



Amnesty International USA Testimony

before the

Tom Lantos Human Rights Commission

"The Ongoing Humanitarian Crisis in Sri Lanka: Internally Displaced People (IDP)"

by

Christoph Koettl

Campaigner, Crisis Prevention and Response
Project Manager, Science for Human Rights
Amnesty International USA

December 10, 2009

Thank you for inviting me to this important hearing. Amnesty International USA is delighted that the Commission has picked International Human Rights Day (December 10) to discuss the ongoing humanitarian crisis and related issues in Sri Lanka.

Before I start, I would like to express AIUSA's gratitude to members of the Administration who have raised concerns regarding the protracted detention of civilians displaced by the conflict in Sri Lanka, notably Assistant Secretary Schwartz, who we heard earlier. AIUSA would also like to thank the many Members of Congress who have publicly expressed their concern over human rights violations in Sri Lanka, particularly over the last year as the violence and human rights abuses rose to a level never before seen. AIUSA would particularly like to thank the members of the conference committee for the Supplemental Appropriations Act of 2009. The Joint Explanatory Statement accompanying the Act mandated the State Department's investigation of alleged war crimes by both parties to the conflict. These steps have already had a positive human rights impact in Sri Lanka.

Recent Senate Report

This hearing comes at a key time, when a recent Senate Foreign Relations Committee report appears to suggest that the U.S. should "re-evaluate its relationship with Sri Lanka," in part by downplaying concerns about human rights and humanitarian issues. The Senate report describes "new political realities" having emerged in Sri Lanka with the end of the war with the Liberation Tigers of Tamil Eelam (known as the "LTTE"). The report does not include urgent human rights and humanitarian concerns, whose resolution is critical for Sri Lanka to achieve reconciliation and lasting peace among its communities. In short, Amnesty International is deeply disappointed with the senate report.

Many human rights concerns remain. I would like to state our concerns regarding three interlinked issues today.

Concerns

I. Displaced Civilians

After Sri Lanka recently emerged from years of armed conflict, close to 300,000 Tamil civilians displaced by the fighting were confined to military-run internment camps. To be clear and give it the proper name, these camps are places of mass arbitrary detention: displaced people are not permitted to leave and are detained without charge or trial. This is a violation of Sri Lanka's obligations under international law, which prohibits arbitrary detention. More specifically: the government does not allow the displaced civilians to leave the camps and choose their residence in Sri Lanka, which violates freedom of movement. Additionally, the civilians are not allowed to freely move in and out of the camps, which violates the right to liberty. The rights

to liberty, freedom from arbitrary detention and freedom of movement are guaranteed to all persons by the International Covenant on Civil and Political Rights (Articles 9 and 12).

A few weeks ago, the government of Sri Lanka promised to lift restrictions on the above-mentioned rights. AIUSA welcomes this policy shift and the government's promise to allow freedom of movement to all displaced civilians. However, it remains to be seen if the government will fully honor its promises. AIUSA is especially concerned about restrictions put on civilians who are released from the camps, and on the incommunicado detention of alleged supporters of the LTTE.

1. Concerns regarding recent releases

- According to the Sri Lankan government, families living in displacement camps in Vavuniya will be given a choice: remain in camps, seek alternative accommodations or attempt to return home. However, there appear to be restrictions on families choosing to leave the camps. A permanent release from camps should be accompanied by assurances that people are not subjected to further questioning or re-arrest in new locations. It is also critical that the government maintain its responsibility to care for displaced people wherever they choose to go.
- Amnesty International welcomes recent statements by the Sri Lankan government claiming that there are no restrictions on the displaced civilians staying away from the camps. However, media reports have suggested that IDPs could be asked to return to the camps after only 15 days. Amnesty International will closely monitor the promise of the unconditional release and hopes that over the next week no displaced civilians will be forced to return to the camps.
- Another concern is the lack of assistance for those who have already been released. A church group has reported instances of civilians being simply 'dumped, left on the road' after being transported from Manik Farm. The government is providing conflicting messages about the process of return. It is also unclear whether freedom of movement will apply to camps in other parts of the country as well.
- As releases and resettlement efforts accelerate, Sri Lankan authorities should allow displaced people to make informed and voluntary decisions about return and resettlement. The Sri Lankan authorities should alert displaced people to the living conditions in the places they come from so that they can make plans about their future. They should also provide them with clear information about their rights, their legal status and procedures for tracing family members.
- Humanitarian and human rights organizations should be given unimpeded access to displaced people. For those attempting to resettle, such organizations should be permitted to monitor their safety and well-being and ensure their needs are being met, including that they are protected against further human rights violations.
- Several weeks ago, Amnesty received reports that many displaced civilians were merely transferred to other camps in the area where they may be subjected to rescreening by local authorities.

There are a number of displaced persons in closed transit sites who have not had access to UN assistance, and humanitarian organizations report that this secondary screening process has resulted in new family separations.

