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Report on the human rights situation in Sri Lanka

Name of stakeholder: Tamil Information Centre (TIC)

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Introduction

Human rights are violated with impunity in Sri Lanka and the people are in constant fear of being denounced as opponents of the Sri Lankan government or the Liberation Tigers of Tamil Eelam (LTTE). The security services and the paramilitaries can strike at will and at any time. The paramilitaries are so fully integrated into the army's battle strategy and linked to government units through intelligence, assassins, supplies, weapons and other common purposes, that they effectively instill terror amongst the population. Arbitrary arrests, abductions, torture and killings are commonplace. Thousands of people have fled their homeland rather than live under militarized regimes controlling the island of Sri Lanka.

Since establishment, the government has continued its repressive policy, which includes killings, abductions for ransom, bombardment of civilian areas and targeted assassinations. It has sought to stifle freedom of expression and association and to control the media by threats, attacks, assassinations and destruction of media offices. It has also targeted human rights defenders and has accused and attempted to denigrate officers of the UN and other international agencies involved in humanitarian work, in furtherance of its attempts to use humanitarian aid as a weapon of war. It has prevented adequate humanitarian aid and assistance reaching the displaced people in the north-east region, and the security forces and intelligence services have murdered scores of humanitarian workers.

The LTTE's record of abuses against civilians has also worsened. The LTTE has been responsible for serious human rights abuses, including threats, intimidation, abductions, killing of civilians, hostage-taking, use of child soldiers, assassinations and the cruel and inhuman treatment of opponents. The LTTE is also guilty of grossly unfair demands on the people in areas under its control and forced displacement of civilians.

Civilians make up more than 90 percent of the people killed by shelling and aerial bombardment of the government forces and suicide attacks of the LTTE. With the current scale of human rights violations that force people to leave their homes, the number of displaced people is likely to grow in the coming years. There is also increasing poverty and deterioration in health standards and the government's refusal to discuss these issues is an indication of its intention to continue its current policy at the expense of all public standards, including human rights.

A political solution that satisfies Tamil aspirations and ensures their rights is essential for improvement in human rights in Sri Lanka. The current unitary constitution does not allow devolution and the government has clearly indicated that it has no intention to amend the constitution or devolve power. It has also rejected the agreement between the parties, and

accepted by the international community, as contained in the Oslo Declaration. In the circumstances, the proposals of the committee appointed by the government to find a political solution could hardly be expected to pave the way for a lasting solution to the conflict.

Arrest and detention

Thousands of Tamils have been arrested in the last two years and many are still in prisons or detention centres, police stations or in military camps. Most arrests are not carried out on evidence of involvement in some illegal activity but on the mere basis of ethnicity.

A large number of Tamils, including women and students were rounded-up in Colombo and its surrounding areas between 29 November and 4 December 2007 and were subject to humiliation and degrading treatment by the Sri Lankan security forces. The government said on 5 December 2007 that 2,554 Tamils were taken into custody, 2,352 were released after interrogation, and 202 were detained for further investigation. These statistics are open to question. The security forces often deliberately neglect to record the names of all the persons taken into custody during round-ups and this has led to the disappearance of hundreds of Tamils. Many of the detainees are from the north-east seeking safety in Colombo from military operations and violence in these areas, and many others are Hill Country Tamils from Hatton, either employed or involved in trade in Colombo. The Sri Lankan Constitution guarantees the freedom of movement and residence. The government's apparent position that Tamil citizens from the north-east can reside in Colombo only if they satisfy the security forces about their reasons for being in the capital, is a gross violation of human rights under the Sri Lankan Constitution as well as international law. The treatment of thousands of Tamils and the denial of their legitimate rights and safeguards confirm that the human rights of the Tamil people of Sri Lanka are not protected by the rule of law.

More than 350 Tamils, including 51 women, were taken to the Boossa detention centre in Galle District, 65 miles south of Colombo. The Boossa centre is notorious for torture and disappearance of Tamils. The detainees in Boossa were subjected to inhuman and degrading treatment. They were held in crowded conditions without proper water or toilet facilities. More than 100 people were expected to use one toilet. They were not provided sufficient food and they had no change of clothing. Some parents were able to visit their children at Boossa, but the detainees had no facility to communicate with their legal representatives, humanitarian agencies or their relatives, who live far away in Colombo, Hill Country or in the north-east.

