

Sri Lankan Chief Justice questions legality of Tamil detention camps

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Just before he retired last week, the Chief Justice of the Sri Lankan Supreme Court, Sarath N. Silva, declared in a public speech that the detention of hundreds of thousands of Tamil civilians in internment camps set up by the army and the government was unlawful.

At a June 4 ceremony to open a new court complex at Marawila, northeast of Colombo, Silva stated that the Tamil detainees “live outside the protection of the law of the country”. He added: “The law of this country does not show any interest in these IDPs [internally displaced persons]. I openly say this. The authorities can penalise me. I visited relief villages where Wanni IDP families are sheltered. I cannot explain their suffering and grief in words.”

Silva, who spent a day visiting the camps in May, before the final influx of civilians, said conditions there were appalling. “While we build new courts, ten people live in one tent in these camps,” he said. “They could stand straight only in the centre of these tents. Their necks will break if they move to a side of the tent.” He said there were queues of 50 to 100 metres for toilets.

The army herded into detention camps nearly 300,000 people who fled the war zone when the military launched its final offensive against the separatist Liberation Tigers of Tamil Eelam (LTTE) on the northeastern coast. According to an unpublished UN report, about 7,000 civilians were killed and thousands were injured due to the army’s intense shelling between January and early May. Other estimates, based on UN sources, eyewitness accounts and analysis of photographs, have put the death toll as high as 20,000.

President Mahinda Rajapakse’s government and the

military have claimed 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.

No one is allowed to visit the camps without permission from the authorities appointed by the army. Like to a prison, visitors are allowed to speak to detainees only with the presence of a guard. People are living on meagre rations provided by the government or aid agencies, whose access is also limited by the government. About 7,000 government employees and some foreign nationals are among the detainees.

Silva was the country’s most senior judge, with the power to interpret Sri Lanka’s constitution and law. When he said that Tamil civilians in the camps “live outside the protection of law”, he was stating that they were being held without any legal or constitutional basis.

Questioned by a BBC correspondent, Human Rights Minister Mahinda Samarasinghe brushed aside the chief justice’s remarks, saying that he was “entitled to his own opinion”. His contemptuous response indicates that the government is not concerned about proving the legality of its actions.

The government has stated that the civilians will be held for as long as it takes to “weed out” LTTE suspects, but this has no basis in law either. What has been revealed in the chief justice’s remarks is that the government and the military have forcibly incarcerated more than a quarter of a million people, completely outside the country’s legal framework. Even the existing draconian emergency regulations and the Prevention of Terrorism Act (PTA), which have been used in the past to detain individuals

without trial, do not sanction such actions.

Lawyers for five members of a family interned in two camps filed a fundamental rights petition in the Supreme Court on Wednesday. The petition states that “the continued detention of the detainees without reasonable basis is unlawful, arbitrary and contrary to procedure established by law and constitutes an infringement of detainees’ fundamental right to freedom from arbitrary detention”. The petition further says this is “contrary to procedures established by law and freedom of movement within Sri Lanka,” which entitles citizens to choose their place of residence within Sri Lanka.

A prominent human rights lawyer, K.S. Ratnavale, told the WWS: “These camps run by the government for displaced people have no legal basis whatsoever. They consist of a vast mass of people, numbering hundreds of thousands who the state has forcibly uprooted from their normal habitat and placed behind barbed wire guarded by the armed forces.”

Former Chief Justice Silva is a deeply conservative figure in the Sinhala legal establishment. In the past he issued key judgments in favour of the Rajapakse government and Sinhala chauvinist groups such as Janatha Vimukthi Peramuna (JVP) and Jathika Hela Urumaya (JHU).

In 2005 he presided over the Supreme Court that declared invalid the Post Tsunami Operational Management Structure (PTOMS) that gave the LTTE limited access to rehabilitation funds. Silva also handed down the 2006 verdict that required the government to de-merge the northeast province. The province had been merged under the Indo-Sri Lanka Accord in 1987 as a limited concession to the Tamil elites.

Silva’s latest remarks reflect concerns among sections of the Colombo political establishment that the Rajapakse government is operating outside the constitution and the entire legal framework. They fear that abandoning legal norms would place capitalist rule in uncharted waters.

In his speech Silva warned: “If there are no proper judicial and social mechanisms to grant Tamils their due protection by law, there is the possibility of there being another uprising, though not necessarily an armed struggle.”

Silva is not defending the democratic rights of Tamils or more broadly the working people. Rather, his statements indicate apprehensions that the open flouting of democratic rights, and the autocratic methods of the Rajapakse government, could provoke broader opposition among the urban and rural masses.

During nearly four years in office, Rajapakse has used executive powers to concentrate power in the hands of a military-politico clique around him. The cabal includes Rajapakse’s brothers, military generals and senior bureaucrats. They are increasingly operating above the law, disregarding the constitution, parliament and the judiciary. Already Rajapakse has simply ignored several Supreme Court judgments, including an order to reduce oil prices and another to appoint a constitutional council—a constitutionally required body that limits the president’s powers.

Pro-government gangs and paramilitaries associated with the security forces are operating with impunity. They have carried out abductions, disappearances and extra-judicial killings. Media outlets that have even slightly criticised the government or the military have been attacked. Journalists have been killed, maimed, detained or intimidated. Now the government is going further—detaining hundreds of thousands of civilians in violation of all the democratic and legal norms that the ruling class claims to protect.

This unprecedented development is a sharp warning to the entire working class. The government is well aware that social struggles will erupt as it imposes the burden of the economic crisis, which has been intensified by huge military spending and the global recession. Having militarily defeated the LTTE, Rajapakse and his ministers have launched an “economic war” for “nation building” and will not hesitate to use police-state measures against working people who oppose the government’s policies.



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