2. Detention of alleged supporters of the LTTE

11,000 – 12,000 individuals (including children) suspected of links to the LTTE have been arrested, separated from the general displaced population and detained by the authorities in irregular detention facilities (i.e. places other than police stations, officially designated detention centers or prisons). The detention centers, referred to as "rehabilitation centers" by the government, are operated by the Sri Lankan security forces and affiliated paramilitary groups, mostly in Vavuniya District, but also in Mannar, Mullaitivu and Kilinochchi.

The danger of serious human rights violations, including torture, enforced disappearances and extrajudicial killings increases substantially when detainees are held in locations that are not officially acknowledged places of detention and lack proper legal procedures and safeguards.

Amnesty International has confirmed the location of more than a dozen of such facilities in the north. There have also been frequent reports of other unofficial places of detention elsewhere in the country.

The International Committee of the Red Cross (ICRC) has no access to these detainees and there is no transparency about their registration and treatment. Detainees have not been charged with any offence, and have been denied legal counsel and due process. Many are held incommunicado. Incommunicado detention of suspects in irregular places of detention has been a persistent practice in Sri Lanka associated with torture, killings and enforced disappearances.

Amnesty International has received repeated, credible reports from humanitarian workers about the lack of transparency and accountability in the screening process, which is conducted outside of any legal framework. While screening is appropriate to ensure that LTTE combatants are not housed with the general camp population, proper procedures should be followed, and the screening process should not be used as an excuse for collective punishment.

II. Accountability

AIUSA would like to raise another important issue, which the organization considers to be directly linked with the treatment of the displaced civilians in Sri Lanka. This is the issue of crimes committed during the last months of the armed conflict in Sri Lanka.

1. While we talk a lot about the current conditions of the displaced civilians, it is often overlooked that during the final stage of the conflict, credible reports suggest that thousands of civilians were killed in the fighting between the government and the LTTE. Who will be held accountable for the killing of these civilians? We know for a fact that Congress is very interested in this question as well, as seen recently through the commission of the war crimes report.
2. The Sri Lankan government did not allow outside observers near the war zone during the final stages of the war. Consequently, the displaced civilians who had been trapped in the zone and survived constitute some of the few witnesses to the final fighting between the government and the LTTE. Any credible inquiry into violations of international humanitarian law should include interviewing these witnesses. The government has not allowed journalists or human rights observers to have unhindered access to the displaced civilians in the camps. Freedom of movement for the civilians is therefore not only essential to ensure their rights, but also critical for an investigation to establish accountability for abuses by both sides to the conflict. This issue becomes even more urgent considering the Sri Lankan's government well-documented track record of not seriously investigating human rights violations.

Need for an international investigation

There is strong evidence that both sides have violated international humanitarian law during the course of the conflict. Government artillery was fired in densely populated areas. Civilians were forced by the LTTE to remain in the conflict zone, using them as human shields against the approaching army. Adults and children were conscripted by the LTTE to serve as combatants.

Analysis based on high-resolution satellite imagery (conducted by the Science and Human Rights Program of the American Association for the Advancement of Science) and aerial photographs raise serious questions about the conduct of war of both parties to the conflict.

Aerial photographs obtained and analyzed by Amnesty International's Science for Human Rights Program confirm that the LTTE set up defensive positions next to the shelters of IDPs, which indicates the use of civilians as human shields. Satellite images reveal several possible mortar craters in close proximity to IDP shelters. The use of mortars (which are indirect fire weapons) in such a context may constitute a serious breach of international humanitarian law. Analysis based on satellite imagery indicates that craters formed within the Sri Lankan civilian safe zone (CSZ) between 6 and 10 May 2009. Further, examination of the area surrounding the CSZ subsequently identified several emplacements consistent with mortar positions in the surrounding countryside. Subsequent analysis sought to determine the possible origin of the shells which caused the craters indicated in the imagery. In numerous cases, information indicates that craters were caused by possible mortar positions to the south of the CSZ, corresponding with several potential Sri Lankan Army positions.

The analysis further identified three different graveyards, counting a total of 1,346 likely graves. The satellite images can neither reveal if these graves contain civilians or LTTE combatants, nor reveal in themselves much about the scope of civilian suffering as a result of targeted or indiscriminate attacks.

These uncertainties, together with the highly disputed civilian casualty figures, require an independent investigation with full and unfettered access to the former war zone and IDP camps.

Impunity for such violations has been the rule, rather than the exception, in Sri Lanka. Nevertheless, the U.S. State Department has stated that the U.S. government is looking to the Sri Lankan government to determine the appropriate institution to set up an accountability mechanism. On October 26, in response to the release of the State Department's war crimes report, the Sri Lankan government vowed to appoint a committee of experts to investigate alleged humanitarian law violations. While commissions of inquiry have previously been initiated by the government on an *ad hoc* basis whenever Sri Lankan forces received adverse publicity for serious violations of human rights, none have advanced justice. These failed attempts to deliver justice have been extensively documented by human rights organizations, including Amnesty International's most recent report, "Twenty Years of Make-Believe: Sri Lanka's Commissions of Inquiry." The report documents the failure of successive Sri Lankan governments to provide accountability for violations, including enforced disappearances, killings, and torture. In fact, since 1991, the Sri Lankan government has formed nine *ad hoc* Commissions of Inquiry to investigate enforced disappearances and a number of other human rights-related inquiries. These commissions of inquiry have lacked credibility and have delayed criminal investigations. While most, if not all, of these Commissions of Inquiry identified alleged perpetrators, they have resulted in very few prosecutions for human rights violations.