The Colombo arrests are just an example of the vulnerable position of the Tamils. Arrests of Tamils are taking place in Sri Lanka's north-east, in many areas of the south and the hill country. The Colombo arrests took place during cordon and search operations although most of the people were in possession of more than one identity document - such as national identity cards, passports, police registration certificates, Village Headman certificates and evidence of employment or trade in Colombo. The persons were not informed of the reasons for the arrest or detention. The relatives were not informed of the whereabouts of the detainees. It is clear that the security forces are not following even the few safeguards provided in the Emergency Regulations (ER) and the Presidential Directives. The Presidential Directives also require that the Sri Lanka Human Rights Commission (SLHRC) should be informed of every arrest under the ER or the Prevention of Terrorism Act (PTA) within 48 hours. But in the case of the mass arrests of Tamils, no information was provided to the SLHRC. The SLHRC itself has failed to take appropriate action in this regard by not demanding information on arrests and the whereabouts of the detainees [Please see Annex 1 for some details about the ER, the PTA and the Presidential Directives].

Both laws give wide powers to the security forces and State officers, and both laws have been condemned as falling far below international standards by the UN and international human rights agencies, which have been repeatedly calling on the government to repeal these laws or introduce the necessary amendments to bring them into line with international standards. The Sri Lankan government has not only ignored these calls but has used these draconian laws to the fullest extent resulting in grave human rights violations. The ERs and the PTA, which are almost exclusively used against the Tamil community, encourage impunity among the security forces, and have led to arbitrary arrests, illegal detention, torture, rape, disappearance and extra-judicial executions. Many Tamils arrested under these draconian laws are held in

detention for several years in the north-east as well as southern areas, in many instances without access to lawyers, organizations or relatives, without facilities for communication or information, without medical facilities or access to humanitarian agencies and sometimes without even being produced before a court of law.

Torture

Torture and ill-treatment are being carried out by the armed forces, paramilitary groups and the police in military camps and police stations. There are also allegations of sexual violence and abuse of women and children in custody, and intimidation of and threats against persons reporting torture. There are no effective witness and victim protection mechanisms in cases of torture. Torture by the security forces has continued in Sri Lanka for several decades and is widespread, systematic and institutionalized, despite international condemnation. The Joint Services Operations Command in Vavuniya, the Kankesanthurai military camp in Jaffna, the Plantain Point army camp in Trincomalee, the “Fourth Floor” headquarters of the Criminal Investigation Department (CID) and the Terrorist Investigation Division (TID) in Colombo, the Batticaloa prison and the Counter Subversive Units (CSU) in various towns, and police stations in the capital and other areas of the south are well known as centres of torture, and according to victims, have special rooms, equipment and devices for the purpose of torture.

Soon after arrest, the victim is usually assaulted and suffers degrading treatment at the place of arrest. Thereafter, the person is transported to these torture centres, stripped naked and subject to torture. The military and the police use various extreme physical and psychological beastly torture methods. Some of these are as follows: 1) beating with plastic pipes filled with cement, batons, belts or chains; 2) stamping wearing boots; 3) Hanging by the legs and beating all parts of the body; 4) burning with cigarettes; 5) suffocating by covering the head with plastic bags soaked in petrol; 6) beating on the soles of the feet; 7) inserting bottle, baton or barbed wire into the rectum; 8) applying chilli powder or other material to sensitive parts of the body; 9) detaining in a dark room; 10) kicking and punching repeatedly; 11) tying to a chair and beating; 12) tying the hand together and hanging from a pole; 13) giving electric shocks; 14) repeatedly smashing the head on a wall; inserting needles into finger nails and other parts of the body; 16) injecting liquids into various parts of the body; 17) deprivation of sleep.

Women have been sexually abused or raped as part of torture by the security forces. Some of the victims of torture have been forced under threat of further torture to join paramilitary groups, give evidence against other people or to spy for the military. The Tamil victims are almost always forced to sign a confession under torture or threat of torture and these confessions are used in evidence against them in court. The provisions of the ER and PTA which allow confessions as evidence in court encourage torture.

Killings and death threats

More than 5,000 people are reported to have died in north-east Sri Lanka since August 2006. These include extra-judicial executions. The Sri Lankan security forces, the non-state paramilitary groups aligned to the military and the LTTE are responsible for the killing of civilians. TIC sources have compiled a list of 1,907 deaths in the north-east between September 2005 and April 2007, including 609 members of the security forces and 234 LTTE cadres. There were 1,064 civilians among the dead, including 95 women and 133 children.¹ In many cases of civilian deaths, the killings have been carried out by unidentified persons arriving at homes and shooting them or taking them away to other places and murdering them. Many people have been abducted by the so-called “unidentified persons”, murdered and their bodies dumped in public places. The perpetrators are referred to as “unidentified persons” in order to avoid persecution in the absence of witness and human rights defender protection. Others have been murdered in public places such as bus stations, streets, shops or offices.

