

[Forwarded Statement by the AHRC] SRI LANKA: Statement from Special Rapporteur on extrajudicial executions

Dear friends,

The Asian Human Rights Commission (AHRC) wishes to forward to you the following statement received through the United Nations Human Rights Council

Asian Human Rights Commission
Hong Kong

FOR IMMEDIATE RELEASE

FS-025-2006

September 6, 2006

A Forwarded Statement by the Asian Human Rights Commission (AHRC)

SRI LANKA: Statement from Special Rapporteur on extrajudicial executions

The statement:

Source: United Nations Human Rights Council

Date: 05 Sep 2006

The situation in Sri Lanka has deteriorated significantly since I visited Sri Lanka and met with Government officials, members of civil society, and representatives of the Liberation Tigers of Tamil Eelam (LTTE) at the end of 2005. Recent events have confirmed the dynamics of human rights abuse identified in my report (E/CN.4/2006/53/Add.5) and demonstrate the urgent need for an international human rights monitoring mission.

International human rights monitoring is not, of course, an invariably effective response even to situations involving widespread human rights abuse, but there are specific factors indicating that such an approach would be extremely valuable in Sri Lanka. One of these is that civilians are not simply "caught in the crossfire" of the conflict: Rather, civilians are intentionally targeted for strategic reasons. Such killings are quintessentially human rights violations demanding a human rights response.

Another factor suggesting the value of international monitoring is that the conflict between the Government and the LTTE is ultimately a struggle for legitimacy, not territory. The conflict has no military solution, and mere adjustment of the facts on the ground will not fundamentally change either party's position in future negotiations. The LTTE's hopes for autonomy or independence rest on persuading the domestic and international communities that this would be the best solution in human rights terms. However, the LTTE has a record of using killings to deter civilians from exercising freedoms of expression, movement, association, and participation in public affairs. "As it stands, no outside observer could wish rule by the LTTE on the entire Tamil community, much less on the Sinhalese and the Muslims of the North and East.

The Government should not, however, interpret the widespread proscription of the LTTE as a terrorist organization as an endorsement of its own record. Indeed, it is an enduring scandal that convictions of government officials for killing Tamils are virtually non-existent, and many Tamils doubt that the rule of law will protect their lives.

A resolution of this conflict that would merit the international community's endorsement will require the Government, the LTTE, or both, to demonstrate genuine respect for human rights. The strategic importance of achieving and maintaining international legitimacy grounded in respect for human rights is not completely lost on either the Government or the LTTE. Indeed, the discourse of human rights is central to the parties' own understandings of the conflict's origins and conduct. However, by using proxies, the subversion of accountability mechanisms, and disinformation, both parties have been able to commit deniable human rights abuses. Effective monitoring would foreclose the possibility of employing a strategy of deniability, pressuring

the Government and the LTTE to seek legitimacy through actual rather than simulated respect for human rights.

When I visited Sri Lanka, my conclusion was that the Sri Lanka Monitoring Mission (SLMM), which was established to monitor the Ceasefire Agreement (CFA) of 2002, could be strengthened in ways that would permit it to provide relatively effective human rights monitoring. Indeed, the SLMM has played a commendable and increasingly assertive role with respect to extrajudicial killings. However, as I observed in my report, "For pragmatic reasons [strengthening the SLMM] seems to be the best interim measure, but before long significantly more will be needed. If the ceasefire fails, and that now appears to be an all too real possibility, the SLMM's role will be in question and there will be an urgent and pressing need to establish a full-fledged international human rights monitoring mission." (E/CN.4/2006/53/Add.5, para. 47). Since then, the SLMM has been severely weakened by the LTTE's decision to insist on the withdrawal of monitors who are nationals of EU member states, and either party could elect to unilaterally terminate the CFA at any time, thus withdrawing the SLMM's mandate. It is time for an international human rights monitoring mission in Sri Lanka.

It is thus appropriate to reiterate some of the requirements for effective monitoring in the particular situation of Sri Lanka today:

- The details of alleged incidents, the results of investigation, and the basis for the monitoring mission's determination of responsibility should be made public (even if information is redacted to protect individuals).
- The investigative process should be designed to prioritize the protection of witnesses against intimidation and violence.
- The mandate of the monitoring mission should not be geographically-limited, inasmuch as conflict-related human rights violations occur throughout the country.
- Because a key purpose of monitoring is to limit the possibility of conducting deniable human rights abuses, the monitoring mission should command a high level of investigative and forensic capacity. This requires, *inter alia*, persons with police training, persons with medical training, and Sinhala and Tamil interpreters.
- The monitoring mission should be independent of any peace process. Two implications of this are that:
 - Regardless whether the CFA remains in force, the monitoring mission should not be called upon to investigate violations of the CFA. The distinction between violations of human rights and humanitarian law, on the one hand, and of violations of a ceasefire agreement, on the other, must be preserved.
 - The monitoring mission should report to a neutral body.

This list should not be considered comprehensive. It is intended simply to highlight certain requirements for effective monitoring that are specific to Sri Lanka in light of the dynamics and logic of human rights abuse in that country. The United Nations would be well-situated to establish a mission fulfilling these requirements.