



Improving Civilian Protection in Sri Lanka Recommendations for the Government and the LTTE

- Map of Sri Lanka 1**
- Introduction 3**
 - Major Recommendations 7
- I. Protecting Populations in Battle Zones 9**
 - A. Pre-position food and other necessities in areas of refuge 9
 - B. Provide effective warnings of impending military operations 11
 - C. Improve civil-military liaisons 12
 - D. Designate demilitarized zones in conflict areas 12
 - E. Keep communication channels open 14
 - F. Provide trauma counseling to communities enduring violence 14
- II. Protecting Displaced Persons 16**
 - A. Permit displaced persons freedom of movement 17
 - B. Ensure the protection of all displaced persons regardless of ethnicity or religion 18
 - C. Do not forcibly return displaced persons 19
- III. Ensuring Humanitarian Access 21**
 - A. End unnecessary interference with humanitarian access 22
 - B. End threats and violence against NGO workers 23
 - C. End unnecessary restrictions on and harassment of NGOs 24
- IV. Promoting Compliance with International Humanitarian Law 27**
 - A. Cease attacks against civilians 27
 - B. Cease indiscriminate or disproportionate use of force 29

C. Verify that targets are military objectives, not civilians	30
D. Do not use human shields	33
E. Do not commit attacks on objects indispensable to the survival of the civilian population	34
F. Cease reprisal attacks	35
G. Cease recruitment and use of children as soldiers.....	36
V. Promoting Adherence to International Human Rights Standards	39
A. Cease extrajudicial killings.....	39
B. Stop enforced disappearances.....	40
C. Revise emergency regulations to meet international human rights standards.....	42
D. Enforce presidential directives on detention	44
E. Support a United Nations human rights monitoring mission	45
VI. Preventing Communal Violence	47
A. Support inter-ethnic networks	48
B. Appoint local officials sensitive to ethnic concerns	49
VII. Ending Impunity	51
A. Provide witness protection	52
B. Strengthen the Human Rights Commission of Sri Lanka.....	53
C. Strengthen the National Police Commission	54
D. Permit a UN commission of inquiry to investigate recent human rights violations	54
Acknowledgements.....	56

Map of Sri Lanka



Map No. 4172 Rev. 1 UNITED NATIONS
January 2004

Department of Peacekeeping Operations
Cartographic Section

Introduction

The resumption of major military operations between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) since April 2006 has placed civilians at greater risk than at any time since the signing of the 2002 ceasefire agreement.¹ Violations of international humanitarian law, including indiscriminate attacks and summary executions, have resulted in numerous preventable civilian deaths and injuries.

Humanitarian aid is not reaching those at risk. Neither the government nor the LTTE has ensured that humanitarian relief is going to the hundreds of thousands of people who have been forced to flee their homes or otherwise require assistance. Aid workers have been targets of attack, threatening an exodus by international humanitarian organizations.

The human rights abuses that characterized the ceasefire period—politically motivated assassinations and “disappearances”—have become more frequent. And rising communal violence between Tamils, Sinhalese and Muslims has been exploited rather than dampened by the government and the LTTE. Impunity for even the most serious crimes remains the norm.

This briefing paper makes 34 recommendations to the Sri Lankan government and the LTTE in seven subject areas, addressing various civilian protection concerns. Each recommendation is grounded in a fact-based assessment of the conduct of the Sri Lankan government and the LTTE since the resumption of major hostilities in April, with the aim of inducing both parties to adopt specific measures to ensure better protection for the country’s civilian population.

¹ The Agreement on a Ceasefire between the Government of the Democratic Socialist Republic of Sri Lanka and the Liberation Tigers of Tamil Eelam, signed on February 21, 2002, had the stated objective to “find a negotiated solution to the ongoing ethnic conflict in Sri Lanka.” The agreement set up modalities of the ceasefire, measures to restore normalcy, and the Sri Lanka Monitoring Mission. The agreement can be accessed at <http://www.slmm.lk/documents/cfa.htm>.

Since Sri Lanka's civil war began more than two decades ago, civilians have borne the brunt of the losses and hardship. In the short period since the renewal of major fighting, both sides appear to have given little attention to keeping civilians from harm. Both the Sri Lankan armed forces and the LTTE have repeatedly violated the 2002 Ceasefire Agreement, though neither party has formally disavowed it. While the peace process established by the agreement is in shambles, its mechanisms remain in place. The massive harm inflicted on the civilian population in the short period since major hostilities resumed should give pause to each side before initiating new military operations.

There is a wide gap between the practice of the Sri Lankan armed forces and the LTTE and the requirements of international law. The civil war in Sri Lanka is governed by international humanitarian treaty law and customary law applicable during non-international armed conflicts.²

In violation of this law, the Sri Lankan armed forces have engaged in indiscriminate shelling and aerial bombing, attacking targets with disregard to the expected harm caused to civilians. At least 19 young women and girls (the LTTE have claimed 51) died in an August bombing raid in LTTE-controlled territory where the evidence indicates that there was no genuine military target. The security forces have summarily executed persons in their control and are believed responsible for a number of "disappearances."

The LTTE has directly targeted civilians with Claymore mines and suicide bombers, summarily executed persons in its custody, and in at least one instance used civilians as shields and blocked water to a civilian population. The LTTE's landmine attack in June on a bus in Anuradhapura killed 67 civilians, including many children.

Outside the immediate battlefield both sides have acted in a manner that has increased the risk to civilians under their control. In April, government security forces stood by for two hours while a Sinhalese mob burned Tamil homes and shops in

² Sri Lanka is a state party to the Geneva Conventions of 1949. While it is not party to the Protocol Additional of 1977 to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I) or the Protocol Additional of 1977 to the Geneva Conventions of 1949 relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), most of their provisions are considered reflective of customary international law. An authoritative study of customary international humanitarian law is the two-volume International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law* (Cambridge, UK: Cambridge University Press, 2005).

Trincomalee. The military is providing weapons but little training to civilian “home guards,” who readily become targets for LTTE attacks. The LTTE imposes mandatory military and civil defense training on a large scale to civilians in areas it controls, and arms civilians to fill checkpoints and sentry posts, dangerously blurring the line between combatants and civilians. Despite widespread international criticism, the LTTE still recruits children to be soldiers in its forces. So has the breakaway faction of the LTTE under Colonel Karuna, which is increasingly linked to the government forces; since June the Karuna group has abducted more than 100 children in Batticaloa district for its forces.

The renewal of major fighting has resulted in several hundred thousand people, including more than 220,000 persons displaced from their homes throughout the north and east, requiring humanitarian assistance. Neither the government nor the LTTE has acted to ensure that humanitarian assistance reaches these populations at risk. Government efforts to provide aid have been slow and cumbersome, while the Ministry of Defense (MoD) has placed unnecessary obstacles in the way of humanitarian agencies, including new registration requirements that appear designed more to discourage humanitarian action in the north and east than regulate it. Even after the end of major fighting in Jaffna, the government and the LTTE have continued to hinder humanitarian assistance from reaching the peninsula.

Local and international non-governmental organizations (NGOs) face increasing hazards in their work. Harassment, threats and violence are becoming a common occurrence for aid workers in the north and east, threatening the delivery of much needed aid. The execution-style killings in August of 17 Sri Lankan aid workers from the international organization Action Contre la Faim (Action Against Hunger, ACF) has forced many international NGOs to reconsider their Sri Lankan operations, now needed as much as ever.

With the ceasefire all but officially collapsed, human rights abuses have dangerously increased. Sri Lankan security forces are believed to be responsible for a number of serious incidents in 2006, including the summary execution of five Tamil students in Trincomalee in January, the “disappearance” of eight young men from a Hindu temple

in Jaffna in May and the execution-style slaying of five Tamil fishermen on Mannar Island in June.

Since the start of the ceasefire in 2002, the LTTE has been implicated in more than 200 targeted killings, mostly of Tamils viewed as being political opponents. Attackers believed to be LTTE cadres shot and killed eight Sinhalese men in April, including three sixteen-year-old boys, while they worked in their paddy fields outside of Kalyanapura village in Trincomalee district. An LTTE car bombing on August 8 in Colombo injured a Tamil member of parliament and killed a bodyguard and a three-year-old child. On August 12, suspected LTTE gunmen shot and killed Kethesh Loganathan, the highly respected Tamil deputy head of the government's Peace Secretariat at his home in Colombo.

As the United Nations Special Rapporteur on Extra-Judicial Executions Philip Alston stated in April, "The current impasse in negotiations is no excuse for either side not taking immediate steps to end political killings and protect human rights. The dangerous escalation of the conflict in recent days is a direct consequence of killings being allowed to run unchecked."³

Impunity for perpetrators of human rights abuses remains the greatest obstacle to ending the vicious cycle of murder and reprisal in Sri Lanka. The government has frequently initiated investigations into alleged rights violations by government security forces, but rarely have these investigations led to prosecutions, let alone convictions. A particular impediment has been the failure of the government to institute meaningful witness protection, which would encourage witnesses to politically motivated crimes to come forward. President Mahinda Rajapakse's effective immobilization of the Sri Lankan Human Rights Commission and the Police Commission because of an ostensible constitutional dispute weakens two important arms for accountability.

³ "UN Special Rapporteur on extrajudicial, summary or arbitrary executions calls for urgent measures to end political killings and to strengthen protection for human rights in Sri Lanka,," UN Press Release, April 27, 2006, <http://www.unhchr.ch/hurricane/hurricane.nsf/viewo1/16F8C22F9FB1E05EC125715E0037176E?opendocument>

More than 65,000 people are believed to have died during two decades of civil war in Sri Lanka, most of them civilians. UN Security Council Resolution 1674 (2006) on the protection of civilians in armed conflict reaffirms that “parties to armed conflict bear the primary responsibility to take all feasible steps to ensure the protection of affected civilians.”⁴ This briefing paper assesses recent conduct of hostilities by both the government and the LTTE, identifying areas in which they have failed to meet this responsibility. We then offer concrete, practicable recommendations in each area that, if implemented would provide stronger protection to civilians. The examples provided in each section are not intended to be comprehensive, but rather illustrative of the particular issue of concern.

The recommendations in this briefing are the product of Human Rights Watch’s experience in conflict settings around the world, many years monitoring the situation in Sri Lanka, and a two-week visit to Sri Lanka in August 2006. During this most recent visit, Human Rights Watch met with Sri Lankan and foreign human rights advocates, humanitarian aid workers, policy analysts, government officials, diplomats and academics. This briefing paper also draws on fact-finding reports by Sri Lankan human rights monitors, policy papers by Sri Lankan and international agencies, official documents, and follow-up research where possible.

Major Recommendations

Human Rights Watch urges the Sri Lankan government and armed forces and the LTTE to:

1. Agree to designate demilitarized zones as sanctuaries in conflict areas and pre-position humanitarian relief in known places of refuge.
2. Ensure the protection of displaced persons, regardless of ethnicity, and end forced returns.
3. Ensure adherence to international law by all senior commanders and lower-ranking personnel and hold violators accountable.
4. Improve humanitarian access to populations at risk, including by ending unnecessary governmental restrictions on humanitarian workers.

⁴ United Nations Security Council, Resolution 1674 (2006), S/RES/1674, April 28, 2006.

5. End threats, harassment and violence against non-governmental organizations and their staff.
6. Support inter-ethnic networks to reduce the likelihood of communal violence.
7. Agree to the establishment of a United Nations human rights monitoring mission in Sri Lanka.

I. Protecting Populations in Battle Zones

The August 2006 fighting in Mutur in Trincomalee district and on the Jaffna peninsula caused preventable loss of civilian life. Civilians who were unable to find refuge away from the fighting and were trapped in the battle zone were put at grave risk. In many instances, the suddenness of military operations, obstacles to movement by the combatants, and the practical difficulties and costs of leaving their home and possessions deterred families from leaving conflict areas.