Many civilians, including journalists, human rights defenders, officers of NGOs, government officers and even Tamil MPs have received death threats from the military. Many of those threatened have taken refuge in the Jaffna prison, where they are held along with other prisoners. The military has also directly threatened members of the judiciary with death, and the judges in army-controlled areas of the north-east are unable to perform their duties effectively.

¹ The list does not include all the killings.

Disappearances

In Colombo and other areas of southern Sri Lanka, 88 Tamils were abducted since February 2006. The persons abducted include journalists, students and women. The bodies of 12 people were found later and the fate of 60 people is unknown. Sixteen people were released after paying huge sums of money as ransom. The ransom monies are paid into named bank accounts, but the Banks and the Police are not willing to investigate contravention of the Prevention of Money Laundering Act No 5 of 2006. These indicate government involvement in the abductions. Individuals, members of organizations and even parliamentarians who attempted to investigate the abductions have received death threats.

In addition to the killings, and the disappearances in the east and Colombo, TIC sources have compiled a list of 900 people who went missing in Jaffna alone between December 2005 and August 2007. Of these, 252 were traced subsequently, 129 of whom were found in security force detention (78 were released later). This means, no information had been given by the security forces about arrest and detention to the relatives or the SLHRC. Seventeen people who went missing were brought in vehicles and dropped at various places by unidentified persons. The dead bodies of 13 other persons were later found. According to the list, 648 are still missing and people have witnessed 194 of them being abducted by the security forces.

Disappearance of people takes place during cordon and search operations, at military checkpoints and during curfew hours. People living near military installations are vulnerable. Often abductions are carried out in white vans, a hallmark of military death squads. During search operations, security force personnel in uniform cover their faces with black scarves in order to hide their identity. The daily curfew in Jaffna between 7.00pm and 5.00am and the cover of night enable the security forces to enter into houses and carry out abductions. Because of the curfew, people are vulnerable and there is no way to escape or call for help. The abductors have no difficulty in passing through several checkpoints with the victims. Where people have witnessed abductions or arrests during cordon and search operations, the military deny holding any person in custody when inquiries are made at army camps. Local *Grama Sevakas* (Village Headmen) are often threatened by the military with death, should they reveal the names of persons arrested during search operations. Many people who visited police stations to report about abductions or arrests by the military and to record their statements as witnesses, have themselves been disappeared or killed. In some instances, several members of one family who made statements to the police have disappeared. This indicates that the police are providing information to the military about witnesses and are involved in disappearances.

In addition to the activities of the security forces, parents and relatives continue to complain that forcible recruitment by the LTTE is taking place in areas controlled by them as well as other parts of the northeast.

Impunity

The government's attitude and its refusal to take action on human rights violations are encouraging further abuses and impunity among security forces and government officers. Four Presidential Commissions inquired into 37,662 of the 54,404 complaints of disappearances, which took place between January 1988 and December 1995 and found evidence of disappearance in 21,115 cases. No enquiries have been conducted into another 16,742 cases of disappearances. No further action has been taken in the 21,115 cases where the commissions have recorded the names of the security force personnel responsible for the disappearances. A new Presidential Commission was appointed in 2006 with a mandate to inquire into complaints of abductions, disappearances and unexplained killings. But the government has not published the reports and has failed to take any action on the recommendations.

Human rights violations, including torture, are not probed by the police. In many instances, the investigators themselves have turned protectors or defenders of the perpetrators, and witnesses have been threatened. The security forces have carried out a number of massacres of Tamil civilians, most of which remain un-investigated. Many Tamil civilians have also been killed in aerial bombardment by the Sri Lanka airforce and the Sri Lankan government has always denied that civilians were killed.

Since Mahinda Rajapakse became President of Sri Lanka, the government has encouraged human rights violations against Tamil civilians by the security forces. This encouragement has been given by government ministers and officers by their war-mongering statements, the stance that the peace process will begin only after the LTTE is destroyed and that the territory controlled by the LTTE is liberated. Ministers and government officers are also telling the public not to criticize the security forces, even in the face of grave violations of human rights. Even international agencies carrying out humanitarian work in Sri Lanka, including UN agencies, have come under severe attack from the government. Journalists who criticize the government have been attacked, arrested under the ER or even killed.