III. Attacks against Journalists

A third issue, connected to the treatment of displaced civilians and the need to establish accountability for war crimes and human rights violations during the war, is the grim state of freedom of expression today in Sri Lanka. In recent years, as the war escalated, journalists and other media workers faced attacks, murder, abduction, censorship and intimidation. Sri Lankan press freedom advocates say that more than 30 people working for media outlets have been killed since 2004. Other journalists have received death threats; some have gone into exile in fear of their lives. The perpetrators of many of these crimes have not been identified, let alone punished. Without the protection of a vigorous free press able to expose wrongdoing, displaced civilians are at risk of arbitrary decisions by government officials denying them their rights. Without the ability of journalists to work freely and independently, the possibility of establishing the facts of what happened during the closing stages of the war becomes that much more remote.

One case that bears particular mention is that of J.S. Tissainayagam, often referred to as "Tissa." A well-known Sri Lankan journalist and columnist, he was arbitrarily detained by the police in March 2008 and held without charge until August, when he was charged with violating the Prevention of Terrorism Act and the Emergency Regulations. The evidence for this charge? Two magazine articles he had written in 2006 criticizing the government's conduct of the war. After a long, unfair trial, he was convicted on August 31 of this year and sentenced to 20 years' hard labor. Amnesty International considers Tissa to be a "prisoner of conscience," imprisoned solely for exercising his legitimate duties as a journalist. He should be immediately and unconditionally released.

Recommendations

The current treatment of displaced ethnic Tamil civilians by the Sri Lankan government, combined with an ongoing culture of impunity, will serve only to foment future conflict. If communities that have been torn apart by decades of violence and impunity are to be reconciled, the Sri Lankan government should initiate internal reforms and seek international assistance to prevent ongoing violations and ensure real accountability for past abuses.

To the Congress of the United States

Continue to press for accountability

- Mandate a follow up report to the investigation by the State Department's Office of War Crimes Issues. The original report—mandated by Congress—provided a valuable and comprehensive overview of reported violations of international humanitarian law. However, the investigation was

limited by restricted access to eyewitnesses both by the authors of the report and independent organizations like Amnesty International that contributed to the report. As this situation is changing with the increased release of the displaced civilians, a follow-up report will provide new insights and evidence.

Call on the Sri Lankan government to:

- a) Ensure the permanent and unconditional release of all displaced civilians.

Urge the Sri Lankan authorities to restore the rights and freedom of internally displaced persons in the North and East of the country. This should include:

- (i) providing adequate assistance for the displaced civilians as they resettle; and
- (ii) consulting with the civilians so they can make informed choices about their future,

- b) Provide due process and access to suspected LTTE detainees.

The estimated 12,000 people (included children) who have been detained on suspicion of links to the LTTE should be given access to the ICRC, relatives, lawyers and medical care. The Sri Lankan government should promptly either charge detainees with recognizable crimes and then try them according to fair trial standards, or else release them.

- c) Provide better access for independent organizations and journalists

Further, media and independent organizations should gain unhindered access to the camps – including transit camps – in order to provide the necessary human rights protection and humanitarian needs.

Demand an end to restrictions on freedom of expression.

The Sri Lankan government should take immediate steps to restore freedom of expression in Sri Lanka. The government should insist that killings, threats or other attacks against media workers will not be tolerated. All cases of attacks against such workers should be promptly and effectively investigated and the perpetrators brought to justice. The Prevention of Terrorism Act and the Emergency Regulations should be promptly repealed or revised to bring them fully in line with international human rights standards. J.S. Tissainayagam should be freed immediately and unconditionally.

To the United States Government

Call for an international inquiry.

The Sri Lankan President's most recent proposal to appoint a committee of experts to examine allegations of violations of international humanitarian law appears to be yet another attempt to deflect attention from repeated calls for an independent international investigation—calls supported by Amnesty International and many other international and domestic human rights groups. These pleas were sustained by the recent report released by the U.S. Department of State's Office of War Crimes Issues.

The Sri Lankan government has a well-documented track record of not investigating human rights violations. This is proven by the failure to open an inquiry into allegations of war crimes when the fighting ended six months ago. Simply encouraging Sri Lanka to probe these accusations will not suffice. In order to seriously confront the abuses listed in the State Department's report, an international commission of inquiry should look into serious allegations of human rights abuses, including possible war crimes by both parties to the conflict.

Thank you for inviting Amnesty International USA to this important hearing.