



HUMAN RIGHTS COUNCIL

**Questioning Possible Human Rights Violations during the
Recent Conflict in Sri Lanka**

BACKGROUND PAPER

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Committee and its Mandate

The United Nations Human Rights Council was created on 15 March 2006, as an inter-governmental body whose membership base extends across 47 States. Each member is elected for a three year term, which is not renewable for immediate re-election after two terms. Established by the General Assembly through Resolution 60/251, the Human Rights Council is closely linked with the Office of the High Commissioner for Human Rights, and works to promote and protect human rights around the world.

In accordance with the Charter of the United Nations, the Universal Declaration of Human Rights and other human rights instruments such as the Vienna Declaration and Programme of Action, the mandate allows the Council to address situations in which human rights are violated, including gross and systematic violations, and make recommendations based on these. Guidance and assistance is offered by the Council to all countries through three avenues – dialogue, cooperation and capacity-building, so that the highest standards of protection for human rights can be achieved.



History

Sri Lanka (formerly Ceylon) became an independent state in 1948 not from the process of nation building that a nationalist struggle involves, but instead launched off the back of the Indian nationalist struggle (Sivanandan 2010, 60). At the time it was regarded as a model colony of the Commonwealth, with an English-educated elite, universal suffrage, and an elected assembly – deserving of self-government (Sivanandan 2010, 60). Due to the British using Tamil labourers for tea cultivation, after independence a large population remained in the North-East of Sri Lanka. Following rapid Sinhalese populations settling in the area the ethnic boundaries of Sri Lanka began to change and particular political parties capitalised on the friction (Sivanandan 2010, 61). In 1956 Solomon Bandaranaike was elected and began a program of ethnic cleansing, whereby Buddhism was adopted as the state religion and Sinhalese the official language, despite the Tamil minority numbering over 20% (Sivanandan 2010, 61). Tamil protests in 1956 and 1958 led to hundreds of brutal killings and eventually Marxist elements in the country led to the forming of the Liberation Tigers of Tamil Eelam (LTTE) (Sivanandan 2010, 61).

After fighting broke out in 1983 there have been human rights breaches by both the Sri Lankan and LTTE. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Manfred Nowak in his 2008 report stated that although the Sri Lankan Government was taking effective steps, torture was still widespread (2008, 24). One of the most shocking practices the Rapporteur discovered in Sri Lanka was against those merely

suspected of being LTTE and subjected to soldering irons and thumb suspension (2008, 24).

Furthermore, conflict has displaced much of the Tamil population in the north. The Special Rapporteur on Internally Displaced Persons, Walter Kälin reported that many internally displaced Tamils and other persons affected by the conflict were excluded from political participation, which effectively undermines the legitimacy of governments (2008, 13). Furthermore, Kälin noted that the resolution of such issues could be a positive force for social rehabilitation and peace-building (2008, 13).

In 2002, a cease fire brokered by Norway (ultimately failing in 2008) was far too lax in dealing with human rights violations by both sides (Höglund and Svensson 2009, 175). Eventually towards the end of the recent conflict, a video emerged (which has now been verified by UN Special Rapporteur Philip Alston and three independent experts) of a Sri Lankan soldier executing an unarmed LTTE fighter, a video the Sri Lankan government insist is fake (BBC, 7 January, 2010). Regardless, the LTTE did perpetrate a number of extra-judicial killings, torture, kidnappings, suicide bombings and even mortar attacks outside of the warzone as far south as Colombo (Matthews 2009, 577).

Current Situation

On the 18th of May 2009, the Sri Lankan Government formally declared an end to the 25-year civil war with the LTTE after the killing of their leader and army chief Velupillai Prabhakaran. The gross violations of human rights in the final offence carried out by the Sri Lankan government saw indiscriminate bombings in LTTE-controlled areas and shelling of civilians, even of hospitals, which often housed those civilians wounded from the fighting. The final five months of conflict saw an equal level of disregard for the protection of the welfare of civilians from the side of the LTTE, who had forced civilians to retreat along with them from government military forces, many being used as human shields. The LTTE followed its practice of zero tolerance of dissent amongst its ranks, and fired on civilians attempting to flee. Humanitarian assistance was blocked to the trapped and desperate population in the war zone.