The Judiciary led by Chief Justice Sarath N. Silva, which should protect the people, has become a partner of the executive in the violation of the rights of the people. This has encouraged impunity. The Chief Justice himself has warned some lawyers who represent victims of human rights abuses, in open court, that he will not hesitate to remove them from the Lawyers' Roll, if any more human rights case is brought before him. Impartial judges hearing human rights cases against security force personnel in the north-east have been threatened and transferred to other areas. The Judicial Services Commission, which is headed by the Chief Justice, sent a circular letter on 22 August 2006 to all judges in the north-east instructing them not to interfere in the activities of the security forces.

Human Rights institutions

It is clear from the inaction even in the cases of serious human rights violations, the SLHRC which should be independent, is now functioning fully under the control of the Sri Lankan government and has failed to provide protection to the people in accordance with its mandate. It has failed to adequately monitor human rights violations and to investigate abuses. It lacks transparency and accountability. It has failed systematically to hold inquiries into abuses and publish reports. As a consequence, it has totally lost the confidence of the people and people's institutions. In relation to torture and disappearances, the regional offices of the SLHRC have provided information to the SLHRC headquarters in Colombo. But the commissioners have not taken any action. The SLHRC lacks the legal basis for effective functioning. The Sri Lankan President appointed the Commission in May 2006 without the recommendations of the Constitutional Council, which is a mandatory legal requirement in terms of the 17th Amendment to the Constitution. The President has also failed thus far to appoint the Constitutional Council which makes recommendations for the appointment of all the independent commissions.

The SLHRC announced in June 2006 that it will not hear 2,127 cases of disappearance passed on to it from the presidential commissions appointed to investigate disappearances, 'unless special directions are received from the government, as findings will result in payment of compensation'. This is a clear indication that the SLHRC is taking instructions from the government contrary to its purpose and mandate. In June 2007, the SLHRC introduced a three-month time-limit for investigation of complaints, although Human Rights Commission of Sri Lanka Act 1996 does not limit the time for investigations. It has also issued instructions to its regional offices to stop sharing information with NGOs. Sri Lankan human rights agencies have stated that the SLHRC violates fundamental features of the Paris Principles Relating to National Institutions for Protection and Promotion of Human Rights. By failing to carry out its duties as a national institution, the SLHRC in effect, is contributing to impunity and human rights violations in Sri Lanka. Despite the downgrading of the SLHRC in 2007 by the International Coordinating Committee of National Human Rights Institutions (ICC) for failure in human rights responsibilities, no action has been taken to improve its position.

In June 2007, International Independent Group of Eminent Persons (IIGEP) expressed concern that the conduct of the Presidential Commission appointed by the Sri Lankan government in November 2006 to inquire into complaints of abductions, disappearances and unexplained killings is inconsistent with international norms and standards. The IIGEP has pointed to the following problems:

1) Lack of speed in investigation: The first investigation began on 14 May 2007, but since then only a few witnesses have been examined and no substantial progress has been made into any of the mandated cases.

- 2) Lack of transparency: The Commission's decision to conduct investigations in closed sessions may undermine the transparency. The amendments to organizational rules implying that Commissioners can make a decision not to hold a public inquiry at the end of an investigation further affects transparency.
- 3) Lack of independence: The involvement of the Attorney General's Department in the Panel of Counsel to the Commission, involves serious conflicts of interest and compromises national and international standards of independence and impartiality that are central to the credibility of and public confidence in the Commission.
- 4) Lack of financial independence: The Commission does not have sufficient financial independence enabling it to exercise direct control of its resources and avoid delays to its operations.
- 5) Lack of victim and witness protection: The Commission has no functioning Victim and Witness Assistance and Protection Unit, and no adequate training programme to ensure that potential witnesses have the confidence and protection to testify in an inquiry.
- 6) Failure to secure disclosure: The Commission is conducting investigations without relevant and sufficient information and evidence from state bodies and other persons which is vital for comprehensive and effective investigations. The Commission has failed to exercise powers in the Presidential Warrant and secure adequate disclosure.

The IIGEP has called upon the Commission and the Sri Lankan government to comply effectively with international norms and standards in order to achieve the objectives of the Commission's mandate, but no effective action has been taken to remedy the situation.

Withdrawal from the ceasefire and displacement

On 2 January 2008, the Sri Lankan government withdrew from the ceasefire agreement of 22 February 2002. As a consequence, the international monitoring body, the Sri Lanka Monitoring Mission (SLMM), established to enquire into any instance of violation of the terms and conditions of the agreement, has come to an end. The withdrawal of the government from the ceasefire and resumption of hostilities will result in displacement and great human suffering. When the tsunami struck in December 2004, there were some 340,000 war-displaced people in Sri Lanka, majority of them in the north-east. The tsunami displaced a further half a million people. The government refused to establish a joint mechanism for the equitable distribution of tsunami aid to the north-east, which could have formed a basis for cooperation towards finding a political solution. More than 300,000 people were displaced in the north-east when the government launched military operations in 2006 and 2007. Currently there are 189,000 internally displaced people in Sri Lanka, 98% of whom are in the north-east.

