



SRI LANKA

Legal Limbo

The Uncertain Fate of Detained LTTE Suspects in Sri Lanka

HUMAN
RIGHTS
WATCH



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Map of Sri Lanka



Summary

The Sri Lankan government is currently detaining at least 11,000 people, including more than 550 children, in so-called “rehabilitation centers.” These individuals, said to be associated with the separatist Liberation Tigers of Tamil Eelam (LTTE), were among the almost 300,000 displaced persons confined in detention camps in the final months of the armed conflict with the LTTE.

The government has routinely violated the detainees’ fundamental human rights, including the right to be informed of specific reasons for arrest, the right to challenge the lawfulness of the detention before an independent judicial authority, and the right of access to legal counsel and family members. The authorities’ consistent failure to inform families of the basis for the detainees’ arrest and their whereabouts raises serious concerns that some detainees may have been victims of torture and ill-treatment, which are more likely to take place where due process of law is lacking and which have long been serious problems in Sri Lanka. Given the lack of information about some detainees, there is also a risk that some may have been “disappeared.”

This report is based on interviews with relatives of individuals who have been detained on suspicion of LTTE association. While the government prohibits access to the rehabilitation centers for most independent observers, and access to the camps and former conflict zones remains strictly limited, we were able to conduct more than a dozen interviews with families of detainees, as well as with numerous humanitarian workers and others in Sri Lanka with knowledge of the situation. Many of those interviewed for this report have requested that their names not be used out of fear of repercussions from the Sri Lankan authorities.

The 26-year-long armed conflict between the Sri Lankan government and the LTTE, which ended with the defeat of the LTTE in May 2009, took a heavy toll on the civilian population in areas affected by the fighting. During the final months of the conflict, both government forces and the LTTE demonstrated blatant disregard for civilian life and suffering.

As the LTTE retreated from government military advances, it forced civilians to retreat with it, effectively using them as human shields. The LTTE on numerous occasions fired on and killed civilians attempting to flee. The LTTE also continued its practice of forcibly recruiting

civilians, including children under 18, into its forces or using them for dangerous military labor on the front lines.¹

Sri Lankan armed forces indiscriminately bombed and shelled civilians trapped in a shrinking area of LTTE control. Army shelling often struck hospitals filled with civilians harmed in the fighting.² The government also prevented humanitarian organizations from delivering much needed food and medical supplies to civilians trapped in the war zone.

The United Nations has conservatively estimated that the fighting killed at least 7,000 civilians during the final five months of the conflict.³ The government's refusal to allow any independent observers into the conflict zone or to talk to people who fled the conflict zone makes it impossible to establish conclusively the number of casualties.

Faced with possible starvation or death by shelling or gunfire, many civilians escaped to presumed safety in government-controlled areas, surviving fire from LTTE forces attempting to prevent their flight, almost continual crossfire and scattered landmines. For the most part people fled in small groups, but a massive exodus of tens of thousands of people took place after the government broke through LTTE defense fortifications on April 20. According to the United Nations, 290,000 people crossed over to government-controlled areas from the conflict zone between October 27, 2008, and June 1, 2009.⁴

At several checkpoints, security forces screened and registered the displaced before transporting them to detention camps in the north, which the government euphemistically called "welfare centers." The largest detention camp was the multi-camp Menik Farm in Vavuniya district. The government denied the displaced in the camps their rights to liberty and freedom of movement. Individuals in the camps could not leave to work or live with family members or others elsewhere. The government started releasing significant numbers from the camps only in November 2009. By that time, the majority of the displaced had been

¹ Human Rights Watch, *Besieged, Displaced and Detained: The Plight of Civilians in Sri Lanka's Vanni Region*, December 2008, <http://www.hrw.org/en/reports/2008/12/22/besieged-displaced-and-detained>, and Human Rights Watch, *War on the Displaced: Sri Lankan Army and LTTE Abuses Against Civilians in the Vanni*, February 2009, <http://www.hrw.org/en/reports/2009/02/19/war-displaced>.

² "Sri Lanka: Repeated Shelling of Hospitals Evidence of War Crimes: 30 Attacks Reported on Medical Facilities Since December," Human Rights Watch news release, May 8, 2009, <http://www.hrw.org/en/news/2009/05/08/sri-lanka-repeated-shelling-hospitals-evidence-war-crimes>.

³ Catherine Philip and Michael Evans, "Times photographs expose Sri Lanka's lie on civilian deaths at beach," *Times* (London), May 29, 2009, <http://www.timesonline.co.uk/tol/news/world/asia/article6383477.ece> (accessed January 10, 2010).

⁴ For a detailed account of the final months of the fighting and abuses by both sides, see University Teachers for Human Rights (Jaffna), "Let Them Speak: Truth about Sri Lanka's Victims of War," December 13, 2009, <http://uthr.org/SpecialReports/Special%20rep34/Uthr-sp.rp34.htm> (accessed January 10, 2010).

confined to the camps for more than six months. Those who were displaced first, in March 2008, had spent more than 18 months in confinement.⁵

Both at checkpoints and in the camps, the authorities separated certain individuals from their families—presumably because of alleged ties with the LTTE—and sent them to “rehabilitation centers.”

The government has the right and responsibility to protect public safety. International law allows the government to take measures to identify and apprehend individuals who acted on behalf of the LTTE in violation of the law, including LTTE combatants and leaders hiding among the displaced population.

However, the detention and treatment of LTTE suspects must also be in accordance with international law. Human Rights Watch research shows that the government has routinely violated the fundamental rights of the detainees.