The Sri Lankan armed forces and the LTTE have obligations under international law to minimize the risk of civilians being caught on the battlefield. The Geneva Conventions encourage parties to an internal armed conflict to reach special agreements to expand the conventions' applicability.⁵

A. Pre-position food and other necessities in areas of refuge

Frequent clashes between government forces and the LTTE on Mannar Island since December 2005 have caused the largely Catholic Tamil community in the town of Pesalai to repeatedly seek refuge at the Church of Our Lady of Victories. On June 15, LTTE cadres had briefly hidden in the church after attacking a police sentry post. Two days later, a naval clash between the Sri Lankan navy and LTTE Sea Tigers in the sea just off Pesalai generated concerns that the fighting would spread to the shore. About 2000 to 3000 people went to the church for protection, closing the windows and doors for safety and to reduce damage to the church should further fighting occur.

On June 17, a group of armed men, believed to be Sri Lankan navy personnel because of their blue T-shirts (known as "military civvies"), fired randomly at homes in the vicinity of the church.⁶ One of the armed men, with his face covered, set his gun on a stand and fired at the crowded church for about ten minutes. While those inside the church cowered for safety, a grenade bounced off the outside church wall

⁵ Article 3 common to the four Geneva Conventions of 1949 states: "The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention."

⁶ The Sri Lankan military blamed the LTTE for the attack. See Ministry of Defense, Media Center for National Security, "LTTE Attack on Police Post and Navy Successfully Retaliated," June 17, 2006, <http://www.nationalsecurity.lk/fullnews.php?id=72>.

and exploded. Another assailant dropped a second grenade through a church window that had been improperly shut; the explosion killed an elderly woman and caused serious shrapnel injuries to four others. The resulting stampede in the church left another forty persons injured. Human rights groups later investigating the scene found numerous bullet holes in the church's main doors and in its outside and inside walls.

The community was so traumatized by the attack (and the summary execution of five fishermen on the beach nearby) that eleven days after the incident, about 200 people had moved into the church indefinitely and another 2,000 people were spending nights there (so-called night refugees). Because dry food was delivered immediately after the incident and people went home during the day, there was no immediate food crisis. However, the people staying at the church faced serious shortages of sanitation facilities and water.⁷

During emergencies in Sri Lanka, known places of refuge, typically religious centers and schools, depend upon the distribution of humanitarian assistance from the government and international relief organizations. In practice, the emergency situation itself may make the provision of assistance difficult if not impossible. Safely storing non-perishable food, water, sanitation facilities and other necessities in advance of emergencies would provide the local population at risk a humanitarian reserve before relief can arrive.

Recommendation 1: Known places of refuge should be provided ahead of an emergency with dry food, water, additional toilet facilities and other necessities to assist at-risk persons until humanitarian assistance can arrive.

⁷ See INFORM and Centre for Policy Alternatives, "Report of a Fact Finding Mission to Pesalai, June 28, 2006," pp. 1-5. One of the conclusions of the report is that "[s]ince the experiences of the past point to the fact that the vulnerability of the people of Pesalai remains very high, equipping the church to cope with sudden influxes of large numbers of people is an important point to be considered." Similar concerns exist in many other places in Sri Lanka.

B. Provide effective warnings of impending military operations

On July 27 the Sri Lankan armed forces launched a major assault towards Mavil Aru waterway. For the offensive, they pulled troops from the town of Mutur, on the southern bank of Koddigar Bay across from Trincomalee, weakening its defenses. At around 11:30 p.m. on August 1, the LTTE cut off power to Mutur. Four hours later, on the morning of August 2, the local LTTE political leader Elilan telephoned Karim Moulavi, a Muslim community leader in Mutur, and informed him that in about an hour the LTTE was going to begin its attack for control of the town. “We are about to start,” Elilan reportedly said. Karim Moulavi wanted to inform the public of the impending fighting through the mosque loudspeaker, but because the electricity had been cut, was unable to do so. He asked for more time to allow the population to get to safety, but the LTTE refused. When the LTTE began shelling military camps in and around the town, the residents fled to schools and religious centers inside the town. The ensuing fighting in the town (see below) resulted in more than one hundred civilian casualties.⁸

International humanitarian law requires that so long as circumstances permit, warring parties must give “effective advance warning” of attacks that may affect the civilian population. Civilians who do not evacuate following warnings are still fully protected by international law. Thus, even after warnings have been given, attacking forces must still take all feasible precautions to avoid loss of civilian life and property. This includes canceling an attack when it becomes apparent that the target is civilian or that the civilian loss would be disproportionate to the expected military gain.⁹

Recommendation 2: The Sri Lankan armed forces and the LTTE should whenever possible provide effective advance warning of military operations, both broadly through loudspeakers, radio announcements

⁸ Human Rights Watch interview, Colombo, August 23, 2006 (Human Rights Watch has omitted all names of persons interviewed in this report for security reasons); see also, University Teachers for Human Rights (Jaffna) (UTHR(J)), “Hubris and Humanitarian Catastrophe,” Special Report No. 22, August 23, 2006, <http://www.uthr.org/SpecialReports/spreport22.htm>.

⁹ See ICRC, *Customary International Humanitarian Law*, rules 19 & 20, citing Protocol I, articles 57(2)(c) and 57(2)(b). International humanitarian law also prohibits “acts or threats of violence the primary purpose of which is to spread terror among the civilian population.” Statements calling for the evacuation of areas that are not genuine warnings, but are primarily intended to cause panic among residents or compel them to leave their homes for reasons other than their safety, would fall under this prohibition. See *Ibid.*, rule 2, citing Protocol II, article 13(2). This prohibition does not attempt to address the effects of lawful attacks, which ordinarily cause fear, but rather those threats or attacks on civilians that have this specific purpose.

or leaflets, and through direct messages to community leaders.

C. Improve civil-military liaisons

In the days before the summary execution of the 17 ACF aid workers in Mutur, their family members living in Trincomalee sought to notify the armed forces that the aid workers remained trapped in the town during the fighting. However, the relatives knew of no one they could contact in the armed forces whom they could be confident would relay their concerns to the appropriate military commanders in the field.¹⁰

The need for better civilian-military communications was recognized after the December 2004 tsunami. The government created Civil-Military Liaison Committees to establish regular communications between the civilian community and the military and facilitate the passage of humanitarian relief during periods of emergency. Unfortunately, there is little evidence that these committees or military civil affairs officers have played a significant role in protecting civilians during the recent hostilities.

Recommendation 3: The Sri Lankan armed forces and the LTTE should appoint local civilian liaison officers who are known and accessible to a wide range of community leaders and have sufficient rank or clout within their respective forces to ensure that information they receive from at-risk communities gets directed to and is acted upon by the appropriate commanders in the field.

D. Designate demilitarized zones in conflict areas

When heavy fighting erupted on the Jaffna peninsula in mid-August, about 500 families in Mannar district to the south sought refuge at the church in Madhu., Sri Lanka's holiest Roman Catholic shrine. The permanent homes surrounding the church were reportedly fully occupied by displaced persons and about 75 families erected tents in the surrounding area.¹¹ The Madhu church has frequently been a

¹⁰ Human Rights Watch interview, Colombo, August 17, 2006.

¹¹ See "Travel restrictions strictly enforced as fighting continues," Daily Mirror (Colombo), August 19, 2006.

place of refuge during fighting, but without always providing real safety. During heavy fighting in 1999, some 20,000 people sought protection in the vicinity of the church. The bishop of Mannar demanded that the Sri Lankan army vacate the church area, where it had begun constructing bunkers, to maintain it as a demilitarized zone. On November 20, 1999, the LTTE shelled the church a couple of hours after about 300 Sri Lankan army soldiers had entered the shrine compound during a military advance, killing about three dozen civilians who had taken shelter in the chapel and injuring some 60 others.¹²

It has long been the practice in Sri Lanka for populations fearing imminent military attack or other violence to seek shelter within their community at a local religious center or school, usually one representing their particular ethnic group. Having the Sri Lankan armed forces and the LTTE designate such places as demilitarized zones—and honor those commitments—would allow these areas to provide civilians greater protection.

International humanitarian law provides for the creation of demilitarized zones, which are areas agreed upon by the parties to a conflict that cannot be occupied or used for military purposes. Attacking a demilitarized zone is a violation of international humanitarian law.¹³

Recommendation 4: The Sri Lankan government and the LTTE should agree to and recognize demilitarized areas in accordance with international law. The location of demilitarized zones and other safe places of refuge should be disseminated to local commanders, with the recognition that there may be additional places of refuge that still must be protected from attack because of their civilian character.

¹² See British Refugee Council, Sri Lanka Monitor, March 1999; UTHR(), "The Scent of Danger," Information Bulletin No. 22, January 30, 2000, http://www.spur.asn.au/UTHR_bulletin_no_23_dated_30_january_2000.htm.

¹³ ICRC, *Customary International Humanitarian Law*, rule 36, citing Protocol I, article 60, which provides a blueprint for the terms of an agreement establishing a demilitarized zone.

E. Keep communication channels open

During the major fighting in Jaffna district in August, local religious and community leaders had great difficulty contacting military commanders from both the government and the LTTE, hindering efforts to get food, water and medicines to the general population. Non-governmental organizations complained that the military did not respond to phone calls, faxes or emails. The telephone system, both land lines and cell phones, was not functioning for more than a week. The government reportedly blocked the mobile networks to prevent the LTTE from using them to better target their attacks. For local leaders overseeing the security of civilians in religious centers and schools, being able to contact military commanders on both sides to alert them to the presence of civilians and their emergency concerns can be vital for survival.

Recommendation 5: Religious and community leaders in demilitarized zones and other known places of refuge should be able to contact, directly if possible, local military commanders on both sides.

F. Provide trauma counseling to communities enduring violence

The psychological impact of armed combat or serious rights abuses can affect communities long after the incidents occur. Human rights groups investigating abuses in Pesalai on Mannar Island (see above, Sec. I.A.) were told by church and community members of the population's need for counseling to address the trauma experienced. Children in the community, for instance, were unwilling to attend school, not only because of fear of new fighting and harassment at military checkpoints (one of the largest schools was next to a military camp), but because they were simply unable to concentrate on their studies.¹⁴

Recommendation 6: The Sri Lankan government should provide or facilitate trauma counseling to communities affected by armed hostilities or serious human rights abuses. The LTTE should facilitate sponsored trauma counseling in LTTE-controlled areas.

¹⁴ See INFORM, CPA, "Report of a Fact Finding Mission to Pesalai," p. 6.

Recommendation 7: In the event of continued hostilities, the Sri Lankan government and the LTTE should seek to reach a special agreement in accordance with the Geneva Conventions to implement the recommendations above on the protection of civilians in the battle zone.

II. Protecting Displaced Persons

The renewed armed conflict in Sri Lanka has displaced more than 220,000 people.¹⁵ While some have moved in with relatives elsewhere in the country, many have gone to displaced persons camps or other places of refuge. Many survive in uncertain circumstances in LTTE-controlled areas. In addition, the country has a large population of persons displaced from fighting that occurred years earlier and from the devastating 2004 tsunami. Existing populations of displaced persons in Sri Lanka have always been especially vulnerable when hostilities resurface. In fact many displaced persons have been forced to flee from one location to the next on multiple occasions. The camps are typically miserable, with overcrowding and insufficient food, clean water, sanitation, health care or education facilities.