Since August 2006, the government has imposed restrictions on food, fuel, medicines, raw materials and other essential needs to the LTTE-controlled areas of the north-east. It has imposed restrictions on materials that are essential for health, education, agriculture, transport, communication and other sectors. It has also restricted legitimate livelihood activities such as fishing. The TIC has received information that the hospitals in the north-east suffer from acute shortage of doctors, hospital staff, proper medical facilities and medicines. Doctors in the north-east have raised alarm about these issues, particularly the acute shortage of many essential drugs.

Human rights defenders

Human rights defenders, journalists and even MPs have been threatened with death or other physical harm to force to keep quiet or abandon the cause they are pursuing. "The threats and pressure come from government ministers and from persons linked to high government authorities" says a Tamil MP, who has been subjected to threats, intimidation and false allegation by senior government and security force officers.

Sri Lankan human rights defenders say that liberal space for expression of opinion has shrunk substantially and they are increasingly exposed to death threats and attacks. They are facing severe retaliatory measures over struggle against abuse of authority, breach of the rule of law, corruption and impunity. These human rights defenders include journalists,

writers, academics, NGO staff, religious leaders, lawyers, members of professional bodies and MPs. They include women and men in rural or urban areas and from various social backgrounds. They have been actively involved in highlighting human rights violations, including arbitrary arrest and illegal detention, torture, disappearance, murder, as well as repression of women and the minorities. Information received by the TIC indicates that the persons most at risk of abuse in Sri Lanka are human rights defenders who:

- persistently criticize the warring parties for human rights violations;
- reveal the links of politicians with the police officers and armed gangs who are involved in human rights abuses;
- reveal corruption involving members of the ruling administration and law enforcement officers;
- reveal abuses against minorities;

In the case of the current Rajapakse administration, despite the fact that President Mahinda Rajapakse himself was a human rights defender at one time, there seems to be a planned and coordinated offensive against human rights defenders.

Hundreds of human rights defenders have received death threats and many of them have been attacked. Many have left their homes and localities in the face of continued threats and many others have fled the country. Agents of the State including the police, army, and other law enforcement agencies, for whom successive governments of Sri Lanka have been directly accountable, have continued to perpetrate violations against human rights defenders. Human rights defenders in the north-east are often followed everywhere for many days by black uniformed masked persons on motorcycles without number plates. These masked persons also hang around the officers and homes of human rights defenders, sometimes for several days. Often relatives of the human rights defenders are arrested or abducted. In Jaffna, the freedom of movement of human rights defenders is extremely restricted. They are often denied travel permits and forced to stay indoors.

TIC has received reports that New Left Front leader Dr Wickramabahu Karunaratne and veteran film maker Dharmasiri Bandaranayake have been subjected to threat and intimidation for their forthright and unswerving stand on the conflict in Sri Lanka.

The intelligence services and other shadowy groups operated by senior government officers are also responsible for abuses. These violations are mainly arbitrary arrest, torture, disappearances and murder. They also include the following:

- Continued harassment of human rights defenders through the filing cases against them on unsubstantiated criminal accusations;
- Visiting them at night and threatening them with death or serious bodily harm;
- Telling them that their spouse and children will be killed or abducted;
- Using abusive language against them;
- Telephoning spouses and threatening them;
- Following them in unmarked motorcycles to work and other places;
- Arriving in vehicles and waiting outside the home or office, sometimes for several days;
- Sending them death threat letters and parcels containing bullets;
- Policemen from the Criminal Investigation Department (CID) ransacking the house on the pretext of search;
- Denying human rights defenders access to scenes of incidents;
- Publishing inflammatory messages in newspapers;
- Making spouses to attend enquiries by providing false information;
- Forcing human rights defenders or spouses to attend enquiries repeatedly;
- Withholding identity cards, thus preventing their movement and forcing to remain in their homes;
- Phone tapping
- Demanding them to provide their mobile telephone numbers;

- Withdrawing or reducing the number of security officers for MPs and others, making them vulnerable to attacks.