One of the tragic outcomes of the final push by the Sri Lankan military was the deaths of over 20,000 Tamil civilians, according to *The Times* (30 May, 2009) from a top-aide to the UN Secretary General. Disturbingly the UN disclosed figures in April 2009 that were significantly less at 7,000 and subsequently the Human Rights Council was severely criticised for apparent non-action (*The Times*, 30 May, 2009). After the resounding defeat



Associated Press, April 26 2009.

of the LTTE *The Guardian* (March 14, 2010) reported that the Tamil National Alliance (what is considered a proxy of the LTTE), have dropped their demands for a separate state and instead have moved to a dialogue of regional autonomy. Now with the LTTE and TNA sidelined, many of their supporters are in hiding are in desperate need of aid. The HRC has offered pledge support to Sri Lanka's humanitarian efforts, however no agreement on UN access to over 300,000 Tamil refugees was reached (*BBC*, 27 May 2009).

The current situation has spiralled into bickering over a plan by Secretary General Ban Ki-moon to send a panel of experts to the country. The current President Mahinda Rajapaksa has condemned the plan, as he sees the allegations of human rights abuses as "misrepresentations" stirred up by LTTE supporters.¹ Meanwhile there are concerns that many activists could be charged over what the International Bar Association says has amounted to listings over "levels of dissent", while Amnesty International has labelled the post-war period a "witch-hunt".²



By Gemunu Amarasinghe - Associated Press, 29 January 2009

Key Documents

In 2008, a Universal Periodic Review (UPR) was conducted with Sri Lanka in question. Although some of the nearly 60 states present commended Sri Lanka's national report, which had put the promotion of human rights at the forefront of its approach to its conflict with the LTTE, the UPR brought to light a number of concerns that

other countries held in regards to the Sri Lankan government's respect for human rights. Noting the deterioration of the overall human rights situation, many of the concerns brought up during the review still exist today, such as:

- Forced recruitment of children into armed forces
- Abduction of civilians
- Inadequate protection and supplies for internally displaced persons
- The number of extrajudicial killings
- Absence of investigation into alleged attacks on journalists and media personnel
- Absence of an effective international human rights monitoring system
- Insufficient cooperation between the government of Sri Lanka and relevant UN bodies, such as the Office of the High Commissioner for Human Rights,

¹ BBC News, "Sri Lanka's Rajapaksa dismisses UN human rights panel", accessed at http://news.bbc.co.uk/2/hi/south_asia/8553095.stm on the 18th of March 2010.

² BBC News, "Lawyers alarmed over 'rights abuse' in Sri Lanka", accessed at http://news.bbc.co.uk/2/hi/south_asia/8566946.stm on the 20th March 2010.

the UN High Commissioner for Refugees and the International Committee of the Red Cross

- Lack of effective implementation of policies and procedures by the Sri Lankan government to resolve the human rights issues



Hospital in Sri Lanka hit by artillery for several days before being evacuated. Private, 2009.

On 23 May 2009, UN Secretary-General Ban Ki-moon paid a visit to Sri Lanka, which was concluded with a joint communiqué with the government of Sri Lanka. It outlined a number of points both parties recognized as necessary to the post-conflict phase:

- Long-term development of the north
- Re-establishing democratic institutions and electoral politics
- Broader dialogue with all parties, including Tamil parties
- The adoption of policies for Northern Sri Lanka for the rehabilitation and reintegration of child soldiers

Human Rights Watch (HRW) circulated a document in January 2010, criticizing the failure of the Sri Lankan government to address adequately the issues brought up during both the conflict and post-conflict phase. The same report reveals that since the end of the conflict in 2009, Sri Lankan government has confined all civilians displaced as a result of the war in “military-controlled detention centres”.³ Called “welfare centres” by the same government, the rights to freedom and liberty of movement are denied in these camps. Out of the apparent 129 000 displaced civilians that remain since November 2009, over 80 000 are children.