The Sri Lankan government retains primary responsibility for ensuring the protection and security of displaced persons within the country. The LTTE is responsible for the protection of displaced persons in areas under its control. In addressing the concerns of displaced persons, including those displaced by the 2004 tsunami, the government and the LTTE should act in accordance with the UN *Guiding Principles on Internal Displacement*.¹⁶

International humanitarian law prohibits parties to a conflict from displacing civilians under their control unless the security of the civilians involved or imperative military reasons so demand. Imperative military reasons cannot be justified by political motives or used to persecute the civilians involved. Whenever displacement occurs, the responsible party must take all possible measures to ensure that the displaced population receives satisfactory conditions of shelter, hygiene, health, safety and nutrition, and that family members are not separated. All parties must

¹⁵ See United Nations, Department of Public Information, "Press Conference by Emergency Relief Coordinator," August 30, 2006, http://www.un.org/News/briefings/docs/2006/060830_Egeland.doc.htm.

¹⁶ UN Commission on Human Rights, *Guiding Principles on Internal Displacement*, UN Doc. E/CN.4/1998/53/Add.2 (1998), noted in Resolution 1998/50, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/d2e008c61b70263ec125661e0036f36e?Opendocument>. Detailed recommendations on confidence building and stabilization measures for displaced persons in Sri Lanka can be found at UN High Commissioner for Refugees, "Humanitarian Plan of Action: Guidelines on Confidence Building and Stabilization Measures for IDPs in the North and East," July 21, 2006.

permit humanitarian assistance to reach the displaced population, as they must in respect of all civilians.¹⁷

A. Permit displaced persons freedom of movement

On August 3 about 45,000 civilians, Muslims and Tamils, together fled shelling in the Mutur area and headed by foot towards Killiveddy town. On the way, LTTE forces stopped them, claimed the road ahead was mined, and directed them towards Kiranthmunai in LTTE-controlled territory. At a point where the path narrowed, LTTE cadres separated the men from the women and children and forced the men to walk past two masked informants. The LTTE was apparently looking for members of Muslim armed groups or the Karuna group, which had been active in Mutur. At least 32 mostly young men, virtually all of them Muslims, were taken from the line, tied up with their hands behind their backs and pushed to the ground. After an altercation in which an LTTE cadre shot and killed one of the civilians, the army was alerted to the LTTE presence and immediately began to shell the area. The shelling killed LTTE cadres, including the LTTE commander and one of the masked informants, and civilians. Everyone fled the scene. Families became separated, including parents from their children.¹⁸ Most of the displaced persons eventually reached the camps in the vicinity of Kantale. An unconfirmed report from the camps placed the number still missing and believed killed or in LTTE custody at 60. The fate of the men taken away by the LTTE is unknown.

The UN Guiding Principles on Internal Displacement provide that every internally displaced person has the right to liberty of movement and the right to seek safety in another part of the country.¹⁹ In addition, no one shall be subjected to arbitrary arrest or detention. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances.²⁰

¹⁷ ICRC, *Customary International Humanitarian Law*, rule 129, citing Protocol II, article 17(1).

¹⁸ HRW interview, Colombo, Aug. 22, 2006; see also UTHR(), "Hubris and Humanitarian Catastrophe."

¹⁹ See *Guiding Principles on Displacement*, principles 14 and 15.

²⁰ *Ibid.*, principles 10 and 2. The basis for these provisions can be found in principles of international humanitarian law.

Recommendation 8: The Sri Lankan armed forces and the LTTE must not place displaced persons at risk by hindering or redirecting their free movement except for valid security reasons.

B. Ensure the protection of all displaced persons regardless of ethnicity or religion

During the flight of the civilian population from the Mutur area in July, Muslims were refused refuge in schools in Sinhalese majority areas, even when the schools and mosques in Muslim areas were overflowing with people. Militants from the Sinhalese nationalist JVP party were believed to be primarily responsible for denying entry to non-Sinhalese displaced persons.²¹

The government and the LTTE have a responsibility to protect displaced persons in all areas under their control. They must take proactive measures to ensure that displaced persons are not discriminated against on the basis of ethnicity or religion. Specifically they must act to ensure that persons in flight are able to find safety.

International humanitarian law prohibits adverse distinctions made on the basis of language, religion, race, sex, and political opinion, among other criteria.²² All possible measures must be taken to ensure that displaced persons receive satisfactory conditions of shelter, hygiene, health, safety and nutrition, and that members of the same family are not separated.²³

Recommendation 9: The Sri Lankan security forces and the LTTE should take proactive measures to ensure that the safety of displaced persons is not compromised by discrimination from their forces or local populations. Allegations of discrimination should be promptly investigated and addressed.

²¹ Human Rights Watch interviews, Colombo, August 13 and 16, 2006

²² Geneva Conventions of 1949, common article 3.

²³ ICRC, *Customary International Humanitarian Law*, rule 131, citing Protocol II, article 17(1).

C. Do not forcibly return displaced persons

On September 7, the Sri Lankan government announced it had sent 170 buses to the camps in Kantale to transport the approximately 15,000 to 25,000 displaced persons back to their homes in and around Mutur. A government spokesman said that the request for buses came from the displaced persons themselves. While representatives for the displaced persons said that all wanted to return to their homes, many families wished to wait until they could be sure the area was safe and that renewed fighting was unlikely. Local sources reported that a Ministry of Defense official contacted by Muslim community leaders justified the returns at this time, saying that because the military had cleared Mutur of the LTTE, civilians should now be going back. The official said that government ministers would go to Mutur to ensure their safety and thought that it would be a disgrace for the government to keep Muslims from Mutur in Kantale as displaced persons.²⁴

According to Refugees International, the population that had fled to Kantale was “forced back to Mutur on September 6 and 7 in a government organized return that in effect removed them from temporary shelters, however inadequate, in safe locations with basic services to temporary shelters with virtually no services in what remains a tense zone of potential conflict.” Refugees International found the returns to Mutur to be problematic because of the threat of renewed hostilities, the likelihood that unexploded ordnance remained, the lack of habitable homes or temporary shelter and the shortage of government and international emergency assistance.²⁵

The involuntary nature of the return can be seen in the government’s handling of Camp-98, a camp for 72 displaced families from Mutur at the al-Hikma Muslim school in Kantale. On Thursday, September 7, a member of the Mutur local authority and the Kantale divisional secretary notified the families that they should leave for Mutur by Friday morning and return the school keys to local authorities by noon that

²⁴ See Sri Lanka Department of Information, “Mutur Muslims return to their homes,” September 7, 2006, http://www.news.lk/index.php?option=com_content&task=view&id=740&Itemid=44; Bharatha Mallawarachi, “Sri Lanka to return 15,000 displaced people to their homes,” Associated Press, September 7, 2006; E-mail communications from human rights investigator, Kantale, September 2006.

²⁵ Refugees International, “Sri Lanka: Forced Return Threatens Safety of Mutur Displaced,” September 11, 2006, http://www.refintl.org/files/9409_file_SriLanka_091106.pdf.

day. The families were also told that their access to assistance, including water, would be stopped on Friday.

On Friday, September 8, 24 families decided to return to Mutur and boarded the buses provided by the government. The remaining families remained concerned about the security situation in the Mutur area and so remained. At around 3 p.m., police led by the local police officer-in-charge and the Kantale divisional secretary entered Camp-98 and ordered the remaining families onto the government buses. The police allegedly forced the few families who had refused to move into the buses, dragging some of them and throwing their few possessions into the street in the rain. At this writing, the three remaining families of this group that had not returned, including two with children injured during the August 3 shelling of Mutur, were seeking refuge in the Kantale area.

On Saturday, September 9, representatives of the remaining displaced persons in Kantale said that the Trincomalee district government agent and the Kantale divisional secretary had refused to send water from the national water board, effectively cutting off water supplies to those displaced. Non-governmental organizations providing assistance in Kantale report that they have been asked to move to Mutur, which would deny those remaining in Kantale other forms of assistance as well.

The UN Guiding Principles on Internal Displacement provide that competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow displaced persons “to return voluntarily, in safety and with dignity” to their homes. Special efforts should be made to ensure the full participation of displaced persons in the planning and management of their return.²⁶

Recommendation 10: All returns of displaced persons should be genuinely voluntary, in safety and with dignity, in accordance with the UN *Guiding Principles on Internal Displacement*.

²⁶ *Guiding Principles on Internal Displacement*, principle 28.

III. Ensuring Humanitarian Access

The major military operations in the Jaffna peninsula in August 2006 highlighted the civilian population's precarious access to humanitarian assistance. During the ten days of fighting, all land, sea and air routes (except for military helicopters) were cut between Jaffna and the mainland. Many residents of Jaffna town, accustomed to past fighting and blockades, stored food for such an emergency. Many others, particularly in the outlying areas closer to the fighting, may not have had the means to do so. Water, medicines and fuel supplies sharply dwindled during this period. Telephone services, including both land lines and cell phones, and electricity were sporadic to non-existent. An estimated 40,000 people fled their homes for greater security elsewhere in the peninsula. While many went to the usual religious centers and schools, there were reports that people who had sought refuge in LTTE-controlled areas were spending the night outdoors.

Neither the Sri Lankan government nor the LTTE took adequate measures to ensure that the civilian population in Jaffna had proper access to food, water and medicine. To our knowledge, no serious effort was made by either side to open for humanitarian convoys the main Jaffna-Kandy (A9) road from the mainland to the peninsula, which goes through LTTE-controlled territory. The government showed little sense of urgency in sending a cargo ship with humanitarian aid to Jaffna. And when the fighting largely ended, the armed forces issued a statement on casualties suffered by combatants, both government and the LTTE, but provided no information on civilian losses. To date, the number of civilians who were killed or wounded during this period of heavy fighting remains unknown.

The humanitarian situation in Jaffna has improved since major combat operations ended, but remains precarious. There is little indication that the government has made shipping aid to Jaffna a priority. Humanitarian agencies have expressed concern that many humanitarian problems persist but that access to populations at risk remains difficult.

A. End unnecessary interference with humanitarian access

During the fighting in Trincomalee district in July and August, humanitarian agencies had particular difficulty getting access to displaced persons in Kantale and other areas. On several occasions reported to Human Rights Watch, aid convoys were forcibly blocked or delayed in villages, typically by large crowds believed to be organized by local community leaders or ultra-nationalist Sinhalese politicians who did not want the aid to reach another ethnic group.²⁷

In mid-August, some 35,000 people, primarily Tamils fleeing fighting in Trincomalee district, moved into Batticaloa district. The Sri Lankan military subsequently closed the checkpoints and provided only sporadic access to a very few agencies to access the civilian population in LTTE-controlled areas. By the end of August, only the UN High Commissioner for Refugees and the International Committee of the Red Cross were given permission to provide assistance to the civilian population in the LTTE areas, and then only in direct collaboration with local government officials. Humanitarian agencies estimated that approximately 200,000 permanent residents of Batticaloa district plus about 25,000 displaced persons from outside the district were no longer accessible to the humanitarian agencies. The checkpoints also prevented civilians from crossing into government controlled areas, keeping farmers from taking produce to markets and denying those needing medical care access to hospitals. At the same time, the LTTE tried to prevent displaced persons from going into government-controlled areas by announcing that they were going to shell army positions. As a result some displaced persons later walked through the jungle to reach Valaichchenai on the coast north of Batticaloa town.²⁸

International humanitarian law requires parties to a conflict to allow and assist impartial humanitarian agencies to supply food, medical supplies and other essentials to civilians at risk. The parties must consent to allowing relief operations to take place, but they may not refuse such consent on arbitrary grounds. They can take steps to control the content and delivery of humanitarian aid, such as to ensure that consignments do not include weapons. However, deliberately impeding relief

²⁷ Human Rights Watch interview, Colombo, August 16, 2006.