Other perpetrators of abuses against human rights defenders are the LTTE, paramilitary groups operating with the security forces, individuals or groups linked to armed criminal gangs, parties of the ruling coalition or the opposition, and mercenary gangs hired by local politicians to suppress revelations about their unlawful activities. Abuses committed by these groups include death threats and physical attacks against human rights defenders.

Humanitarian workers under attack

Between January 2006 and September 2007, at least 57 humanitarian workers were killed in Sri Lanka, including 17 workers of the French agency Action Contre la Faim in Trincomalee in August 2006. In many of the killings, government agencies, security forces or government-aligned paramilitaries are suspected to be involved. The government has failed to carry out proper investigations in any of the cases. In some cases such as the Action Contre la Faim killings, regarding which the SLMM said that the ‘Security Forces of Sri Lanka are widely and consistently deemed to be responsible for the incident’, the government actively sought to prevent any investigation.

Sri Lanka Red Cross Society worker S Thavarajah (43) was abducted by unidentified gunmen from his home in Jaffna town and his body was found on 16 December 2007. The offices of the Tamils Rehabilitation Organization (TRO), in Colombo and government-controlled areas of Vavuniya and Trincomalee in the north-east were searched in January 2007 by the police and all documents, project files and computers were seized. The Trincomalee office was also attacked and ransacked. Seven TRO workers were abducted and murdered by paramilitaries working with army on 29 and 30 January 2006 near government-controlled Welikande in the eastern province. Filipino aid worker Antonio Villeomour of the US agency Mercy Corps, was shot and wounded in Trincomalee on 14 June 2007 in an area heavily guarded by the Sri Lankan navy. A Tamil staff member of the Danish Demining Group (DDG) in Jaffna was shot dead in August 2007. Steen Wetlesen, country programme manager of the DDG said that four staff members travelling to work motorcycles were chased by three people also on motorbikes and fired upon. He also said that four other DDG staff had disappeared in the past two years.

NGOs under attack

NGOs maintaining a position independent of the government in defense of human rights have also been frequently harassed and attacked. They have come under severe pressure from the Sri Lankan government as well as the LTTE and the paramilitary groups. After fighting resumed between government forces and the LTTE, the Sri Lankan government enforced new controls on foreign aid workers and ordered all local and foreign non-government organizations immediately obtain permits. In October 2006, the government decided to withdraw the visas issued to members of four international NGOs – MSS France, MSS Spain, MDM France and Doctors of the World USA – on the recommendations of the Parliamentary Select Committee, alleging that they supported the LTTE.

Government members and government allies such as the People’s Liberation Front (JVP) continue verbal attacks against NGOs alleging that they are a threat to national security. The Parliamentary Select Committee was mandated to investigate activities of NGOs ‘inimical to the sovereignty and integrity of Sri Lanka’ and ‘that adversely affect Sri Lanka’, despite the statement of the UN Special Representative on Human Rights Defenders that ‘only an independent judicial body should be given authority to review an organization’s purpose and determine whether it is in breach of existing laws’.

French medical agency, Medecins Sans Frontieres (MSF), working in the north-east for the past 17 years, withdrew from Jaffna in October 2006. MSF took the decision after the Sri Lankan media referred to MSF as a ‘threat to national security’ and on receiving letters from the government cancelling visas of staff saying that the agency was under investigation. Defence Secretary Gotabhaya Rajapaksa, allegedly threatened *Daily Mirror* editor Champika Liyanarachchi on 17 April 2007, after the newspaper published an article accusing the Thamil Makkal Viduthalai Pulikal Party (TMVP) (Karuna Group) of operating with weapons in government-controlled areas while law

enforcement authorities turned a blind eye. On 20 April 2007, the Colombo-based Consortium of Humanitarian Agencies (CHA) received a threat from TMVP.

Freedom of expression under attack

During the past two years twelve media personnel have been killed in Sri Lanka. President Rajapakse, Defence Secretary Gotabhaya Rajapakse and the army commander have summoned meetings of media representatives on several occasions to warn them against criticizing the war on the grounds that it will affect national security and the morale of the security forces. The *Uthayan* newspaper which reports the conditions of ordinary people in government-controlled Jaffna has lost five journalists. Sampath Lakmal de Silva, who specialized in defence issues, was abducted and murdered in Colombo on 2 July 2006.

Attacks on and harassment of the media have continued despite this observation. Anuruddha Lokuhapuarachchi, *Reuters* photographer and journalist, Rohitha Bhasana Abeywardana, a freelance reporter, and S. Rajkumar, president of the Sri Lanka Tamil Media Alliance have fled the country after receiving death threats. The Karuna group, which operates with the army, has banned the distribution of the Colombo-based Tamil newspapers *Virakesari* and *Thinakkural* in the eastern district of Batticaloa. Following repeated protests by students in Jaffna against abduction of young people, the Sri Lanka army stormed offices of *Thinakkural*, *Uthayan* and *Valampuri* newspapers on 9 January 2007 and ordered staff not to publish reports by the Jaffna University Student Union.