In expressing grave concerns for the human rights record in Sri Lanka, the HRW has also criticized the international community for not having taken serious steps to investigate allegations of human rights abuses and violations of warfare laws during the final months of the conflict. The report also condemned the refusal of the government to be accountable for human rights abuses, which demonstrates a “longstanding impunity for rights violations by security forces.”⁴

With the conscription of children into the armed forces and Internally Displaced Persons (IDP) being two major human rights concerns, a report was released by

³ World Report Chapter: Sri Lanka. January 2010, p.2

⁴ Ibid., p.5

the Office of the Secretary-General to address this issue (see *UN Sources*). Both groups were victims of shelling and aerial bombing, which worsened the numbers of IDP. The crossfire between Sri Lankan government army groups and the LTTE resulted in internally displaced families and persons being displaced multiple times, as they attempted to flee war zones. In addition, the report reveals the scarcity of humanitarian assistance, and the difficulty in accessing such aid. The protection of children was a key concern in the context of human rights issues, as the conflict witnessed continual maiming and killing of children, with the full scale of violations unknown with hindered access to regions of concern.



Private, 2009.

Questions the Committee should consider:

How will the Human Rights Council investigate and respond to the alleged violations of human rights in Sri Lanka by both the government and the LTTE?

- Should UN personnel be sent into Sri Lanka to assess the human rights situation?
- How should the UN deal with the Sri Lankan government allegedly refusing to be held accountable for their actions?
- Should the HRC call for the establishment of a commission or rights review involving both the government of Sri Lanka and LTTE representatives as a means of resolving the serious issues at hand?
- What should be done about the rehabilitation of children who are now ex-combatants and the release of child soldiers?
- How should the UN approach the situation of IDP and Sri Lanka's need for humanitarian assistance in its post-conflict phase?

Further Reading

News Reports

BBC News, "Sri Lanka Country Profile", updated 16 March 2010:
[http://news.bbc.co.uk/2/hi/south_asia/country_profiles/1168427.stm]

BBC News, "Sri Lanka: Timeline", updated 16 March 2010:
[http://news.bbc.co.uk/2/hi/country_profiles/1166237.stm]

BBC News, "UN supports Sri Lankan aid effort", accessed at
[http://news.bbc.co.uk/2/hi/south_asia/8070964.stm] on the 19th March 2010.

For up to date stories on the UN Human Rights Inquest see:
[<http://www.guardian.co.uk/world/srilanka>]

The Guardian, "Sri Lankan Tamil Alliance drops independence demand",
accessed at [<http://www.guardian.co.uk/world/2010/mar/14/sri-lanka-tamils-self-rule>] on the 20th March 2010.

The Times Online, "UN Chief knew Tamil civilian toll had reached 20,000",
accessed at
[<http://www.timesonline.co.uk/tol/news/world/asia/article6391265.ece>] on
the 20th of March 2010.

UN Sources

2008 Universal Periodic Review of Sri Lanka:
[http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/A_HRC_8_46_SriLanka_E.pdf]

Joint Statement released by UN Secretary-General and the Government of Sri Lanka. 26 May 2009:
[<http://www.un.org/News/Press/docs/2009/sg2151.doc.htm>]


Reports by the Office of the Special Representative of the Secretary-General for Children and Armed Conflict on the situation in Sri Lanka of children in armed conflict. December 2009:
[<http://www.un.org/children/conflict/english/srilanka.html>]

Key Documents, including Reports

Human Rights Watch, *Sri Lanka: Events of 2009*:
[<http://www.hrw.org/en/node/87402>]

For more in depth examination into the violations of human rights in Sri Lanka see:

Human Rights Watch *World Report Chapter: Sri Lanka*, January 2010.
[http://www.hrw.org/sites/default/files/related_material/srilanka_0.pdf]



University Teachers for Human Rights (Jaffa), *Special Report No. 34. Let Them Speak: Truth about Sri Lanka's Victims of War*, 13 December 2009:
[http://uthr.org/SpecialReports/Special%20rep34/Special_Report_34%20Full.pdf]

Other Recommended Reading

Höglund, K & Svensson, I. 2009. Mediating between tigers and lions: Norwegian peace diplomacy in Sri Lanka's civil war. *Contemporary South Asia* 17(2): 175-191.

Matthews, B. 2010. The limits of international engagement in human rights situations: the case of Sri Lanka. *Pacific Affairs* 82(4): 577-596.

Nowak, M. United Nations Mission to Sri Lanka. *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development*. 26 February 2008: 1-51.

Sivanandan, A. 2010. Ethnic cleansing in Sri Lanka. *Race and Class* 51(3): 59-65.

Walter, K. United Nations Mission to Sri Lanka. *Report of the representative of the Secretary-General on the human rights of internally displaced persons*. 21 May 2008: 1-25.