²⁸ Human Rights Watch interview, Colombo, August 14, 2006.

supplies is prohibited.²⁹

Recommendation 11: The Sri Lankan government and armed forces and the LTTE should communicate more closely with UN aid agencies and other humanitarian organizations to improve access to populations in conflict areas.

Recommendation 12: The Sri Lankan government and armed forces and the LTTE should instruct civilian officials and military commanders in the field to allow all humanitarian convoys access to civilians and only refuse access when a specific security reason requires otherwise. Refusals for valid security reasons should only be for as long as necessary, and may delay but should not block legitimate humanitarian assistance.

B. End threats and violence against NGO workers

Serious threats and violence against NGO workers have impaired the delivery of humanitarian assistance and compelled the United Nations and international NGOs to consider suspending operations in Sri Lanka.³⁰

The execution-style slaying of 17 ACF aid workers in Mutur in early August (see below) was only the most horrific act of violence directed at NGOs in 2006. On May 21, unidentified persons threw grenades at the compounds of three international groups, Inter SOS, ZOA, and the Nonviolent Peaceforce. One international staffer from the Nonviolent Peaceforce and two local passersby were injured in the attack on the Nonviolent Peaceforce office.

There have also been several killings of local relief agency staff in recent months in which the responsibility and motives are unclear. On May 15 unknown gunmen shot

²⁹ ICRC, *Customary International Humanitarian Law*, rule 55, citing Protocol I, article 70(2) and Protocol II, citing article 18(2).

³⁰ See "U.N. threatens to halt Sri Lanka work after aid killings," Reuters, August 31, 2006. UN Emergency Relief Coordinator Jan Egeland told the media in New York after the murder of 17 Sri Lankan aid workers in Mutur that "We have no independent information ourselves in the UN, but I say we cannot continue in this area unless people will be held accountable for the execution of 17 of our colleagues." Ibid.

and killed Jeyaruban Gnanapragasam, who worked for the Norwegian Refugee Council in Vavuniya town. Unknown gunmen shot dead Nagarasa Thavaranjitham, a 23-year-old woman who worked with the Sri Lanka Red Cross on August 20 in Cheddikulam, Vavuniya district. Unknown gunmen shot dead P. Lesley Julian, who worked for the UN Office for Project Services on August 24 in Thambiluvil, Amparai district.

Extremist Muslim groups and the LTTE appear to have been behind threats against women NGO workers in the east in April. Leaflets were circulated in Tamil and Muslim areas telling women not to work for non-governmental organizations. The leaflets claim that such women are sexually harassed and have become promiscuous, leading to their participation in pornographic videos and an increase in the number of abortions. A leaflet widely circulated in Batticaloa and Ampara districts and attributed to a women's organization linked to the LTTE, told women to stop working for non-governmental organizations by April 15 or "your future life may be endangered." Pro-LTTE parliamentarians said that they did not wish to ban women from working for NGOs so long as they behaved according to Tamil culture. After the dissemination of the leaflets, many women NGO workers and their families in the east remained fearful for their security.³¹

International humanitarian law provides humanitarian relief workers, as well as their buildings, vehicles and supplies, special protections against attack.³²

Recommendation 13: The Sri Lankan armed forces and the LTTE should use all available means to instruct their forces to respect and protect humanitarian aid personnel, their facilities, supplies and their transportation. Personnel who commit abuses against humanitarian organizations and their staff should be held criminally accountable.

C. End unnecessary restrictions on and harassment of NGOs

All international aid agencies, including the many that had begun working in Sri Lanka after the 2004 tsunami, have had to register with the Ministry of Social

³¹ "Threat Against Women Organizers in Sri Lanka," *Tamil Week*, May 2006, reprinted in *The South Asian*, May 21, 2006.

³² ICRC, *Customary International Humanitarian Law*, rules 31 and 32, citing Protocol II, article 18.

Welfare. The government announced that the changing security situation required that international aid workers must also register with the Ministry of Defense—initially requiring that all expatriate staff be registered by August 31.

According to the MoD spokesman, the government was entitled to know which international NGOs were working in the troubled north and east, what assets they had, and whether their expatriate staff had valid work permits.³³ While states may require international NGOs and their staff to register with the government, as the Ministry of Social Welfare had been doing, the application of the new MoD registration requirements appears intended mostly to discourage international NGOs—many of which have long been in Sri Lanka—from working in the north and east. While the registration is only for individual work permits, and no institutional registration is required, the work permit procedure includes submitting detailed information on the organization’s activities, areas of work, funding sources and budget (UN workers are exempt from these requirements). On September 4, the government announced that foreign nationals applying for visas to work as aid workers would have to produce security clearance certificates from the authorities of their home countries, a process that seems designed to discourage NGO humanitarian activity.³⁴

Work permits are for a maximum of one to six months, and so far the authorization is only for Colombo and the south. While the Ministry of Defense says this does not preclude travel to other areas, the registration rules do not permit work in the north and east. Human Rights Watch is unaware of any individuals receiving a work permit for those areas.

Humanitarian organizations, including UN agencies, have had particular difficulty gaining access to LTTE-controlled areas to provide relief. Military checkpoints have routinely imposed registration requirements beyond those required by the Ministry of Defense, demanding that the NGOs and their vehicles, instead of just their expatriate staff, be registered with the MoD. They have also demanded that local NGO workers be registered, which is also not required, and threatened them with

³³ See P.K. Balachandran, “UN suspends relief aid to Sri Lanka,” *Hindustan Times* (New Delhi), August 31, 2006.

³⁴ See “Government to double check credentials of NGO workers,” *Daily Mirror* (Colombo), September 5, 2006.

arrest when they failed to provide such documentation. The military has used these non-existent requirements to turn away NGOs at checkpoints and prevent them from providing assistance. On August 8 the Ministry of Defense issued a letter addressing the above problems at checkpoints with the intention of correcting them.³⁵

The new registration requirements have proven to be extremely disruptive of humanitarian activities during a period of great humanitarian need. The government denies that the new requirements, imposed suddenly and apparently without careful planning, were a form of harassment of international NGOs.³⁶ The Colombo-based Centre for Policy Alternatives (CPA) has criticized the government for placing obstacles that have hampered effective and efficient delivery of humanitarian assistance in the path of aid agencies. The CPA found that government-imposed restrictions, including delays in issuing work permits and travel restrictions in both government and LTTE controlled areas, created “a climate of confusion” that constrained the delivery of humanitarian assistance. Relief agencies have drawn a connection between these registration difficulties and harassment and threats to which their staff members in the field have been subjected.³⁷

International humanitarian law provides that parties to a conflict must ensure the freedom of movement of authorized humanitarian relief personnel. Authorization cannot be refused arbitrarily and only in the case of imperative military necessity may their movements be temporarily restricted.³⁸

Recommendation 14: While the Sri Lankan government may regulate NGO activities, it should do so in a manner that is in accordance with international standards, is transparent and provides clearly defined procedures. Registration should ultimately facilitate the work of NGOs. It should neither disrupt legitimate NGO activities nor put NGO workers at risk.

³⁵ See Ministry of Defense, Public Security, Law & Order, “Issue of Work Permits to Expatriates attached to NGO,” August 29, 2006 (copy on file at Human Rights Watch).

³⁶ See P.K. Balachandran, “UN suspends relief aid to Sri Lanka,” *Hindustan Times* (New Delhi), August 31, 2006.

³⁷ See Centre for Policy Alternatives, “Statement on Space for Humanitarian Work: Issues of Safety, Access and Restrictions,” August 18, 2006, http://www.cpalanka.org/research_papers/Statement_on_Space_for_Humanitarian_Work_English.pdf.

³⁸ ICRC, *Customary International Humanitarian Law*, rule 56, citing Protocol I, article 71(3) and Protocol II, article 18(2).

IV. Promoting Compliance with International Humanitarian Law

Since the renewal of major military operations in April 2006, the Sri Lankan armed forces and the LTTE have been implicated in serious violations of international humanitarian law, which are war crimes. The limited information available on specific incidents makes conclusive findings difficult. However, existing evidence of violations of international law requires that parties to the conflict undertake serious investigations, act to hold those responsible accountable and introduce measures to prevent future violations.

The Sri Lankan armed forces have engaged in indiscriminate shelling and aerial bombing, attacking targets with insufficient regard as to whether civilians would be harmed. They have engaged in “disappearances” and summarily executed people in their custody. The LTTE has directly targeted civilians with Claymore mines and suicide bombings, and summarily executed those in their custody. In at least one instance it has used civilians as human shields and blocked water to a civilian population.

The conflict between the Sri Lankan government and the LTTE is considered a non-international armed conflict under international humanitarian law. Applicable law includes article 3 common to the four Geneva Conventions of 1949 and customary international humanitarian law. Common article 3 provides minimum standards for the treatment of all persons in custody, including prohibitions on murder, torture and other cruel treatment, the taking of hostages, humiliating and degrading treatment, and holding trials not in conformity with international fair trial standards. Customary international humanitarian law sets out, among other things, rules on the means and methods of warfare, including prohibitions on direct, indiscriminate or disproportionate attacks on civilians.³⁹

A. Cease attacks against civilians

On June 15 at about 7:30 a.m., a Claymore mine exploded beside a crowded bus outside the town of Kebitigollewa in central Anuradhapura district, killing 67 civilians

³⁹ See generally, ICRC, *Customary International Humanitarian Law*.

and injuring about 45 others, including many children.⁴⁰ The victims were primarily Sinhalese. The blast occurred at a time of when many villagers were traveling to work or school. An investigation by the Nordic-led Sri Lanka Monitoring Mission (SLMM) found the attack showed evidence of military expertise and the professional deployment and handling of weapons. The SLMM concluded that it was “highly probable” that the LTTE or LTTE-affiliated forces carried out the attack.⁴¹

On Friday, August 4, the LTTE withdrew its small force of two dozen cadres from Mutur and the Sri Lankan armed forces reoccupied the town during the day. The following evening the media reported that bodies of 15 Sri Lankan staff of the international aid agency ACF were found inside the ACF office compound. The next day two additional bodies were located outside the compound. The aid workers, all Tamil but for one Muslim, were involved in water and sanitation projects to help area victims of the 2004 tsunami. All were wearing ACF T-shirts. The fifteen found inside the compound, including four women, had been shot execution-style, with gunshot wounds to the head. The bodies of two others, apparently shot while trying to escape, were found in a car.

The police Criminal Investigation Division is investigating the killings. The government has permitted the participation of Australian forensic experts in the investigation, but difficulties in gaining permission to exhume the bodies of the murdered aid workers has to date limited their involvement.

The departing head of the SLMM, Ulf Henricsson, issued a statement on August 30 that concluded that “there cannot be any other armed groups than the security forces who could actually have been behind the act.” Henricsson said the SLMM reached its conclusions based on its determination that the Sri Lankan security forces were in Mutur at the time of the incident on information gathered from sources the SLMM considered highly reliable, and on the government’s refusal to allow the SLMM access to the site of the killings, since it indicated the government’s “eagerness to conceal the matter from the SLMM.”⁴²

⁴⁰ See “Bus blast in Sri Lanka kills 64,” Agence France Presse, June 15, 2006.

⁴¹ Sri Lanka Monitoring Mission, “The SLMM Condemns Murder of Kethesh Loganathan, press release, August 30, 2006.

⁴² “Monitors’ statement on Sri Lanka killings,” BBC News, August 30, 2006, http://news.bbc.co.uk/2/low/south_asia/5298748.stm.

International humanitarian law requires that parties to a conflict at all times distinguish between combatants and civilians, and that attacks not be directed against civilians. The intentional killing of civilians during an armed conflict is a war crime.⁴³

Recommendation 15: The Sri Lankan armed forces and the LTTE must cease attacks directed against civilians. This message must be conveyed in the strongest terms to both senior military commanders and lower-ranking personnel.