K.C. Saranga, a programmer for *Derana TV*, was severely beaten on 15 January 2007 by a mob in the Colombo suburb of Dehiwela and a video film on an operation by STF commandos in the Eastern Province was seized from him. Thanikasalam Sarirooban, a trainee journalist with the *Daily Mirror*, was shot dead by gunmen on a motorcycle on 2 August 2007, a day after journalism student Sahadevan Nilakshan was gunned down inside his home. In August, Nadarajah Kuruparan, a news programmer at *Sooriyan FM* television, was abducted and released 24 hours later. His abductors warned him to stop showing a programme that exposed the abuse suffered by the Tamil minority community. Sinnathamby Sivamaharajah, editor of the Tamil-language daily *Namathu Eelanadu* was shot dead by gunmen at his home at Tellippalai, Jaffna on 21 August 2007.

The office of the *Sunday Leader* newspaper which is an outspoken critic of the government was burned on 21 November 2007. The fact that some 15 perpetrators were able to pass security force checkpoints easily and escape, is an indication that they were linked to the government. State-controlled Sri Lanka Rupavahini Corporation's (SLRC) news producer Lal Hemantha Mawalage was stabbed on 25 January 2008 in Colombo. On 27 January 2008, Defence Secretary Gotabhaya Rajapakse openly criticized private newspaper groups and declared that strong action should be taken against journalists who write about military matters. He also stated that laws that criminalize defamation should be re-introduced.

Trade unions under attack

Trade unions and trade union rights are also under attack in Sri Lanka. In February 2007, the Sri Lankan government admitted that the abduction of a railway trade union activist Nihal Serasinghe and two journalists Sisira Priyankara and Lalith Seneviratne in Colombo was carried out by the army. The government claimed that they were arrested, but none of the procedures for arrests was followed. After the trade unions protested about the arrests, posters depicting trade union leaders as terrorist operatives sprung up in many places calling for their arrest. A campaign in the government media was also launched to discredit trade unionists. After the Sri Lanka Ports Authority (SLPA), which is under the Ministry of Ports, and the Minister of Ports refused to negotiate on wages and benefits, 14 port trade unions representing 14,000 port workers decided to launch industrial action in March 2007. The Supreme Court, on a petition filed by an employer organization Joint Apparel Association Forum (JAAF) claiming that the trade union action constituted an infringement of their right to lawful occupation, issued a restraining order on 25 July 2007 forbidding the trade union actions until 27 November 2007 and ordered the police and military to take immediate steps to ensure the trade unions complied with the decision. The International Labour Organization (ILO) in its November 2007 Governing Body session held the view that the restriction placed on the port-workers by the Supreme Court is contrary to the principles set out in the ILO Conventions that Sri Lanka has ratified and pledged to uphold.

Hostile Supreme Court

Human rights defenders are attacked from all sides and they have no one to turn to for protection. The courts, particularly the Supreme Court, are hostile to the defenders. The Chief Justice himself has threatened human rights defenders during court proceedings that he would suitably deal with them if they brought human rights cases before the Supreme Court against the security forces.

The Supreme Court, on a petition filed by employer organization Joint Apparel Association Forum (JAAF) claiming that trade union action constituted an infringement of their rights, issued a restraining order on 25 July 2007 forbidding the trade union actions until 27 November 2007 and ordered the police and military to take immediate steps to ensure the trade unions complied with the decision.

The International Community

The international community, through international agencies, UN organizations, government agencies and other means, has made attempts for more than 25 years to improve human rights in Sri Lanka. Within the last two years the human rights situation has gravely deteriorated and the Sri Lankan government, rather than taking measures to protect the people, has unleashed its power on the people themselves, resulting in enormous suffering, particularly for the Tamil people in the island, and in erosion of democracy. The government has also made it clear by words and action that it will not take, for the foreseeable future, any measure to put the peace process back on track. If persuasion has not produced results for 25 years, the TIC believes that the International Community must explore other means to restore human rights, democracy and peace in Sri Lanka.

