

Two legal cases challenge Sri Lanka's mass detention of Tamil civilians

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Sri Lanka's Supreme Court this week began to hear two cases challenging the violation of the basic legal rights of Tamil civilians interned in military-controlled camps in the island's north. Both cases argue that the detentions are illegal and in breach of "fundamental rights" guaranteed in the country's constitution.

By opposing the applications and successfully pushing for their postponement, President Mahinda Rajapakse's government has underlined its contempt for basic democratic rights, and its determination to proceed with the mass detentions regardless of the law and the constitution.

The military has incarcerated about 300,000 Tamil civilians who fled the war zone, facing intense army shelling in the final phase of the government's offensive against the separatist Liberation Tigers of Tamil Eelam (LTTE). Most of the refugees have been detained in Vavuniya while others are in centres across the Jaffna Peninsula.

Rajapakse and the military assert that the camps are "relief centres" or "welfare villages". In reality, they are internment centres guarded by soldiers, and surrounded by barbed and razor wires. The war refugees cannot leave the camps and even movement within the camps is restricted.

The first Supreme Court case, heard on Wednesday, has been filed on behalf of five members of the same family who have been separated in detention. Their petition to the court provides a picture of the immense human suffering caused by the government's ruthless military offensive.

Grandmother, Manikarajah Sivapakiam, 68; mother, Jeyarani Surendranathan, a public servant; father, Ponnusamy Surendranathan; and granddaughter and grandson, Sopika, 13 and Nesana, 10, were displaced from Vishvamadu in the Vanni and finally reached Putumattalan on the north eastern coast, where they became trapped in the war zone.

While fleeing, they were separated. The army took Jeyarani,

Ponnusamy and Nesana to a camp at Saivaprakasha school in Vavuniya. The grandmother and two children remained at Putumattalan, where they faced mortar shelling. Sopika was injured and another grandson, Kishore, killed. The grandmother and Sopika were later taken to Kodikamam camp on the Jaffna Peninsula, about 120 kilometres from Vavuniya.

The grandmother was finally given permission to leave the camp and reunite with her 70-year-old husband who had been released from a camp in Vavuniya. However, officials would not allow her to take Sopika with her, so she refused to leave her injured granddaughter alone.

The petitioners asked the court to order their immediate release and reunification as a family. They sought an interim order for release on such terms as the court deemed fair, and the transfer of Sopika to her parents until the case was determined. Their petition states the authorities are violating article 13(2) of the constitution guaranteeing freedom from unlawful detention and article 14(1) that guarantees freedom of movement and the right to choose one's place of residence within Sri Lanka.

The petitioners declared that they are not "displaced persons" as they have houses, properties and relatives to return to. This same argument is valid for nearly all the detainees. The judges postponed the case until June 24 to determine whether to grant leave to proceed.

A family relative and attorney-at-law, Annapakkyam Sithambarapillai, whose affidavit supported the case, described the family's harrowing experience to the WSWs. "The son (Kishore) was killed by a shell shrapnel that pierced his bladder. He suffered for three days without any proper medical attention, leaking urine through the damaged swollen bladder.

"The grandmother and the sister had to watch him die without proper medical attention. The girl was severely injured and traumatised by the loss of her younger brother. In a sense, ours is not the worst fate. There are other cases where families, including babies and old men, were entirely wiped out."

The second fundamental rights case, heard yesterday, was filed by Pakiasothy Saravanamuttu, the executive director of the Centre for Policy Alternatives, a Colombo-based think tank. It cites as respondents President Rajapakse, in his role as defence minister, and his brother Gotabhaya, who is defence secretary, as well as the attorney-general and the army commander in charge of the camps. (Rajapakse cannot be sued as president because the executive president enjoys constitutional immunity).

The petition noted that internally displaced persons (IDPs) began arriving at the camps in March; there were now about 300,000 in 40 camps encircled by barbed wire; detainees could not leave the camps without the permission of military officials; and even UN and International Red Cross officials were not permitted entry without military approval.

The petitioners stated that a Vavuniya magistrate had recorded that 30 elderly people had died of malnutrition and starvation. It added those in the camps included disabled persons, 3,100 public servants, 6,700 individuals aged over 60 and 780 pregnant women.

The petitioners asked the court to declare that the respondents and/or the state had violated fundamental rights guaranteed to individuals, specifically the right to equality and equal protection of the law, freedom from arbitrary arrest and detention, freedom to engage in any lawful occupation profession, trade, business or enterprise and as well as freedom of movement and place of residence. The petitioners added that according to international standards enshrined in the International Covenant on Civil and Political Rights and the Guiding Principles on Internal Displacement, IDPs have the right to liberty of movement and the right to move freely in and out of camps.

Attorney-at-law Rajaratnam, who appeared for the government, demanded time to prepare his arguments and take instructions from the competent authorities. The lawyer for the petitioner, Kanakeeswaran, argued that such time was not needed because he was merely seeking leave to proceed and the state could provide its observations during the case. But the judges postponed the decision on leave to proceed until July 10, giving the state counsel the time he demanded.

Another fundamental rights petition, demanding access by opposition MPs to the camps, was also postponed, in this case to July 27. Submitted by several United National Party (UNP) and other opposition MPs, the application does not challenge the arbitrary detention of civilians itself.

Having supported the Rajapakse government's war, the UNP has approved its mass detention policy as well. On Wednesday

UNP spokesman Gayantha Karunathilake told a press conference that the UNP would not criticise the government's detention regime.

Media minister Laxman Yapa Abeywardene displayed the government's disregard for legality and democratic rights when he defended the denial of access to opposition MPs, telling reporters that the government did not want to leave room for anyone to exploit the plight of the displaced people.

It is now two weeks since the former chief justice, Sarath N. Silva, just before his retirement from the Supreme Court, publicly declared that the camps were unlawful, saying that the Tamil detainees "live outside the protection of the law of the country". His remarks confirmed that the government and the military are increasingly operating outside the country's legal and constitutional framework.

Silva's intervention reflected concerns among sections of the Colombo political establishment that the government's flouting of legal norms and its autocratic methods could provoke broader opposition among the urban and rural masses. Far from defending the democratic rights of Tamils or more broadly of the working people, he warned that refusal of "due protection by law" could trigger "another uprising".

By proceeding with its illegal mass detention, Rajapakse and the cabal of military generals and senior bureaucrats around him are signalling that they will not hesitate to use police-state measures against any threat or opposition to their rule.



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