B. Cease indiscriminate or disproportionate use of force

On the morning of May 1 in Trincomalee, an apparently remotely detonated Claymore mine attached to a parked bicycle exploded near a busy intersection in a Tamil residential neighborhood. The attack targeted a group of sailors, killing one and wounding three others. The explosion also killed four civilians, a family with two children in a passing three-wheeler. Four other civilians were injured.⁴⁴

After the LTTE forcibly captured Mutur on August 2, about two dozen LTTE cadres remained within the town, reportedly searching for people with connections to the military (see LTTE's use of human shields, below, Sec. IV.D.). The Sri Lankan armed forces responded with heavy shelling from three military camps, including by Multi-Barrel Rocket Launchers (MBRLs) fired from the Trincomalee naval dockyard.⁴⁵ Over several days the Sri Lankan armed forces repeatedly shelled the town with apparently little regard for the civilian population, which had largely fled to local religious centers and schools in the town. Residents reported that most of the civilian casualties during the fighting—which resulted in more than 49 civilian deaths and many more injured—were from the military's shelling of the town. About half the civilian deaths occurred in

⁴³ ICRC, *Customary International Humanitarian Law*, rule 1, citing Protocol II, article 13(2).

⁴⁴ See Ranil Wijayapala & K.D. Jayasekara, "LTTE claymore kills four civilians, sailor," *Daily News*, May 2, 2006; UTHR(), "When Indignation is Past and the Dust Settles," Special Report No. 21, May 15, 2006, p. 4, <http://www.uthr.org/SpecialReports/spreport21.htm>.

⁴⁵ The rockets fired are believed to have been Czech or Slovak-made 122mm unguided artillery rockets, a version of the former Soviet BM-21 Grad system.

religious centers and schools which the military had reportedly been informed were being used as places of refuge.⁴⁶

International humanitarian law prohibits attacks that are not directed at a specific military target, or make use of a weapon or method of combat that cannot be directed at a specific military target.⁴⁷ Also prohibited are attacks on military targets that would be expected to cause loss of civilian life disproportionate to the concrete and direct military advantage anticipated.⁴⁸

Recommendation 16: The Sri Lankan armed forces and the LTTE must cease all attacks that cannot be directed at a specific military target or that would cause disproportionate civilian loss.

C. Verify that targets are military objectives, not civilians

The Sri Lankan military reported that on May 4, seven LTTE cadres were killed while attacking an army checkpoint near a petrol station in Nelliady in Jaffna district. According to a military spokesman, at around 2:15 p.m. seven LTTE cadres armed with hand grenades arrived in two three-wheelers (motorized rickshaws) and launched an attack on the two soldiers at the military checkpoint. Troops at the nearby Navindil camp blocked the passage of the three-wheelers and fired at them. “Simultaneously, a huge explosion occurred inside the second three-wheeler killing all the men inside,” said the spokesman. Soldiers then opened fire at the first three-wheeler while the LTTE cadres threw hand grenades at the troops. The spokesman said that “after the fierce battle ended,” soldiers recovered the bodies of seven LTTE cadres and several hand grenades scattered on the ground. It was further reported that the cadres were members of the LTTE’s auxiliary force, which has been given military training for handling hand grenades and weapons to carry out attacks on the military, who were posing as civilians.⁴⁹

⁴⁶ See UTHR(), “Hubris and Humanitarian Catastrophe.”

⁴⁷ ICRC, *Customary International Humanitarian Law*, rule 12, citing Protocol I, article 51(4)(a) and Protocol II, article 13(2).

⁴⁸ *Ibid.*, rule 14, citing Protocol I, articles 51(5)(b) and 57.

⁴⁹ Kurulu Kariyakarawana, Easwaran Rutnam and Sunil Jayasiri, “Seven LTTE cadres killed as military retaliates, civilians also injured,” *Daily Mirror* (Colombo), May 5, 2006.

Two human rights groups separately concluded that those killed were all unarmed civilians—five Tamils youth aged 17 to 19 who worked as day laborers at the Point Pedro harbor and two three-wheeler drivers. Ten to twenty minutes earlier, a grenade had been thrown at the petrol station sentry post. The youth were returning from having gone drinking at a friend's when they passed the petrol station sentry point and a military intelligence camp, which reportedly signaled them from a distance to stop. The drivers apparently did not see the signal and they continued towards the checkpoint. A rifle propelled grenade was fired at the three-wheelers from about 50 yards behind, causing the explosion reported by the military spokesman. Soldiers then fired at the vehicles with small arms.⁵⁰

It appears that the soldiers fired upon the vehicles without doing everything feasible to verify that those targeted were combatants. Evidence contradicting the military's claim that those killed were all LTTE cadres demonstrates the need for an independent investigation of the incident.

On August 14, Sri Lankan air force fighter jets dropped about twelve bombs on a former children's home in Vallipulam, deep in LTTE-controlled territory in Mullaitivu district. The SLMM and UNICEF went to the site five hours after the bombing and were shown 19 corpses of women and girls aged 16 to 18. A list attributed to principals at local schools provided the names of 51 young women and girls said to have been killed in the attack, as well as four instructors. Another 100 persons were reported injured. The SLMM reported finding no evidence of weapons or military equipment at the site.

The Sri Lankan armed forces claimed that the women were getting military training to be LTTE combatants at a site near an LTTE base and were thus valid military targets. According to MoD spokesman Brig. Athula Jayawardana the day after the bombing: "If the children are terrorists, what can we do?"⁵¹ In September, the government arrested three young women who were being hospitalized in Kandy for injuries

⁵⁰ See INFORM, "Some Key Concerns Regarding the Human Rights Situation"; UTHR(), "When Indignation is Past and the Dust Settles," p. 28.

⁵¹ See Justin Huggler, "Sri Lankan Army Warns Children Can Be Targets," *The Independent* (London), August 16, 2006.

received during the bombing, and announced that the women had confessed that they were receiving military training at the site.⁵²

Local sources believe the LTTE had just started using the site not as a military training camp, but to provide first-aid and civil defense training for the school girls. There were no known LTTE military structures nearby. The training, which the girls probably had no choice but to attend, would have been part of broader LTTE indoctrination efforts in areas that it controls.⁵³ Under such circumstances, these young women and girls would not have been combatants who could lawfully be targeted under international humanitarian law.⁵⁴

The tragic circumstances of the attack underline the failure of both sides to take all feasible precautions to minimize harm to civilians. The LTTE, by assembling a large group of civilians in an unexpected place in the midst of a bombing campaign, appears to have unnecessarily put the young women at grave risk. The Sri Lankan military at a minimum directed an attack on a building without taking all feasible precautions to determine whether those inside were combatants or civilians. At worst, the military knowingly bombed people and a building that had protected civilian status.

In conducting military operations, each party to the conflict must do everything feasible to verify that targets are military objectives.⁵⁵ Additionally, all feasible precautions must be taken to avoid loss of civilian life and property.⁵⁶

Recommendation 17: The Sri Lankan armed forces and the LTTE must do everything feasible to verify that they are attacking military targets, not civilians, and take all feasible precautions in conducting

⁵² Voices played on Sri Lanka's Eye Channel attributed to the young women said that they needed authorization from the LTTE to sit for public exams or otherwise they would not be able to attend school. They said that to receive authorization they had to attend these sessions where, in addition to first aid, they would be taught self-defense, which in the future (they had been there four days) was to involve marching with poles and throwing dummy hand grenades.

⁵³ See UTHR(), "Hubris and Humanitarian Catastrophe," p. 17.

⁵⁴ Civilians may only be treated as combatants under international humanitarian law when and for such time that they are taking a "direct part in hostilities." See ICRC, *International Humanitarian Law*, rule 6, citing Protocol II, article 13(3).

⁵⁵ ICRC, *International Humanitarian Law*, rule 16, citing Protocol I, article 57(2)(a).

⁵⁶ *Ibid.*, rule 15, citing Protocol II, article 13(1).

attacks to avoid loss of civilian life and property. In its conduct of aerial bombing, the Sri Lankan air force should institute measures to ensure that its information on military targets is current and accurate.

D. Do not use human shields

During the fighting in Mutur in early August, several thousand Muslims sought shelter in the Nathvathul Ulama Arabic College, Al Hilal School and Ashraff High School, while Tamils in the area fled to the local Methodist and Roman Catholic churches or to LTTE-controlled areas. At around 9:30 a.m. on August 3, an LTTE leader called Shanthan and about a dozen cadres fired mortar shells not far from the Arabic College compound—which was sheltering about 15,000 people at that time—at government military camps. When the LTTE cadres walked to within 50 meters of the college compound, several Muslims pleaded with Shanthan to consider the safety of the civilians. Shanthan responded with verbal abuse. Government helicopters flying overhead apparently spotted the uniformed LTTE cadres. Fire from government artillery, including multi-barrel rocket launchers, came quickly. Three shells hit the Arabic College and its vicinity, killing 19 civilians on the spot and injuring several dozen others.⁵⁷

It appears that the LTTE commander, by deliberately placing his unit close to the school filled with displaced persons, was either using them to try to shield his forces from attack, or was trying to provoke the Sri Lankan military to shell the Muslim civilians.

Intentionally using the presence of civilians to render certain points, areas or military forces immune from military attack is considered “shielding,” and is a war crime. While it may be unlawful to place forces, weapons and ammunition within or near densely populated areas, it is only considered shielding when there is a specific intent to use the civilians to deter an attack.⁵⁸ Each party must take all feasible precautions to protect the civilian population and civilian objects under their control from the effects of attacks.⁵⁹

⁵⁷ Human Rights Watch interviews, Colombo, August 13 and 22, 2006; see also, UTHR(), “Hubris and Humanitarian Catastrophe.”

⁵⁸ ICRC, *Customary International Humanitarian Law*, rule 97, citing Protocol I, article 51(7).

⁵⁹ *Ibid.*, rule 22, citing Protocol I, article 58(c); Protocol II, article 13(1).

Recommendation 18: The Sri Lankan armed forces and the LTTE must instruct commanders at all levels never to use civilians as shields, which is a war crime. Any combatant that uses or attempts to use human shields should be held fully accountable. Attacks on combatants using civilians as shields may not cause disproportionate civilian harm.

Recommendation 19: The Sri Lankan armed forces and the LTTE must instruct commanders at all levels to protect civilians from the effects of attacks, such as by helping civilians withdrawal to safe places, providing accurate information about the military situation, and, to the extent feasible, avoiding placing their military forces within or near populated areas.

E. Do not commit attacks on objects indispensable to the survival of the civilian population

On July 20, the LTTE closed the sluice gate of the Mavil Aru waterway in eastern Trincomalee district. The government Peace Secretariat claimed the closure of the sluice gate cut off water to over 15,000 families and approximately 30,000 acres of agricultural lands in government-held areas.⁶⁰ Beginning on July 26 the Sri Lankan air force began bombing raids on LTTE areas. Two days later the army launched a major assault to capture the sluice gates. The Sri Lanka Monitoring Mission criticized the government for firing rockets towards the vicinity of negotiations between the SLMM and the LTTE to reopen the sluice gates, hampering those negotiations. On August 7, the LTTE reopened the sluice gates.

International humanitarian law prohibits attacks against or otherwise rendering useless objects that are indispensable to the survival of the civilian population.⁶¹

⁶⁰ The number of people affected by the cutoff has been called into question. Because government reprisals against LTTE attacks had displaced many Tamils to LTTE-controlled areas in earlier months, only about 40 percent of the land was under cultivation. Other water-use concerns by the government have also been raised. However, these factors do not justify under international law the sluice gate cutoff.