It is unclear whether any of the 11,000 detainees have been formally charged with any crimes and what acts these individuals have committed that led to their detention. In December, 2009, one government minister said that only 200 of the 11,000 detainees will be charged with a crime and that the vast majority of the detainees were forced to fight by the LTTE.⁶ In January, 2010, another government minister said the government will not release the 14,000 [sic] LTTE suspects anytime soon, “because some of them are suspected to be connected to very serious incidents.”⁷

The government has routinely violated the detainees’ right to be informed of specific reasons for arrest, the right to challenge the lawfulness of the detention before an independent judicial authority (habeas corpus), and the right of access to legal counsel and family members.

⁵ As of January 2010, the government still held almost 80,000 people in the camps. “Only 79,965 IDPs remaining in Vavuniya,” *Government of Sri Lanka*, January 7, 2010, http://www.priu.gov.lk/news_update/Current_Affairs/ca201001/20100107only_79,965_idps_remaining_in_vavuniya.htm (accessed January 10, 2010). While the government claimed that freedom of movement had been restored for those still in the camps, the remaining camp residents were permitted to leave the camps only temporarily, for up to 15 days at a time, and only with specific permission.

⁶ Karen Snowden, “Sri Lanka to free most Tamil Tigers,” *Radio Australia*, December 9, 2009, <http://www.abc.net.au/news/stories/2009/12/09/2766990.htm> (accessed January 12, 2010).

⁷ Saroj Pathirana, “Sri Lanka's Tamil Tiger suspects 'won't be freed soon',” *BBC News*, January 10, 2010, http://news.bbc.co.uk/2/hi/south_asia/8450914.stm (accessed January 12, 2010).

In many cases, the authorities have failed to inform family members about the whereabouts of the detainees. Often, family members who themselves were deprived of their liberty in detention camps have had great difficulty in locating relatives who were taken away from the camps. While some families have been able to locate their relatives in other camps, many people remain missing weeks and months after they were separated from their families, raising fears that they might have been subjected to enforced disappearance. Concerns about the fate of detainees are aggravated by Sri Lanka's appalling record of enforced disappearances.⁸

The government argues that the detainees are "surrendeers" under the Sri Lankan emergency laws that permit the government to hold without charge or trial individuals for up to two years. It claims that the 11,000 detainees acknowledged that they had participated in the insurgency and effectively turned themselves in.⁹ The absence of information on arrests and detention makes it impossible to determine whether those deemed to be surrendeers actually surrendered voluntarily. Human Rights Watch research shows that many of the so-called surrendeers were in fact detained against their will, contrary to government claims.

Government promises that the "surrendeers" will be released after their rehabilitation do not make the detentions legal.¹⁰

Because the recruitment and use of individuals under the age of 18 in hostilities is illegal, such children should be treated first and foremost as victims in need of protection and assistance with reintegration into society. Children who have been connected with the LTTE should not be prosecuted, punished, or threatened with prosecution or punishment solely for their association or membership. Any prosecution for crimes committed by children when they were associated with the LTTE, as well as any detention pending such prosecution, should conform to international juvenile justice standards.

The government's treatment of security detainees has fed fears among many Tamils that the government intends to persecute and discriminate against the Tamil population. It is

⁸ For detailed information on "disappearances" in Sri Lanka in 2006-2007, see Human Rights Watch, *Recurring Nightmare: State Responsibility for "Disappearances" and Abductions in Sri Lanka*, vol. 20, no 2(C), August, 2009, <http://www.hrw.org/en/reports/2008/08/27/recurring-nightmare>.

⁹ See, for example, Karen Snowden, "Sri Lanka to free most Tamil Tigers," *Radio Australia*, December 9, 2009, <http://www.abc.net.au/news/stories/2009/12/09/2766990.htm> (accessed January 12, 2010).

¹⁰ On January 9, 2010, the authorities released more than 700 individuals from rehabilitation camps in Vavuniya because they were "only connected with minor crimes" and because "the Government had taken the decision to release them." Gandhya Senanayake "Over 700 rehabilitated LTTE suspects to be released," *Daily Mirror*, January 9, 2010, <http://www.dailymirror.lk/print/index.php/news/123-news/867.html> (accessed January 10, 2010). The releases and their motivation is further evidence of the arbitrary nature of the detentions.

important for public confidence in the government that these cases be dealt with in accordance with Sri Lanka's obligations under international human rights law.

Human Rights Watch urges the Sri Lankan government to:

- Immediately make public specific information on the whereabouts of those detained on security grounds and the legal basis for the detention of each individual;
- Ensure that individuals detained are held in conformity with international law, including being charged with a criminal offense or released;
- Ensure that those held are able to contest their detention before an independent court and have access to legal counsel and other internationally guaranteed due process and fair trial protections; and
- Ensure that family members are informed of the whereabouts of those detained.

Human Rights Watch also calls upon influential governments and the United Nations and its relevant agencies to publicly and privately raise concerns about the legal status and treatment of security detainees. While the Sri Lankan government has requested financial support from the international community to build rehabilitation centers for LTTE cadres, no such support should be provided unless and until the basic rights of those detained are respected.

Human Rights Violations against LTTE Suspects

Arbitrary Arrests

According to government statements, the Sri Lankan authorities have detained more than 11,000 people suspected of LTTE involvement from among the people displaced by the conflict. At least 556 of them are children.¹¹ Security forces detained some of these people immediately after they fled the conflict zone and reached government-controlled areas. Others were taken away from the camps in the ensuing months.

Government officials often claim that these detainees “surrendered” to the authorities and were then transferred to “rehabilitation centers” for former LTTE cadres where they receive vocational training and other services.¹² Human Rights Watch research indicates, however, that many of the “surrendeers” were in fact detained against their will, either at military checkpoints or taken from the camps. Media accounts have cited military officials who suggest some suspected LTTE cadres were taken into custody based on information gathered by the army's intelligence wing “following revelation about their presence by their detained colleagues.”¹³

While most of these LTTE suspects were detained during the final weeks of fighting and the conflict's immediate aftermath, new arrests continue. In October 2009, the media reported that the security forces detained at least 300 senior LTTE cadres who were “hiding among” internally displaced persons.¹⁴ Human Rights Watch has received information that the detentions continued at least through December.