The TIC calls up on the International Community to take all measures as are necessary to

The Tamil Information Centre calls up on the UN Human Rights Council to

- a) take urgent measures for the presence of an international human rights monitoring body with access to all parts of Sri Lanka and access to all relevant institutions with a view to improving human rights on the ground and ensuring Sri Lanka's human rights obligations and commitments;**
- b) ensure that a mechanism for investigation of human rights violations throughout the island, which meets the requirements of independence, credibility, effectiveness and empowerment is established, with international participation, so that it contributes to public confidence, peace and stability in all parts of Sri Lanka;**
- c) ensure that impunity is dealt with in Sri Lanka, paying special attention to the laws and regulations that contribute to impunity, particularly through proper, adequate and impartial investigations into allegations of torture, rape, disappearances and extra-judicial executions, and that the perpetrators, irrespective of their ethnic origin, position or status, are prosecuted.**

ANNEX 1

Emergency Regulations (ER) and the Prevention of Terrorism Act (PTA)

Regulation 20 (9) of the ER provides as follows:

Where any person is taken into custody under the provisions of this regulation it shall be the duty of the arresting officer to issue to the spouse, father, mother, or any other close relative a document in such form as is specified by the Secretary, acknowledging the fact of arrest.

The Presidential Directives of 5 July 2006 provide as follows:

At or about the time of the arrest or as it is not possible in the circumstances, immediately thereafter as circumstances permit:

(i) The person making the arrest or detention shall identify himself to the person arrested or any relative or friend of such person upon inquiry, being made by name and ranks;

(ii) Every person arrested or detained shall be informed of the reason for the arrest;

(iii) The person making the arrest or detention shall issue, to the spouse, father, mother or any other close relation as the case may be a document in such form as specified by the Secretary to the Ministry of the Minister in charge of the subject of Defence, acknowledging the fact of arrest.

The name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained, shall also be specified.

The security forces may be hiding behind the following proviso common to both the Regulation and the Presidential Directive, which enables them to ignore the requirements:

Provided that, where any person is taken into custody and it is not possible to issue a document as set out above, it shall be the duty of the arresting officer, if such officer is a police officer, to make an entry in the Information Book, giving reasons as to why it is not possible to so issue a document, and if the arresting officer is a member of the Armed Forces to report the reasons why it is not possible to issue a document to the officer in charge of the police station, whose duty it shall be to make an entry of such fact along with the reasons therefor in the Information Book.

The ERs introduced in August 2005 have the effect of removing judicial oversight in relation to arrest and detention, and suspend the relevant provisions of the normal law. The ERs give authority to security forces to arrest on mere suspicion, without warrant. The person arrested can be detained without access and without charge, and the ERs do not limit the time period of detention. Under the ERs the Defence Secretary can order a person to be held for a period of one year and such person need not be produced before a Magistrate for 30 days or in some cases 90 days. The Magistrate has no authority to release the person on bail without written permission from the Attorney General.

The ERs allow confessions to the police admissible as evidence in court and suspend the relevant provisions of the normal law. A confession or statement made to any person under any circumstance may also be used as substantive evidence against the accused. The burden of proving that the confession was made under duress lies on the accused.

The ERs also erode the powers of the courts under normal law in relation to deaths in the custody of the police or armed services. Under normal law, the Magistrate has wide powers to receive information immediately, view the body and hold an enquiry to ascertain the causes of death. But under the ERs enquiries into deaths in custody can take place only on the application of the Inspector General of Police (IGP). After a post-mortem, a DIG has the power under the ERs to burn the body without handing it over to relatives.

ERs introduced in December 2006 give a very wide definition of “terrorism” and are clearly intended to curtail legitimate democratic activities and constitutionally protected rights of the people, organizations and the media. The regulations say that no person shall engage in any transaction on any matter whatsoever with a group engaged in terrorism. But the regulations also say that there can be transaction with such a group with the written approval of the Competent Authority appointed by the President, to facilitate a peaceful political solution, maintenance of supplies,

services essential to the life of the community, provision of humanitarian assistance, conduct of development activities or for any other lawful purpose. This means, individuals and civil society organizations engaged in these activities, including promotion of peace, cannot continue. If they wish to carry out these legitimate activities, they must obtain written approval from the Competent Authority, as otherwise they would be accused of engaging in terrorism.

In addition to ERs, the PTA gives wide powers of arrest and detention to the security forces and State officers. A person may be arrested without a warrant under the PTA and can be detained for 72 hours. But during this period of 72 hours, the Defence Minister has the power to issue a detention order and detain the person for three months and such order may be extended up to 18 months. The Minister's detention order is final and cannot be called into question in any court or tribunal in any manner. A person can be held for 18 months without being produced before a court. As in the case of ERs, confessions to the police are admissible as substantive evidence.