⁶¹ ICRC, *Customary International Humanitarian Law*, rule 54, citing the prohibition on attacks on civilian objects and Protocol II, article 14.

Recommendation 20: The Sri Lankan armed forces and the LTTE should never attack or otherwise intentionally disrupt objects and infrastructure indispensable for the survival of the civilian population, such as food supplies, agricultural areas, crops, livestock, water installations, irrigation works and the like.

F. Cease reprisal attacks

In southern Trincomalee district on January 8, the LTTE attacked a military vehicle in Iruthayapuram, wounding three soldiers, and an army patrol in nearby Menkamam, killing one soldier. Government soldiers, who were particularly angry because of reports that LTTE cadres were moving around at night in civilian clothes, conducted a search operation in Menkamam in which they found weapons in a house. The soldiers went from house to house, allegedly threatening the villagers with a massacre in reprisal should there be another LTTE attack. As part of this threatened reprisal, the soldiers made reference to a massacre in the nearby village of Kumarapuram that had occurred ten years earlier, when over 20 civilians were killed and two girls were raped and murdered. No actual reprisals were carried out.⁶²

In late April, about 400 persons left their homes near Mutur following an LTTE attack on a nearby Sinhalese village that was followed by military-backed reprisals against Tamils. Villagers from Bharatipuram, for instance, fled after about 35 Sinhalese civilians attacked their village, killing one young man, sexually harassing women, and looting and burning about 30 houses and shops. Eyewitnesses told human rights groups that the army closed off the entrance to the village and watched while the attack occurred.⁶³

International humanitarian law bans belligerent reprisals against civilians.⁶⁴

⁶² Human Rights Watch interview, Colombo, August 16, 2006.

⁶³ See INFORM et al, "Report on the Fact-Finding Mission to Gomarankadawela and Mutur, Trincomalee District: April 26-27," May 7, 2006.

⁶⁴ ICRC, *Customary International Humanitarian Law*, rule 148, citing the protection of fundamental rights of persons "at any time and in any place whatsoever" found in common article 3 to the Geneva Conventions and Protocol II, article 4. Any treatment of civilians that would violate common article 3 would also be prohibited if committed as a reprisal. See ICRC, *Commentary on the First Geneva Convention* (Geneva: 1952), pp. 54-55.

Recommendation 21: The Sri Lankan armed forces and the LTTE must clearly convey to senior commanders and lower-ranking soldiers that carrying out or threatening reprisal attacks against civilians is unlawful and that those responsible for such attacks will be held accountable.

G. Cease recruitment and use of children as soldiers

Since June 2006, the Karuna group abducted more than 100 boys for their forces from several towns in Batticaloa district.⁶⁵ After a decline in reported abductions in July, abductions by the Karuna group rose sharply in August after fighting between government forces and the LTTE intensified. Local human rights groups said that the location, time and manner of the abductions—all in government-controlled territory—strongly indicate that the abductors were from the Karuna group and not members of the LTTE.⁶⁶

Many of the youths abducted are known to be in Karuna camps, located either in government-controlled territory or in the “no-man’s land” between government and LTTE forces, with government military camps nearby. In order to travel to these areas, the abductors would likely have had to pass through multiple Sri Lankan military checkpoints, suggesting that military officials were aware of the abductions. Some parents have visited their children at the Karuna camps and have even received “payments” (*koduppanavu*) for their children’s services. Some of these children have reportedly been deployed in military operations against the LTTE within weeks of being abducted.

In many cases family members have registered complaints with local police, but no action is known to have been taken. In some instances, the police refuse to record the abductions, saying it was “not necessary.”⁶⁷ Parents who have filed complaints

⁶⁵ Human Rights Watch interviews, Colombo, August 22-23, 2006. UNICEF reported as of August 31 that they had received a total of 118 reports of children recruited by Karuna’s forces, of which 44 occurred in August. All but ten cases occurred in Batticaloa district. (UNICEF statistics on file with Human Rights Watch.)

⁶⁶ Human Rights Watch interviews, Colombo, August 21 and 24, 2006.

⁶⁷ Ibid.

reportedly received threats soon after from the Karuna group, suggesting linkages with the police.

The LTTE has a long history of recruiting children as soldiers and continues to do so in areas it controls. A Human Rights Watch report published in November 2004 documented LTTE recruitment of thousands of children since the beginning of the 2002 Ceasefire Agreement. The report found that the LTTE often used threats, intimidation and sometimes abduction to bring children into its ranks. Prior to the ceasefire, children were routinely used in combat, and often deployed on suicide missions.⁶⁸ During 2006, UNICEF reported that it had received an average of about 55 reports per month of children being recruited into the LTTE forces, though the actual figure is believed to be several times higher.⁶⁹

The recruitment of children under the age of 18 by non-state armed groups contravenes international law. It prohibits any participation of children in active hostilities in the armed forces of states and in non-state armed groups. States are required to take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices. The recruitment of children under the age of 15 is a war crime.⁷⁰

Recommendation 22: The LTTE and the Karuna group must immediately stop the recruitment of children into their armed forces and release those already in their ranks. The Sri Lankan government, police and armed forces must take urgent measures to obtain the release of persons arbitrarily detained by the Karuna group, including

⁶⁸ See generally, Human Rights Watch, *Living in Fear: Child Soldiers and the Tamil Tigers in Sri Lanka*, vol. 16, no. 13(c), November 2004, <http://hrw.org/reports/2004/srilanka1104/>.

⁶⁹ UNICEF statistics on file with Human Rights Watch.

⁷⁰ Sri Lanka is a party to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted May 25, 2000. G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III, entered into force February 12, 2002. The protocol raised the standards set in the Convention on the Rights of the Child by establishing eighteen as the minimum age for any conscription or forced recruitment or direct participation in hostilities. Upon ratifying the Optional Protocol, the Sri Lankan government deposited a binding declaration establishing eighteen as the minimum age for all voluntary recruitment into its armed forces. The protocol also places obligations upon non-state armed forces. Article 4 states that “armed groups that are distinct from the armed forces of a state should not, under any circumstances, recruit or use in hostilities persons under the age of eighteen.”

all children. Police who fail to take action against criminal activity by the Karuna group should be held accountable.

V. Promoting Adherence to International Human Rights Standards

Serious human rights abuses by the Sri Lankan security forces, the LTTE and other armed groups have continued since the resurgence of fighting. The LTTE has been implicated in more than 200 killings since the 2002 ceasefire, often of Tamils considered to be LTTE opponents, and continues to engage in targeted attacks. The LTTE and the Karuna group frequently engage in tit-for-tat murders, with the victims often having at most a distant connection to either group. Government security forces have been implicated in several massacres since the beginning of 2006, as well as a number of “disappearances.”

A. Cease extrajudicial killings

On April 7 in Trincomalee, unidentified gunmen believed to be connected to the government armed forces shot and killed Vanniasingham Vigneswaran, a local councilor with the Tamil National Alliance, an LTTE-backed political grouping. The killing took place in a high-security area near the police and navy headquarters.⁷¹ Vigneswaran was expected to be named to fill the national parliamentary seat held by Joseph Pararajasingham, a Tamil National Alliance parliamentarian who was murdered in Batticaloa on Christmas Eve in 2005.

On the evening of August 12, two unidentified gunmen came to the Colombo home of Kethesh Loganathan, deputy head of the government’s Peace Secretariat, called him outside and fatally shot him. He was a passionate supporter of Tamil rights and a longtime critic of the LTTE. Occurring exactly one year to the day of the LTTE assassination of Sri Lankan foreign minister Lakshman Kadirgamar, Loganathan’s death had all the hallmarks of an LTTE political killing.

Extrajudicial killings by the LTTE, the Karuna group and other armed groups occurred with great frequency throughout the ceasefire period, perhaps totaling 300.⁷² The great majority of the victims have been Tamils who were viewed as political

⁷¹ See UTHR(), “When Indignation is Past and the Dust Settles,” p. 6.

⁷² See Commission on Human Rights, Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, “Mission to Sri Lanka (28 November to 6 December 2005),” E/CN.4/2006/53/Add.5, March 27, 2006.

opponents of the LTTE, or a member—or somehow connected to a member—of one or another group. In the past year, government security forces have increasingly been implicated in extrajudicial killings. Philip Alston, UN Special Rapporteur on extrajudicial executions, summed up the broader social impact of the widespread killings in his March 2006 report to the UN Commission on Human Rights:

The social consequences of these political killings are... exponentially more severe than those that would follow from a comparable number of common crimes or random ceasefire violations. The purpose of these killings has been to repress and divide the population for political gain. Today many people—most notably, Tamil and Muslim civilians—face a credible threat of death for exercising freedoms of expression, movement, association, and participation in public affairs. The role of political killings in suppressing a range of human rights explains why members of civil society raised this more than any other issue.⁷³

Recommendation 23: The Sri Lankan government, the LTTE and all armed groups must stop extrajudicial killings and hold those responsible accountable. The government must investigate all alleged political killings and fully and fairly prosecute those implicated.

B. Stop enforced disappearances

On May 6, eight young Tamil men “disappeared”⁷⁴ from the premises of a Hindu temple in Manduvil in Jaffna district where they were spending the night prior to a festival. The media reported that in the days before the festival, military personnel from the nearby Varani army camp made several visits to the temple. Villagers said that on the night of May 6 they heard shots and the sounds of heavy vehicles. The next morning the temple was empty; blood stains and ID cards from three of the

⁷³ Ibid., para. 5.

⁷⁴ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, E/CN.4/2005/WG.22/WP.1/Rev.4 (2005), defines a “disappearance” as:

the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

young men were found on the temple grounds. When family members of the missing called for a search of the scrub jungle nearby, the authorities declared a sixteen-hour curfew, effectively delaying a search by the villagers.⁷⁵ The eight men remain “disappeared” and no bodies have been located.

Following fighting in August in Allaipiddy on Kayts Island off the Jaffna peninsula in which at least 15 civilians died and more than 50 were injured, Father Thiruchchelvan Nihal Jim Brown assisted civilians fleeing to Kayts town. He then reportedly began receiving death threats from senior officers at the Allaipiddy naval camp accusing him of helping the LTTE to dig bunkers. On August 20 Father Jim Brown and Wenceslaus Vines Vimalathas went missing. They were last seen by a friend at a Sri Lankan navy checkpoint outside Allaipiddy. The men had been returning to Allaipiddy, where Father Jim Brown is the parish priest, after the navy prevented them from visiting nearby Mandaithivu Island. Kayts Island is tightly controlled by the Sri Lankan navy. Rear Admiral Upali Ranaweera, commander of the navy’s Northern Region, denied that the two men had been detained. When Kayts police reportedly requested that the navy produce evidence of the registration of the two men when they passed through the checkpoint, the navy refused.⁷⁶

During two decades of civil war, more than 12,000 cases of “disappearances” have been reported to the UN Working Group on Enforced or Involuntary Disappearances.⁷⁷ Virtually all of those since 1990 have occurred in the context of the armed conflict between the government and the LTTE. In about 5,000 of those cases, the victim has been confirmed dead; in most of the others there has been no resolution. Few cases have been prosecuted.

Recommendation 24: The Sri Lankan government and the LTTE should take all steps necessary to bring an end to the practice of “disappearances.” Investigate all cases of enforced disappearance

⁷⁵ See INFORM, “Some Key Concerns Regarding the Human Rights Situation.”

⁷⁶ See Amnesty International, “Fear of Safety/Possible “disappearance,” Urgent Action 230/06, August 29, 2006, <http://web.amnesty.org/library/Index/ENGASA370232006?open&of=ENG-313>.

⁷⁷ UN Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, “Question of enforced or involuntary disappearances,” E/CN.4/2005/65, December 23, 2004.

and continue the investigation until the fate of the victim is clearly and publicly established. Hold accountable all those who order or carry out “disappearances.”