The authorities frequently arrest LTTE suspects without regard to the requirements of domestic or international law. Eyewitnesses to arrests told Human Rights Watch that plainclothes members of the security forces have taken persons into custody without identifying themselves or informing those arrested or their families of the grounds for arrest. They frequently failed to provide arrest receipts to the family, as required by Sri Lankan law,

¹¹ Government of Sri Lanka, “Rehabilitation of Child Soldiers,” November 18, 2009, http://www.news.lk/index.php?option=com_content&task=view&id=12394&Itemid=44 (accessed January 10, 2010).

¹² “More rehabilitation centers for ex-LTTE cadres to be established in North and Eastern Sri Lanka,” *Colombo Page*, October 8, 2009, http://www.colombopage.com/archive_091/Oct1255012631RA.html (accessed January 10, 2010).

¹³ “300 LTTE cadres detained from welfare camps in Lanka,” *Indian Express*, October 28, 2009, <http://www.indianexpress.com/news/300-ltte-cadres-detained-from-welfare-camps-in-lanka/534389/> (accessed January 10, 2010).

¹⁴ *Ibid.*

and, when they did, the arrest receipts often did not specify the reasons for detention or the location where the person was being taken.

In an illustrative case, the army detained 32-year-old Jeganathan on May 15, 2009, after he crossed into government-controlled areas with his wife and one-year-old son. Jeganathan's wife, Aanathi, told Human Rights Watch that when they arrived at the Omanthai checkpoint, soldiers informed them that everybody who had been involved with the LTTE had to surrender. Jeganathan, who had worked for the LTTE, decided to register. Aanathi said:

When we went to register, the military told us that my husband had to register separately because he had been involved with the LTTE, but that he would join me in the camp two days later. I initially refused to go alone, but they forced me. After two days, the camp administration said that he would come in two weeks. After two weeks he was still not there. I lost all hope. I thought that I would never see him again.¹⁵

Aanathi never received official notification of her husband's whereabouts from the authorities. A relative who lives in Vavuniya kept looking for Jeganathan in every camp in the district, and finally managed to locate him in the Rambaikulam camp and notified Aanathi. However, in the absence of official notification, it was impossible for her to make a request to visit him or obtain information about his fate. Eventually, Aanathi received a document from the International Committee of the Red Cross (ICRC), which then had access to the camps, that confirmed her husband was at Rambaikulam.¹⁶ Nearly three months after he had been detained, she finally managed to visit him.

The authorities have also arrested suspected LTTE supporters from the camps. Initially the majority of camp arrests were conducted by uniformed military personnel. Gradually, however, authorities in civilian clothes, sometimes identifying themselves as being from the police Terrorist Investigation Division (TID) or the Criminal Investigation Department (CID) conducted the arrests. On several occasions, the military or CID rounded up dozens and even hundreds of people and took them away.

¹⁵ Human Rights Watch interview with Aanathi, September 2009. Here and after, all names have been changed to protect the people interviewed by Human Rights Watch.

¹⁶ In mid-July 2009, the authorities barred the International Committee of the Red Cross (ICRC) from accessing camps in Mannar and Vavuniya districts, preventing ICRC from informing families about the whereabouts of people detained on LTTE suspicion. "The ICRC in Sri Lanka," International Committee of the Red Cross, http://www.icrc.org/Web/Eng/siteeng.nsf/htmlall/sri_Lanka?opendocument&link=home (accessed January 10, 2010).

In April and May, while the displaced were still arriving from the conflict areas, the military administration of the camps regularly announced over loudspeakers that people who had been involved with the LTTE should come forward to surrender, and then detained those who did so.

Karunainathan, 24, was taken into custody in early April, about 20 days after he had arrived at Menik Farm. His brother Mathivaanan told Human Rights Watch that Karunainathan went to register with the military authorities because he had been forced to work for the LTTE just days before he managed to escape to government-controlled areas. According to Mathivaanan, his brother thought he would be pardoned, but the military detained him on the spot and asked his relatives to bring his belongings.

Mathivaanan said that later that day, about 20 buses arrived and took away his brother and several hundred others who had notified the authorities of their involvement with the LTTE. The military authorities did not provide any specific information to those arrested or their families as to where they were being taken:

When the military detained him, they said that he would be interrogated and then receive vocational training. They gave us no arrest receipt. They did not inform the government representative in the block either. For 20 days we heard nothing from him. We started to get very concerned.¹⁷

Menik Farm residents also told Human Rights Watch about at least two other incidents, on October 5 and 7, when police from the Criminal Investigation Department detained dozens of people from the camps. One eyewitness, Tamilvaani, age 29, explained that her husband, Gunanathan, had told the authorities about his involvement with the LTTE 10 years ago. She said:

When they came to detain him on October 5, they did not tell me anything. They only said that he would be interrogated and that he would come back in a couple of days. When I did not hear from him, however, I went to the CID. I cried and I begged them to return him to me, but they only told me to go back and that he was not in a bad place.¹⁸

¹⁷ Human Rights Watch interview with Mathivaanan, October 2009.

¹⁸ Human Rights Watch interview with Tamilvaani, November 2009.

Tamilvaani only found out about her husband's whereabouts 15 days later, when she received a letter from him.

