ICJ report accuses Sri Lankan government of violating human rights

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A report by the International Commission of Jurists (ICJ) released late last month condemns the arbitrary detention in Sri Lanka of thousands of Tamil youth with suspected links to the separatist Liberation Tigers of Tamil Eelam (LTTE).

In the wake of the LTTE's military defeat in May 2009, the Sri Lankan military herded the entire population of LTTE-controlled areas—more than a quarter of million men, women and children—into so-called welfare villages. Inside these mass detention camps, young people were questioned by military intelligence and special units of the Terrorist Investigation Division (TID) and Criminal Investigation Division (CID).

Those accused of being "LTTE suspects," along with others who surrendered directly to the military, were taken off to secret prisons for further interrogation and "rehabilitation". Thousands have now been held for more than a year without charge or trial under the country's draconian emergency regulations and Prevention of Terrorism Act. Such detention centres have been notorious for the use of torture to forcibly obtain confessions.

The ICJ report, entitled "Beyond Lawful Constraints: Sri Lanka's Mass Detention of LTTE Suspects," is cautiously written and is aimed at putting pressure on the Sri Lankan government to take "corrective measures". Nevertheless, it makes clear that the systematic abuse of the basic democratic rights of "surrendees" and "rehabilitees" is a fundamental breach of international law.

According to the report, the arrests of LTTE suspects continued until at least December last year. It points out that even the number of detainees is not known with certainty, and highlights obvious inconsistencies. Last November, Sri Lanka's Commissioner General for Rehabilitation (CGR) stated that 10,992 people had "surrendered" and stated at a later press conference that the number was 10,732. In February, the former CGR said that 12,000 had been detained. None of the figures tally.

The ICJ estimates that 12,000 people have been arrested. Of those, 1,300 have been categorised as "hard-core LTTE" and face criminal prosecution. At least 8,000 others are being held for "rehabilitation" in at least a dozen camps. About 3,000 have been released over the past year.

The report states that the exact condition of the detainees is unknown and it could not verify whether they have been subjected to torture. Even the International Committee of the Red Cross (ICRC) has been denied access to some detention camps. The ICJ was refused permission to visit any of the prisons. On the basis of the little information available, the report states that conditions are "cramped and unhygienic" and only limited medical facilities are provided.

The ICJ challenges the government's claim that the detainees surrendered to government forces, and questions the voluntary nature of surrenders that did take place. The report cites a UN report that many parents encouraged their children to "surrender," even if their links to the LTTE were minimal, in order to avoid later repression. As the ICJ notes, given the LTTE's "policy of conscription and forced labour", many civilians had some sort of link with the organisation inside its territory.

The blanket detention without trial of thousands of people is sanctified by the continuing state of emergency and the use of the Prevention of Terrorism Act (PTA). After winning office in late 2005, President Mahinda Rajapakse continued the state of emergency and strengthened its regulations after renewing the war

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against the LTTE in mid-2006. More than a year after the end of the war, the emergency remains in force.

Emergency regulations allow the security forces to detain a person whom they "believe may commit offences," for up to one year as a preventive measure. The report explains the draconian nature of the measures: "While magistrates are to be informed of such detentions, the regulation excludes judicial review, declares all such detentions lawful, and denies the magistrate power of bail without consent by the Attorney General."

The only change to the emergency regulations, made in May this year, is that the period of detention was reduced to three months. The report declares that the detention of about 8,000 people under these emergency regulations could be the "largest mass administrative detention anywhere in the world".

Even outside the state of emergency, the PTA allows the government to detain a person for up to 18 months without charge. The military and police have the power to arrest people merely on suspicion of a "connection" to "unlawful activity". The ICJ says this law leads to the arrest of people "no matter how attenuated or remote from the activity and irrespective of the detainee's intent to participate in or even have knowledge of the occurrence of the activity".

The report reveals that the army "promised that, once registered, those who 'surrendered' would be released, but surrender instead triggered continuing indefinite detention without charge or trial." It is unclear whether all detainees signed a written surrender statement. Even the detainees who did sign could not have understood the content as the statements were in Sinhala. The detainees are Tamil speaking and the majority cannot read Sinhala.

The report observes that arbitrary arrests "have become the norm and have led to widespread abuses and undermined the normal criminal justice system." It states that the "emergency regulations and counter-terrorism legislation… fall short of international law" and leave detainees in a "legal black hole".

The ICJ argues that international human rights law is the "applicable legal regime" for Sri Lanka and that the government is violating human rights. The government had ignored the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol, which it had ratified.

Citing the Rome Statute of the International Criminal Court, the report states that "imprisonment or severe deprivation of physical liberty in violation of fundamental rules of international law" amounts to a "crime against humanity" when committed "as part of a widespread or systematic attack directed against any civilian population".

The ICJ report provides an authoritative account of one aspect of the Sri Lankan government's systematic abuse of basic democratic rights. It highlights the sham character of the so-called Commission on Lessons Learnt and Reconciliation set up by Rajapakse to justify his government's conduct of the war, cover up its responsibility for war crimes and deflect continuing international criticism.

The government has dismissed the ICJ report out of hand. Deputy economic development minister Lakshman Yapa Abeywardena told the BBC that LTTE suspects could not be treated like ordinary criminals. "The detainees are providing us with information about others who are still at large. The authorities need to keep them for longer to extract more information about the rebel activities and people involved," he said.

This "explanation" not only contradicts official propaganda that LTTE suspects are being "rehabilitated" but demonstrates that the Rajapakse government will continue its regime of interrogation and torture indefinitely. Under the pretext of waging a "war on terror", the security forces are establishing what amounts to a permanent military occupation in former LTTE-held areas. The system of arbitrary detention in secret prisons is a necessary adjunct.

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