C. Revise emergency regulations to meet international human rights standards

On September 1, the inspector general of police announced that the police had arrested three young women, aged 18 to 20, who were being hospitalized for injuries suffered in the military’s August 14 aerial bombing in Mullaitivu district. Two of the women were still being treated at Kandy General Hospital for serious neurological injuries, while the third was in police custody. The inspector general said they were being held for questioning under legal provisions, evidently the Emergency Regulations, that allow for detention for up to 90 days.⁷⁸ While in custody, the women were questioned about whether the LTTE had provided them with military training.⁷⁹

The Sri Lankan government has imposed some form of emergency rule or regulations nearly continuously since 1971. Following the assassination of Foreign Minister Lakshman Kadirgamar in August 2005, the government enacted emergency regulations drawn from the Emergency Regulations of 2000.⁸⁰ The vaguely worded regulations enhance the powers of the police and military to arrest and detain persons suspected for a wide range of acts. The authorities may search, detain for the purpose of a search and arrest without a warrant any person suspected of an offense under the Emergency Regulations. Persons arrested must be turned over to the police within 24 hours and their family provided an “arrest receipt” acknowledging custody. Detentions are for up to 90 days. Additionally, the secretary of defense may order persons held in preventive

⁷⁸ The women are apparently being held under the Emergency Regulations, which permits 90-day police custody plus indefinite remand thereafter. It is unlikely that they are being detained under the Prevention of Terrorism Act, which has been suspended under the 2002 Ceasefire Agreement (“The Parties agree that search operations and arrests under the Prevention of Terrorism Act shall not take place. Arrests shall be conducted under due process of law in accordance with the Criminal Procedure Code.” Ceasefire Agreement, article 2.12.).

⁷⁹ “Police in Sri Lanka arrest 3 suspected female rebels at hospital,” Associated Press, September 1, 2006. The International Committee of the Red Cross confirmed that the three women had been transferred to the Kandy General Hospital because inadequate medical facilities in the LTTE-controlled area.

⁸⁰ Article 155 of the Sri Lankan Constitution on public security empowers the president to declare a state of emergency. The parliament has 14 days to approve the measure and then must renew the state of emergency every 30 days thereafter.

detention for up to one year. There is no requirement that authorized places of detention be published.⁸¹

The Emergency Regulations on their face raise important due process concerns. As the regulations are implemented, the concerns become magnified. The military and the police routinely detain Tamils suspected of involvement with the LTTE under the Emergency Regulations. The safeguards provided in the regulations are often ignored: family members of those taken into custody are not given arrest receipts; and, the 90-day limit on detentions has little importance because police can easily get remands from magistrates, effectively permitting indefinite detention.

The International Covenant on Civil and Political Rights, to which Sri Lanka is party, permits limitations on some rights during periods of national emergency. However, such measures are limited to the extent strictly required by the exigencies of the situation. Certain basic rights, such as the right to life and to be free from torture and other cruel, inhuman or degrading treatment, may never be restricted. The principles of legality and the rule of law require that the fundamental requirements of a fair trial be respected even under emergency regulations.⁸²

Recommendation 25: The Sri Lankan government should repeal or amend the Emergency Regulations of 2005 to comply with international human rights standards. Until they are so revised, local authorities must fully comply with the protections provided to persons detained under the regulations and under international human rights standards. The government should carry out an awareness campaign targeting all police stations to ensure that those detained are receiving the security guarantees provided in the regulations.

⁸¹ The Emergency Regulations also provide for house arrest, prohibitions on an individual from leaving the country, restrictions on the movement of certain persons or groups, and limitations on an individual's business or employment. They empower the police to require homeowners to register at a local police station. The regulations also allow for the censorship of articles related broadly to "sensitive" issues and the disruption and banning of public meetings.

⁸² See generally, 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). Sri Lanka ratified the International Covenant on Civil and Political Rights in 1980.

D. Enforce presidential directives on detention

On Friday, August 18 in Trincomalee at about 11 a.m., unidentified men in a van, supported by masked men on motorcycles, abducted four youth from the Orr's Hill Kumaran playground. A fifth youth was taken, but was left behind after his parents arrived on the scene. The *Sunday Virakesri* reported that the police denied any knowledge of the arrests. In light of the extrajudicial executions of five Tamil students in Trincomalee in January and the ongoing shelling in the area, there was considerable concern for the safety of the four youth. One youth was released that Friday night; the Trincomalee police, who reportedly said the youths were turned over to them by the army, released the remaining three on the evening of Monday, August 21.⁸³

Illegal arrests and detentions are a widespread problem. On July 7, in response to public concerns, the government re-issued the Presidential Directives on the Arrest or Detention of Persons. The directives restate the statutory authority of the Human Rights Commission of Sri Lanka to monitor the welfare of persons detained through regular inspections of places of detention and require that the police inform the commission within 48 hours of all arrests and detentions. The police must also provide relatives of persons arrested with receipts, though in Batticaloa, for instance, families have been routinely denied receipts for the arrests. Many police stations are believed not to have copies of the directives (which were in legal force but widely ignored before they were reissued).⁸⁴ On July 19, a ministerial body issued a statement calling for the implementation of the Presidential Directives.⁸⁵

Recommendation 26: The Sri Lankan government should take steps to ensure the implementation of the Presidential Directives on the Arrest or Detention of Persons, including providing all police stations with the directives in Tamil and Sinhala, ensuring the availability of receipt books, and conducting appropriate training and follow-up to ensure their proper use. Appropriate action should be taken against station officers who fail to implement the directives. Police stations

⁸³ Human Rights Watch interview, Colombo, August 19, 2006; see also, UTHR(), "Hubris and Humanitarian Catastrophe," p. 14.

⁸⁴ Human Rights Watch interview, Colombo, August 23, 2006.

⁸⁵ Government of Sri Lanka, Inter-Ministerial Committee on Human Rights, "Implementation of Presidential Directives on the Arrest or Detention of Persons," Press Release, July 19, 2006.

without Tamil speakers should establish contacts with appropriate civil society groups who can provide Tamil language assistance. Local offices of the Human Rights Commission should monitor police compliance with the directives.

E. Support a United Nations human rights monitoring mission

The failure of the 2002 Ceasefire Agreement to bring an end to serious human rights abuses by the LTTE, government security forces and various armed groups demonstrates the need for greater human rights monitoring in the country. For reasons of access and safety, domestic human rights organizations cannot carry this burden on their own. The Sri Lanka Monitoring Mission was established under the Ceasefire Agreement to monitor ceasefire violations, including “torture, intimidation, abduction, extortion and harassment” of civilians, by the government and the LTTE, which it has done under increasingly difficult circumstances. However, the SLMM has neither the mandate nor the capability to fully investigate the increasing number and range of human rights abuses. The decision by Denmark, Finland and Sweden to withdraw their monitors on September 1 after the LTTE called for the expulsion of all monitors from European Union countries sharply reduced the SLMM contingent—from 57 to about 30 expatriate staff—stretching further the SLMM’s monitoring capabilities.⁸⁶

Human Rights Watch, along with many Sri Lankan and international human rights organizations, has called for the establishment of an international human rights monitoring mission under the auspices of the Office the United Nations High Commissioner for Human Rights. Such a mission would have the mandate and expertise to monitor human rights abuses and humanitarian law violations by all sides throughout government and LTTE-controlled areas in the north and east, as well as in Colombo.⁸⁷

⁸⁶ The ceasefire agreement states that the Sri Lanka Monitoring Mission shall be composed of representatives from Nordic countries, and requires that any modifications to the agreement have the mutual consent of the government and the LTTE. Denmark, Finland and Sweden apparently agreed to pull out their monitors by September 1 without apparent consent from the Sri Lankan government. This withdrawal left only the non-EU states of Norway and Iceland as part of the mission.

⁸⁷ A detailed analysis for a proposed international human rights monitoring mechanism in Sri Lanka can be found in the working paper by Alan Keenan et al., “Independent International Human Rights Monitoring in Sri Lanka,” October 6, 2005.

One model for such an undertaking is the successful UN monitoring mission established last year in Nepal. The Nepal mission was set up to monitor abuses of human rights and international humanitarian law by both government and rebel forces with a view to preventive or remedial action. The mission has a detailed mandate to investigate cases, including in rebel-held areas. The mission also advises state and non-state entities on the promotion and protection of human rights.

A UN human rights monitoring mission in Sri Lanka would be best placed to deter abuses through the active presence of international monitors; to thoroughly, impartially and independently investigate alleged abuses by all sides and report publicly on its findings; and to support efforts of governmental and non-governmental entities to hold accountable those responsible for abuses. Such a monitoring mission could help support and build the capacity of the Sri Lankan Human Rights Commission and other human rights organizations in the country to strengthen human rights monitoring over the long term.

Recommendation 27: The government should request that the United Nations establish an international monitoring mission in Sri Lanka with the capability to monitor and publicly report on the human rights situation in conflict-affected areas of the country, in particular the north and east and in Colombo. The LTTE should express support for such a monitoring mission.

VI. Preventing Communal Violence

Since April 2006, there has been an increase in communal violence among the country's Sinhalese, Tamil and Muslim communities which the government and the LTTE have sought to use for their own advantage.

On April 12, a bomb believed to have been set by the LTTE exploded in the crowded Trincomalee vegetable market, which is dominated by Sinhalese traders. Five people died in the explosion. Within about fifteen minutes, seemingly organized Sinhalese mobs armed with poles and long knives began a rampage through the town's business district, setting on fire Tamil businesses and homes. About 30 shops and other businesses, virtually all Tamil-owned, were burned. Persons believed to be Tamil were attacked and several were killed. For nearly two hours, the numerous navy and army personnel and the police stood by in broad daylight while the mobs, never numbering more than 100 to 150 people, looted, killed and destroyed. Security forces present outside the Hatton National Bank, for instance, took no action against a crowd trying to break into a cash machine. Altogether that day, 19 people were reported killed and another 75 injured.⁸⁸

The Trincomalee violence encouraged violence in neighboring areas. After the body of a young Sinhalese man was found in Manhindapura on April 14, Sinhalese villagers went on a rampage in the neighboring Tamil village of Nadespura and set fire to over forty homes and a Hindu temple. After the LTTE killed two policemen on April 21 in a landmine attack in Menkamam, a Sinhalese mob killed a Tamil farmer in reprisal. When on the same day another LTTE landmine killed a Sinhalese home guard and injured a policeman in Dehiwatte, a Sinhalese mob stabbed to death a Tamil man. The violence in the district caused more than 700 families to flee their homes to find refuge in schools and other public buildings. Some of the homes of Tamils who fled Dehiwatte were burned and looted.⁸⁹

⁸⁸ See INFORM et al., "Report: Fact-Finding Mission to Trincomalee, April 16-17, 2006."

⁸⁹ See UTHR(), "Flight, Displacement and the Two-fold Reign of Terror," Information Bulletin No. 40, June 15, 2006.

A. Support inter-ethnic networks

The Mutur area in Trincomalee district has long been the scene of ethnic violence between the Tamil and Muslim populations, which are about equal in size. The situation is complicated by the area's proximity to the boundary between government and LTTE-controlled areas. Beginning in December 2005 there was a series of ethnic killings and reprisals that threatened to lead to more widespread violence. The Mutur peace committee, working with the Sri Lanka Monitoring Mission and non-governmental organizations, often intervened to stop the cycle of violence.