Aanathi said that when she went to the CID on October 5, she saw many women standing around the office crying and trying to convince the police officers that their sons or husbands had no connection with the LTTE. She told Human Rights Watch, "The CID only told them to go away and that they would release the men soon."¹⁹

Sumitha told Human Rights Watch about the arrest of her nephew, Eshanthan, age 30. She said that since June, when the military first interrogated Eshanthan, he had been required to register every day at the CID office in the Menik Farm camp. On October 5, 2009, he did not come back quickly as usual. When a relative told Sumitha that people were being detained at the CID office, she became worried. She went there and found many people outside the CID office. She told Human Rights Watch:

The CID confirmed that he and others were there. But then they told us to go away and bring them some clothes. The only thing they said was that they will release them in six months' time. Other than that, nobody was answering any of our questions. We were just standing outside the fences, not being able to do anything.²⁰

Sumitha said she was "highly worried about him. I pray that I will receive information about him soon. I can't allow myself to think that he might be disappeared or killed."²¹

Five days after Eshanthan was detained, two men in civilian clothes, identifying themselves as CID officers, approached Sumitha in her tent. They told her that her nephew was being held at the Pampaimadhu camp in Vavuniya, but they did not provide her with any other information. She told Human Rights Watch:

They said nothing about why he had been detained. They said nothing about when he might be released. They said nothing about whether I could write to him or talk to him on the phone. I have decided not to try because I am afraid that it will get him into trouble.

¹⁹ Human Rights Watch interview with Aanathi, October 2009.

²⁰ Human Rights Watch interview with Sumitha, October 2009.

²¹ Ibid.

The only thing they said was that he is at Pampaimadhu and that I might be able to see him in a month. I don't trust them, though. Until I get a letter directly from him, I will never be confident that he is ok.²²

Concerns about Possible Enforced Disappearances

The complete lack of transparency in the detention process, particularly the authorities' consistent failure to inform families of the basis for the detainees' arrest and their whereabouts, raises serious concerns that some detainees may have been victims of enforced disappearance.

Under international law, an enforced disappearance occurs when state authorities detain a person and then refuse to acknowledge the deprivation of liberty or the person's whereabouts, placing the person outside the protection of the law.²³

Concerns about the fate of detainees are aggravated by Sri Lanka's appalling record of enforced disappearances. More than 20,000 people "disappeared" during armed conflicts in the 1980s and 1990s.²⁴ The collapse of the ceasefire between the government and the LTTE in 2006 was accompanied by a new wave of "disappearances" committed by Sri Lankan security forces and pro-government paramilitary groups. Over two years, more than 1,500 people, the vast majority of them ethnic Tamils, were forcibly disappeared, placing Sri Lanka among the countries with the highest number of new cases in the world.²⁵

In several cases documented by Human Rights Watch, relatives either have received no information about the detainee's whereabouts or received vague information that could not be verified.

Many families have not heard anything about their relatives' fate since they were separated and detained at Omanthai checkpoint, after crossing into government-controlled areas. In September 2009, several aid workers told Human Rights Watch that families approached them on a daily basis searching for their relatives, mostly young men, who had been

²² Ibid.

²³ See International Convention for the Protection of All Persons from Enforced Disappearance, G.A. res. 61/177, U.N. Doc. A/RES/61/177 (2006), adopted Dec. 20, 2006, article 2. The convention is not yet in force.

²⁴ The data was collected by four official commissions of inquiry set up by then President Chandrika Kumaratunga in the 1990s. Human rights groups believe that the actual figure may be two to three times higher. For more information, see Human Rights Watch, *Recurring Nightmare*.

²⁵ For detailed information on "disappearances" in Sri Lanka in 2006-2007, see Human Rights Watch, *Recurring Nightmare*.

detained at Omanthai.²⁶ While some detainees seem to have later “reappeared” in detention camps, the fate of many others remains unknown.

For example, Jenitha told Human Rights Watch that her 18-year-old son, who had been forcibly recruited by the LTTE while he was still in school and managed to escape a month later, was detained at Omanthai checkpoint on May 16. More than a month later, Jenitha had no information about her son’s fate or whereabouts. She said:

When we arrived at Omanthai, they separated us. The army took him away from me. They told me that they would just ask him some questions and then they would release him. They tricked me. [Because we were separated] they registered him on his own, not with our family. I have no news from him yet. It has been more than a month. If I could just get some news about my son—that would give me some peace.²⁷

Security forces carrying out the arrests at Menik Farm and other camps often refuse to inform the families or government representatives (*grama sevakas*) in the camps where they take those arrested. Even the Human Rights Commission on Sri Lanka, which needs to be informed about an arrest according to the Presidential Directives on Arrest and Detention, has not been informed in the cases documented by Human Rights Watch.²⁸ The families, particularly those held in the camps, have no ability to search for their missing relatives.

In the afternoon of July 27, two men in civilian clothing, driving a white van, took away 39-year-old Partheepan from Menik Farm camp. His wife, Naathaveni, told Human Rights Watch that the men, who said they were from the TID, came to the family’s tent and said they needed to take her husband away for questioning, but that he would be returned after a week. Naathaveni told Human Rights Watch:

I did not protest, because this is usual here. They come and take people away. Sometimes they return people. Sometimes they don’t. We don’t dare to protest. There is nothing we can do. I didn’t dare because they behaved roughly. Sometimes they even beat people. When they took him, I rushed to

²⁶ Human Rights Watch interview with humanitarian workers, September 2009.

²⁷ Interview with Jenitha, June 2009. Human Rights Watch does not know whether the authorities eventually informed Jenitha about the whereabouts of her son and husband.

²⁸ “S/Defense re-circulates Presidential Directives on Protecting Fundamental Rights of Persons Detained,” Sri Lanka Ministry of Foreign Affairs, April 27, 2007, http://www.slmfa.gov.lk/index.php?option=com_content&task=view&id=831&Itemid=1 (accessed January 11, 2010).

the van and I saw that 4 or 5 people were already inside, so perhaps 6 people were taken away that day.²⁹

Naathaveni said that several days after her husband's arrest she received an arrest slip—but it merely indicated “Colombo” as current location, and her attempts to find out more about her husband's fate or place of detention yielded no results. Neither the camp administration nor the government representative in her block knew anything about the detention. She said, “I complained to the GS [government representative], but he said that he did not dare to record these complaints right now. ‘I don't think it is advisable for me to involve myself with such matters,’ he said.”³⁰

Using the public phone in the camp, Naathaveni informed the ICRC about her husband's detention. She said that the ICRC replied that they had not received any detention lists from the TID for more than a month and a half and that they therefore could not verify whether her husband was in TID custody.

Naathaveni told Human Rights Watch that she was particularly worried because of the manner in which her husband was arrested. In Sri Lanka, white vans have in recent years become associated with enforced disappearances. In numerous cases previously documented by Human Rights Watch and other organizations, white vans have often been used by perpetrators of arbitrary arrests or abductions that result in “disappearances.” Most of these people were never seen again or found dead.³¹

Relatives of dozens of men detained from Menik Farm on October 7 had not received any indication as to where they had been taken several days later when Human Rights Watch spoke to them. Mathuvanthi told Human Rights Watch that when the CID detained her son together with dozens of others camp residents, neither she nor her son were given the reason for the detention. Mathuvanthi said:

I asked them why and where they were taking him. They didn't say anything, replying only that they were following orders. I could see tears streaming down my son's face. I was crying too. “Don't worry,” he said. “They say that they will release us after six months. I will return.”³²

²⁹ Human Rights Watch interview with Naathaveni, September 2009.

³⁰ Ibid.

³¹ See generally, Human Rights Watch, *Recurring Nightmare*.

³² Human Rights Watch interview with Mathuvanthi, October 2009.

The lack of transparency and information about the fate of the detainees has caused great anxiety among their relatives, many of whom were themselves in centers for displaced persons. On at least one occasion their indignation led to public protest. On September 23, residents at the Poonthotham camp in Vavuniya district attacked soldiers and police officers and their vehicles after the police took one of the camp's residents away. The riot, which lasted for three hours, ended when the police brought the man back.³³

The number of people whose whereabouts are unknown after having been detained at checkpoints or in the camps cannot be determined. Sri Lankan authorities themselves have admitted that thousands of people remain unaccounted for. According to the government representative in Vavuniya, more than 10,000 people are missing from the camps.³⁴ Although the missing might also include those who have escaped or bribed their way out of the camps, the large number unaccounted for raises concerns of enforced disappearances.

This concern is aggravated by the authorities' rejection of any involvement by UN agencies, humanitarian organizations, or other independent observers in the screening and detention process.³⁵ Furthermore, the authorities have denied access to the registration lists of the displaced to these agencies and even to the Human Rights Commission of Sri Lanka, making it difficult for them to help families locate their missing relatives.³⁶

The International Committee of the Red Cross, the organization usually tasked with searching for missing people during and after armed conflicts, was initially able to locate some of the detainees, as illustrated in some of the cases above. However, since mid-July,

³³ "Joint Humanitarian Update, Report #9," United Nations Office of the Resident Coordinator and Humanitarian Coordinator, October 1, 2009, http://www.humanitarianinfo.org/srilanka_hpsl/ViewFile.aspx?Item=Files%5CSituation%20Reports%5CJoint%20Humanitarian%20Update%5CLKRN030_090912-090925-SL-IA-Sitreps-Joint_Humanitarian_Update-09.pdf (accessed January 11, 2010).;

³⁴ Rukshana Rizwie, "Vavuniya GA's survey reveals 10,000 escaped from camps," *The Nation on Sunday*, August 31, 2009, <http://www.nation.lk/2009/08/30/news5.htm> (accessed January 11, 2010).

³⁵ The Sri Lankan government eventually permitted ICRC and the Office of the UN High Commissioner for Refugees to have partial access to the screening point at Omanthai. However, the authorities did not allow them to speak with the displaced persons. See Human Rights Watch, *War on the Displaced*, p. 29.

³⁶ Established by law in 1996, the Human Rights Commission of Sri Lanka is mandated, among other things, to "monitor the welfare of persons detained either by a judicial order or otherwise, by regular inspection of their places of detention, and to make such recommendations as may be necessary for improving their conditions of detention." The law further states: "Where a person is arrested or detained under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 or a regulation made under the Public Security Ordinance, (Chapter 10) it shall be the duty of the person making such arrest or order of detention, as the case may be, to forthwith and in any case, not later than forty-eight hours from the time of such arrest or detention, inform the Commission of such arrest or detention as the case may be and the place at which the person so arrested or detained is being held in custody or detention. Where a person so held in custody or detention is released or transferred to another place of detention, it shall be the duty of the person making the order for such release or transfer, as the case may be, to inform the Commission of such release or transfer, as the case may be, and in the case of a transfer, to inform the Commission of the location of the new place of detention." Human Rights Commission of Sri Lanka, Act No. 21 of 1996, <http://www.hrcsl.lk/PFF/HRC%20Act.pdf> (accessed January 11, 2010), art. 28.

ICRC has also been barred from accessing the detention centers and the main “welfare centers” for displaced persons, nor do they have access to the registration lists.³⁷

Representatives of international humanitarian agencies working in the camps told Human Rights Watch that camp residents continue to report that relatives have been detained or are missing and to beg international organizations to help locate them, yet there is nothing the agencies can do. One humanitarian worker said:

Every time we go into the camps, everybody is asking about missing relatives, but we don’t have access to the registration lists so there is nothing we can do. We have even stopped gathering information about missing people because we do not want to create expectations.³⁸

Lack of Due Process Protections

Family members whose relatives have been taken into custody rarely know the legal basis under which their relatives are being held. Basic due process protections are routinely ignored, including being charged with an offense, having the right to contest the basis for detention before a court, and having access to legal counsel. Concerns of ill-treatment in detention have also been raised.