For example, on January 9 a group of drunken Tamils attacked and threatened to kill a Muslim in the village of Manalchenai. Two senior members of the Mutur peace committee were contacted, one a Tamil priest and the other a Muslim community leader, and informed that this was a personal matter, not a case of communal violence. The two went to the victim's village nearby and asked the people for calm. At the same time, a non-governmental organization rescued the man and took him to Mutur hospital. Because of the existing inter-ethnic network, the situation was defused without an escalation of communal violence.⁹⁰

Inter-ethnic networks called citizens' committees or peace committees have been established in a number of areas with mixed ethnic populations. These networks typically consist of local religious and community leaders of high standing. When effective, they can play an important role in defusing tensions and quashing rumors likely to incite or exacerbate ethnic violence, alerting members of other communities to possible violence, and taking measures during outbreaks of violence to help protect individuals from other communities at particular risk. Unfortunately many peace and citizens' committees have become inoperative in recent months because of threats against their members.

Recommendation 28: The Sri Lankan government and LTTE should give full recognition to local efforts by civilians to establish or revive inter-ethnic networks, such as citizens' or peace committees, to address ethnic concerns and help defuse communal tension. They

⁹⁰ Human Rights Watch interview, Colombo, August 16, 2006.

should engage with these networks to find ways to reduce dangers to the civilian population. Both sides should take measures to stop threats and violence against committee members and take appropriate action against members of their forces responsible.

B. Appoint local officials sensitive to ethnic concerns

Immediately following the April 2006 communal violence in Trincomalee (described above), the Sri Lankan security forces called a meeting of the citizens' committee, which consisted of local religious and community leaders from the town. While the Sinhalese community and all the religious leaders were present, no Tamil or Muslim community representatives participated in the meeting. As a result the meeting focused on issues of concern only to the Sinhalese community, primarily their security. The high-level delegation sent by President Mahinda Rajapakse two days after the violence, which included the Inspector General of Police, reportedly announced measures to provide compensation to harmed traders and rejuvenate area peace committees. But the delegation reportedly did little to defuse existing tension and fear in the area.⁹¹

More positively, after the Trincomalee communal violence the government replaced the senior superintendent of police with an individual who has had some success reducing ethnic tensions. After a grenade blast killed three police personnel, two army soldiers, a woman member of the home guard and a civilian at Anuradhapura Junction on July 3,⁹² he went to the area and prevented reprisals.

To prevent communal violence from occurring, the government has a responsibility to appoint senior police officials who are both committed to protecting all members of society and who are viewed as playing such a role. Particularly in the north and east, a demonstrated commitment and openness to all communities—and Tamil language ability—should be important considerations for senior appointments.

⁹¹ See INFORM, et al., "Report of the Fact-Finding Mission to Trincomalee: April 16-17, 2006."

⁹² Ministry of Defense, Media Centre for National Security, Situation report for July 3, 2006.

Recommendation 29: The Sri Lankan government and armed forces should ensure that senior civilian and military officials serving multi-ethnic communities are genuinely sensitive to the concerns of all communities and have the ability, including necessary language skills, to do their job effectively.

VII. Ending Impunity

Since the beginning of the civil war more than two decades ago, successive Sri Lankan governments have failed to prosecute those in the security forces responsible for serious human rights violations and war crimes. LTTE personnel responsible for abuses also go unprosecuted. Perhaps more than anything else, impunity for human rights violations has helped to perpetuate the cycle of violence and reprisal that continues to plague the country.

The Ministry of Disaster Management and Human Rights has given priority to several serious cases in which the security forces have been implicated, including the extrajudicial killing of five students in Trincomalee, the grenade attack and killings on Mannar Island, the “disappearance” of eight young men in Jaffna, and the execution-style murders of the 17 ACF workers in Mutur. The ministry hopes that by highlighting these cases, government investigators will devote greater energy and resources to investigating and eventually prosecuting those responsible.

These are welcome aspirations. But Sri Lanka has a sorry history of initiating investigations and then letting them slowly fade and disappear. A constant excuse given by the government is the unwillingness of eyewitnesses to come forward, a circumstance that is directly related to the free rein allowed to abusive members of the security forces, as well as the inability of the justice system to provide adequate witness protection. Instead of assisting witnesses to come forward, state investigators have often tried to discourage them from testifying or sought to discredit them. To date, there is little indication that prosecutions will be forthcoming in these or any of the other recent cases if there is evidence that the security forces may be responsible.

On April 26, 2006, UN Security Council Resolution 1674 on the protection of civilians in armed conflict reaffirmed that “ending impunity is essential if a society in conflict or recovering from conflict is to come to terms with past abuses committed against civilians affected by armed conflict and to prevent future such abuses.”⁹³

⁹³ United Nations, Security Council Resolution 1674 (2006), S/RES/1674, April 28, 2006, para. 7.

A. Provide witness protection

On the evening of January 2, a grenade was thrown at seven 20-year-old recent college graduates, all Tamils, while they sat near the seafront in Trincomalee town. Soon after, 10 to 15 uniformed officers with the elite police Special Task Force arrived in jeeps. The officers allegedly beat several of the youth with rifle butts, then fired upon them, killing five and wounding two. Three were shot in the head, while two died from gunshot wounds to the chest and abdomen. Initially the security forces reported that five LTTE cadres preparing an attack had been killed by their own grenade that had gone off accidentally, a claim soon abandoned.⁹⁴ A dozen Special Task Force members were placed under restraint pending inquiries; they were effectively discharged in April.

In January, President Rajapakse pledged publicly that the perpetrators of the killings would be brought to justice, irrespective of rank. However, the investigation has stagnated. Because of fear of reprisals, only Dr. K. Manoharan, the father of one of the victims, has come forward to testify as a prosecution witness. No one else among the many persons in the vicinity of the killings has been willing to do so.

Since testifying at a magistrate's inquest in January, Dr. Manoharan and his family have been subjected to numerous serious threats. On the evening of the inquest, unidentified men banged on his door and threw stones at his house. Dr. Manoharan has received anonymous phone calls threatening to kill him and his family. A man on a motorbike who kept his face covered sought medical help but left when only Dr. Manoharan's wife, who is also a doctor, agreed to treat him. In June one of Dr. Manoharan's sons was threatened by police on his way to school. A policeman delayed Dr. Manoharan at a checkpoint, telling him: "You are supporting the LTTE and our high officers are supporting you, so how can we do our duty?" Naval officers and police have come to Dr. Manoharan's home in the evening offering "protection" in a manner suggesting not a genuine offer of assistance, but a thinly veiled threat.⁹⁵

⁹⁴See D.B.S. Jeyaraj, "Terrible truth of the Trincomalee tragedy," *TamilWeek*, January 15, 2006.

⁹⁵ Human Rights Watch, "Sri Lanka: Protect Witnesses in Trincomalee Killings," press release, June 28, 2006.

To date, several of the security personnel prominently implicated in the murders remain in Trincomalee, posing a threat to Dr. Manoharan and prospective witnesses. A senior police officer cited in a special investigator's report as allegedly being "behind the shooting incident" received a promotion and remained in Trincomalee until July 31, seven months after the crime.

Sri Lanka does not have a witness protection law or program.⁹⁶ Witnesses in criminal cases implicating members of the security forces have long been targeted for threats, harassment and violence. While taking legal action against those who threaten harm to witnesses is absolutely necessary, a witness protection program would help deter abuses before they happen and hopefully encourage witnesses to come forward.

Recommendation 30: The government should promptly enact a witness protection law and establish an adequately funded witness protection program. Until it does so, the government should adopt measures to ensure that witnesses, victims and others who are at risk be provided protective measures and security arrangements, counseling and other appropriate assistance.

B. Strengthen the Human Rights Commission of Sri Lanka

The effectiveness of the Sri Lankan Human Rights Commission has been undermined by a constitutional impasse that has prevented the proper appointment of new commissioners (the president has appointed commissioners outside of the constitutional process).⁹⁷ In some cases, field offices of the Human Rights Commission have played an important role in providing a measure of protection to victims of rights abuse and their families by proactively investigating cases and making use of all the investigation and protection powers conferred on them by the Human Rights

⁹⁶ The Inter-Ministerial Committee on Human Rights reported that it is investigating the possibility of introducing witness protections laws. "Decisions taken by the Inter-Ministerial Committee on Human Rights to protect human rights in Sri Lanka," undated, 2006, <http://daccessdds.un.org/doc/UNDOC/GEN/No6/331/99/PDF/No633199.pdf?OpenElement>.

⁹⁷ See Civil Rights Movement of Sri Lanka, "The Constitutional Council Must Function," April 23, 2006.

Commission statute.⁹⁸ This has proven especially difficult without the presence of constitutionally appointed commissioners since early 2006.

Recommendation 31: The president should end the constitutional impasse that has prevented the appointment of commissioners to the Human Rights Commission and the Police Commission.

Recommendation 32: The government should ensure that the Human Rights Commission has sufficient competent staff and resources to investigate serious human rights abuses and assist in the prosecution of those responsible.

C. Strengthen the National Police Commission

The Sri Lankan Police Commission is empowered to investigate wrongdoings by members of the national police force. To date, Police Commission investigations have conflicted with the commission's primary role of providing for the welfare of members of the police force. The independence of the current police commissioners has also been called into question by the president's appointment of commissioners outside of the process required under the constitution.

Recommendation 33: The government should create a competent, independent and impartial unit within the Police Commission to investigate serious human rights violations by members of the police force.

D. Permit a UN commission of inquiry to investigate recent human rights violations

On September 4, President Rajapakse announced that the government would invite an independent international commission to probe abductions, "disappearances"

⁹⁸ According to the Human Rights Commission, its mandate is: to investigate and inquire into violations of fundamental rights; intervene in court proceedings with the permission of the court; monitor the welfare of detainees through regular inspections of places of detention; undertake research on human rights issues and public education programs on human rights; and, summon persons before the Commission to procure evidence including documentary evidence and to examine witnesses. See Human Rights Commission of Sri Lanka, <http://www.hrsl.org/about/mandate.php>.

and extra-judicial killings in all areas in the country. “[I]nternationally reputed judges, human rights activists and civil society representatives” would be invited to form the commission. The president said such a commission “was essential in the light of attempts being made in various quarters to discredit the government, security forces and the police.”⁹⁹

On September 10, the government announced that President Rajapakse had decided instead to appoint a five-member Special Presidential Commission of inquiry, consisting of three Supreme Court judges and two other Sri Lankans, to investigate selected high profile cases. International participants will act only as observers to the commission.¹⁰⁰

Human Rights Watch welcomes initiatives to bring in foreign experts to conduct independent investigations of human rights abuses. We believe the best way to ensure an independent, impartial and effective investigation is to invite a commission of inquiry under the auspices of the UN High Commissioner for Human Rights.

Recommendation 34: The government should invite the UN High Commissioner for Human Rights to send a commission of inquiry to investigate the most egregious human rights and humanitarian law violations.

⁹⁹ Government of Sri Lanka, “International body to probe abductions, killings – President,” September 4, 2006, http://www.news.lk/index.php?option=com_content&task=view&id=722&Itemid=44.

¹⁰⁰ See Arthur Wamanan, “SPC to inquire into abductions and killings,” *Sunday Leader* (Colombo), September 10, 2006.

Acknowledgements

This briefing paper was written by James Ross, senior legal advisor at Human Rights Watch. It was edited by Brad Adams, executive director of the Asia division, and Joseph Saunders, deputy program director. Wilder Tayler, legal and policy director, provided legal review. Jo Becker, deputy director of the Children's Rights division, and Marguerite Garling of the Refugee Policy program provided specialist review. Benjamin Addy, an intern with the Asia division, provided invaluable research assistance. Production and coordination assistance was provided by Nicolette Boehland, associate in the Legal and Policy office.

The Asia division of Human Rights Watch gratefully acknowledges the support of Cordaid.

Human Rights Watch offers special thanks to all those in Sri Lanka who contributed to this briefing paper with their information and ideas.