For instance, when Tamilvaani learned about her husband’s whereabouts at Pampaimadhu camp two weeks after his arrest, she herself had been released from Menik Farm and so was able to visit him. She told Human Rights Watch:

He does not know how long he will have to stay there. They have not told him anything. When I went there the day before yesterday [mid-November, more than five weeks after his detention], he had still not been brought before a judge and he had not had access to a lawyer.³⁹

Aanathi told Human Rights Watch that when she visited her husband in detention, she learned that he had not been charged or brought before a judge, and had not been granted access to a lawyer. She said:

³⁷ “The ICRC in Sri Lanka,” International Committee of the Red Cross, http://www.icrc.org/Web/Eng/siteeng.nsf/htmlall/sri_Lanka?opendocument&link=home (accessed January 10, 2010).

³⁸ Human Rights Watch interview with humanitarian worker, September 2009.

³⁹ Human Rights Watch interview with Tamilvaani, November 2009.

They don't tell him anything about how long he has to stay there. They just keep interrogating him, saying that they don't believe that he has told them everything even though he has confessed that he at some point was involved with the LTTE.⁴⁰

In a number of cases, family members interviewed by Human Rights Watch said that their detained relatives complained of ill-treatment and poor conditions in custody. The last time Aanathi went to see her husband, in October 2009, he told her that the CID, with the help of former LTTE members, was continuing to interrogate him. She told Human Rights Watch:

He told me that they have started beating people with their fists and with sticks now, saying that they are not telling the truth. He didn't say that he had been beaten, but I think that he is hiding something from me.⁴¹

Mathivaanan learned from the ICRC that his brother, Karunainathan, was held in detention in Nellikulam camp. The family received a letter from him, which he managed to have smuggled out of the camp. He told his family that the military had beaten him twice and that conditions were poor. He also said that he was not undergoing any vocational training and had no information as to whether and when he would be released. Mathivaanan said the family felt desperate because there was nothing they could do to help Karunainathan, especially because they too were effectively being detained at the time:

Since we are not able to leave this camp, we don't know whom to approach for help. I don't think there is a court decision to keep them there, but I have no way to find a lawyer for him.⁴²

The Sri Lankan government has sent mixed messages on the future of LTTE suspects who are detained. A National Framework Proposal for Reintegration of Ex-Combatants into Civilian Life in Sri Lanka was announced by the Ministry of Disaster Management and Human Rights in July 2009 but the proposal does not afford improved due process rights for detainees and does not even mention a role for the judicial system in determining the culpability of alleged

⁴⁰ Ibid.

⁴¹ Human Rights Watch interview with Aanathi, October 2009.

⁴² Human Rights Watch interview with Mathivaanan, October 2009.

LTTE suspects. Instead, it leaves such determinations up to the attorney general, with involvement by TID, CID, and the Military Intelligence Corps.⁴³

In early December the Ministry of Disaster Management and Human Rights said that an inter-ministerial committee would be set up to review the cases of individuals held under the Emergency Regulations and the PTA to initiate a process to secure either the prosecution or the release of long-term detainees.⁴⁴

⁴³ Sri Lanka Ministry of Disaster Management and Human Rights, *National Framework Proposal for Reintegration of Ex-Combatants into Civilian Life in Sri Lanka*, July 30, 2009, http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/--ifp_crisis/documents/publication/wcms_116478.pdf (accessed January 11, 2010), p. 14.

⁴⁴ "Lanka to review cases of those detained under PTA," *Daily Mirror*, December 8, 2009, http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=70129 (accessed January 10, 2010).

Legal Standards

Individuals who participated in the LTTE's armed secessionist movement against the Sri Lankan government are subject to prosecution under Sri Lankan criminal law. However, many persons apprehended during the final months of the conflict or after the fighting ended have been detained by the government with little regard for the requirements of Sri Lankan domestic law or international legal obligations.

Sri Lankan Law

Sri Lanka's criminal code contains many provisions that can be used to charge and prosecute individuals who took up arms on behalf of the LTTE, including murder and attempted murder, firearms and explosives offenses, and other crimes. Two additional sets of laws—the Public Security Ordinance 1947 (PSO),⁴⁵ dating back to British colonial rule, and the Prevention of Terrorism (Temporary Provisions) Act of 1979 (PTA)⁴⁶—have long provided the authorities broad powers to hold individuals without charge or trial in violation of their basic due process rights.

Since 1971, Sri Lanka has been under a nearly continuous state of emergency. After the LTTE assassinated the Sri Lankan foreign minister in August 2005 and the 2002 ceasefire agreement collapsed the following year, the government promulgated more than 20 new emergency regulations. Two of these laws, The Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 and the Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation No. 7 of 2006, provide military personnel with sweeping powers of search, arrest, and detention without regard to the fundamental rights protections provided by international law.

The emergency regulations are vaguely worded, facilitating arbitrary arrest. For example, they 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

⁴⁵ Public Security Ordinance (PSO), No. 25 of 1947. Sri Lanka has been under a state of emergency, which parliament renews monthly, from 1983 until 2001 with small gaps, and continuously since August 2005. Under the Thirteenth Amendment to the Constitution, adopted in 1987, the proclamation of a state of emergency has been immune to judicial challenge.

⁴⁶ Prevention of Terrorism (Temporary Provisions) Act, No 48 of 1979.

to include peaceful or nonviolent acts protected under the rights to free expression or association.⁴⁷

The emergency regulations permit the authorities to detain persons without charge for up to one year. This can be extended for an additional six months, or 18 months altogether. The Emergency Regulations provide for a detainee to be physically produced before a magistrate within 30 days (instead of within one day (24 hours) under the criminal procedure code).⁴⁸

However, under the Emergency Regulations the courts have no authority to order the release of anyone, a decision left to the executive branch of government.⁴⁹ This is contrary to article 141 of the Sri Lankan constitution, which provides for the right of habeas corpus.⁵⁰

Other provisions of the Emergency Regulations allow authorities to hold detainees in irregular places of detention, move a detainee from place to place for interrogation, and do not require the publication of a list of authorized places of detention.⁵¹ Other important requirements of Sri Lankan law are not applicable under the emergency regulations, such as the requirement that authorities submit a written record of arrest and detention to the court, or the rights of detainees to be notified of the reasons for arrest and to have access to legal counsel.

The government has referred to many of the detained LTTE suspects as “surrendeers.” Under the 2005 Emergency Regulations, a “surrendeer” is defined as anyone who surrenders to the authorities in connection with a range of insurgency-related crimes, the PTA, “under any emergency regulation,” or “through fear of terrorist activities.” Such individuals are automatically detained in a “Protective Accommodation and Rehabilitation Center” for up to one year, which may be renewed at three-month intervals for up to two years. Decisions on whether an individual has been “rehabilitated” remain entirely with the executive branch—the courts have no authority to release.⁵²

⁴⁷ Emergency Regulation of 2005, regulation 19.

⁴⁸ *Ibid.*, regulation 19.

⁴⁹ The Emergency Regulations provide that where the Secretary to the Ministry of Defence has ordered detention under Regulation 19 or 21, the court “shall order” continued detention.

⁵⁰ Constitution of the Democratic Socialist Republic of Sri Lanka, article 141, available at <http://www.priu.gov.lk/Cons/1978Constitution/Index.html>.

⁵¹ Emergency Regulation of 2005, regulation 19 (3), 21, 49, and 69 (2).

⁵² *Ibid.*, regulation 22.

The Prevention of Terrorism Act, enacted in 1979, allows arrests without warrant and permits detention without the suspect being produced before a court for up to 18 months.⁵³ The government may hold a person under the PTA on suspicion and need not charge the person with an offense. The PTA was informally suspended during the 2002 Ceasefire Agreement, but was used after the ceasefire fell apart.

Persons mistreated under the Emergency Regulations or PTA are unlikely to come forward because of immunity provisions in these laws. The emergency regulations provide immunity from prosecution for 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.”⁵⁴

International Law

Relevant international law on the treatment of individuals taken into custody in the context of an internal armed conflict exists in international humanitarian law and human rights law. Sri Lanka’s treatment of individuals allegedly associated with the LTTE has been in violation of both legal regimes.

International humanitarian law (the laws of war) applicable during the non-international armed conflict in Sri Lanka includes article 3 common to the four Geneva Conventions of 1949 and customary international humanitarian law.⁵⁵ Most of the provisions of Additional Protocols I and II of 1977 to the Geneva Conventions are considered reflective of customary law.⁵⁶

Pertinent international human rights law includes the International Covenant on Civil and Political Rights (ICCPR),⁵⁷ which Sri Lanka ratified in 1980, the Convention against Torture

⁵³ Detention is 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.

⁵⁴ Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulation No. 7 of 2006, article 15; a similar provision is found in PTA, article 26.

⁵⁵ See article 3 common to the four Geneva Conventions of 1949; see generally International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law* (J.M. Henckaerts, L. Dowsald-Beck, eds) (Cambridge: Cambridge Univ. Press, 2005).

⁵⁶ See, e.g., Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (Cambridge: Cambridge University Press, 2004), pp. 10-11 (“[m]uch of the Protocol may be regarded as declaratory of customary international law, or at least as non-controversial.”). See generally ICRC, *Customary International Humanitarian Law*.

⁵⁷ International Covenant on Civil and Political Rights (ICCPR), 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.

and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁵⁸ the Convention on the Rights of the Child,⁵⁹ and other sources of human rights law.⁶⁰

During an internal armed conflict, both humanitarian law and human rights law remain applicable. Although the more specific rules of international humanitarian law may be specially relevant, “both spheres of law are complementary, not mutually exclusive.”⁶¹ Fundamental rights afforded by both include the right to be treated humanely; to be protected against torture and other ill-treatment; to be allowed to communicate with families; and to only be sentenced by a court meeting international fair trial standards.⁶²

International humanitarian law specifically permits the apprehension of enemy fighters, civilians taking a direct part in hostilities, and others detained for security reasons linked to the armed conflict. According to the ICRC study of customary international law, persons deprived of their liberty in the context of an internal armed conflict must be released as soon as the reasons for their detention cease to exist, unless charged or convicted for a criminal offense.⁶³ Moreover, at the end of hostilities, the government should endeavor to grant the broadest possible amnesty to individuals who participated in or were otherwise deprived of their liberty during the armed conflict, with the exception of those implicated in war crimes.⁶⁴

International human rights law provides protections to individuals in custody during an internal armed conflict unless they are superseded by more specific provisions of humanitarian law. These include the rights to be promptly notified of the reasons for arrest, to the presumption of innocence, to be brought promptly before a judicial authority and informed of any criminal charges, to access to counsel, and to communicate and meet with

⁵⁸ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987.

⁵⁹ Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990.

⁶⁰ See, e.g. Standard Minimum Rules for the Treatment of Prisoners, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).

⁶¹ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 11.

⁶² See Protocol II, art (5)(2)(b); Standard Minimum Rule for the Treatment of Prisoners, rule 37.

⁶³ ICRC, *Customary International Humanitarian Law*, rule 128.

⁶⁴ *Ibid.*, rule 159.

family members. Those detained on criminal charges must be promptly tried before a court that meets international fair trial standards or released.⁶⁵

The ICCPR permits the suspension or restriction (derogation) of certain due process rights during a state of emergency. States have frequently misused states of emergency as an excuse to deny individuals their fundamental rights. According to the UN Human Rights Committee, the expert body that monitors state compliance with the ICCPR, any measures of derogation must be “limited to the extent strictly required by the exigencies of the situation.”⁶⁶ The fundamental requirements of a fair trial must always be respected. And in order to protect against torture and other non-derogable rights, “the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party’s decision to derogate from the Covenant.”⁶⁷

Under the Convention on the Rights of the Child, the Sri Lankan government is required to take all appropriate measures to promote the physical and psychological recovery and social reintegration of children who have been victims to armed conflicts.⁶⁸ The government is also required to these children have access to free basic education and when possible and appropriate, vocational training.

Any criminal prosecution of children for crimes committed while associated with the LTTE must take into account the age of the child at the time of their involvement as well as any duress exerted on the child to carry out any illegal acts. Any prosecution of children for criminal acts should be conducted with the objective of rehabilitating the child and promoting the child’s reintegration and assumption of a constructive role in society.⁶⁹

The arrest, detention, or imprisonment of a child should be used only as a measure of last resort and for the shortest appropriate period of time.⁷⁰ Every child deprived of liberty must be separated from adults, unless it is considered in the child’s best interest not to do so,

⁶⁵ See ICCPR, arts 9 & 14.

⁶⁶ 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), para. 16.

⁶⁷ *Ibid.*, para. 16.

⁶⁸ CRC, art. 39.

⁶⁹ *Ibid.* art. 40(1).

⁷⁰ *Ibid.* art. 37(b).

and the child has the right to maintain contact with his or her family through correspondence and visits, apart from in exceptional circumstances.⁷¹

The Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (Paris Principles), a set of international guidelines adopted in February 2007, provide guidance for release, protection, and reintegration of children. Children who have been associated with armed forces or armed groups should not be prosecuted, punished, or threatened with prosecution or punishment solely for their membership of those forces or groups. Prosecution for crimes committed by children when they were members of armed groups should conform to international juvenile justice standards. Further, release and rehabilitation measures should be carried out without any conditions. During release, children should be handed over to “an appropriate, mandated, independent civilian process,” and the majority of children should be returned to their family and community or a family and community environment as soon as possible after their release.⁷²

Under Sri Lanka’s state of emergency, the government has routinely violated the fundamental human rights of alleged members or supporters of the LTTE in custody. These include the right to be informed of specific reasons for arrest, the right to challenge the lawfulness of the detention before an independent judicial authority (habeas corpus), and the right of access to legal counsel and family members. Adherence to these basic protections are important not only to ensure basic due process rights, but to reduce the possibility of enforced disappearance, torture and ill-treatment, which have long been serious problems in Sri Lanka.

⁷¹ Ibid. art. 37(c).

⁷² The Paris Principles: Principles and Guidelines on Children Associated with Armed Forces or Armed Groups (“The Paris Principles”), January 30, 2007, <http://www.unicef.org/protection/files/ParisPrinciples310107English.pdf> (accessed March 25, 2008), para. 3.11, 7.21, 7.45, 8.7, 8.8, 8.9.

Recommendations

To the government of Sri Lanka

- Comply with international law when detaining people suspected of LTTE involvement;
- Ensure that suspects are detained only by officials who are authorized to do so and that they properly identify themselves;
- Charge suspects with a criminal offense or order their release;
- Provide suspects the opportunity to challenge their detention before an independent judicial authority; an independent judicial authority should regularly review the lawfulness of those detained;
- Promptly inform family members about the whereabouts of the detained relatives;
- Ensure that detainees have access to legal counsel;
- Grant the International Committee of the Red Cross access to all detention facilities, including “rehabilitation centers”;
- Keep LTTE suspects and other detainees only in official places of detention;
- Investigate alleged enforced disappearances, and prosecute those responsible, regardless of rank, for their involvement in them;
- Clarify the legal and procedural status of “surrendees”, including child ex-combatants;
- Grant UNICEF access to all detention facilities, including “rehabilitation centers” to assist in the assessment of the age of detainees;
- Provide appropriate physical and psychological assistance to any detained children;
- Separate detained children from detained adults, except in situations where it is considered in the child’s best interest not to do so;
- Provide children with the means to maintain contact with their family through correspondence and visits.

To the United Nations, donor countries and institutions, and other concerned governments

- Call upon the Sri Lankan government to comply with international law with regards to detention and treatment of LTTE suspects;
- Support the government’s rehabilitation program and the rehabilitation centers only on condition that they either are truly voluntary or that detainees are granted all of their rights under international law.

Legal Limbo

The Uncertain Fate of Detained LTTE Suspects in Sri Lanka

The Sri Lankan government is currently detaining at least 11,000 people, including more than 550 children, in so-called “rehabilitation centers.” These individuals, said to be associated with the separatist Liberation Tigers of Tamil Eelam (LTTE), were among the almost 300,000 displaced persons confined in detention camps in the final months of the armed conflict with the LTTE.

The government has routinely violated the detainees’ fundamental human rights, including the right to be informed of specific reasons for arrest, the right to challenge the lawfulness of the detention before an independent judicial authority, and the right of access to legal counsel and family members.

The authorities’ consistent failure to inform families of the basis for the detainees’ arrest and their whereabouts raises serious concerns that some detainees may have been victims of torture and ill-treatment, which are more likely to take place where due process of law is lacking and which have long been serious problems in Sri Lanka. Given the lack of information about some detainees, there is also a risk that some may have been “disappeared.”

Legal Limbo is based on interviews with relatives of individuals who have been detained on suspicion of LTTE association, as well as with humanitarian workers and others in Sri Lanka with knowledge of the situation.

The government’s treatment of security detainees has fed fears among many Tamils that the government intends to persecute and discriminate against the Tamil population. It is important for public confidence in the government that these cases be dealt with in accordance with Sri Lanka’s obligations under international human rights law.

Human Rights Watch calls upon the Sri Lankan government to ensure that individuals detained are held in conformity with international law, including being charged with a criminal offense or released.

Tamil women in a camp for displaced persons in Sri Lanka asking for news of their relatives who were taken away by the army, allegedly for rehabilitation.

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