

AMNESTY INTERNATIONAL

18 January 2010

AI Index: ASA 37/002/2010

TG: ASA 37/2010.001

Sri Lanka: Time for a new start

An appeal to Sri Lanka's presidential candidates

All candidates in Sri Lanka's upcoming Presidential Election should make a firm commitment to improve respect for human rights. They must pledge to put an end to the widespread human rights violations that have plagued Sri Lanka for decades and to the climate of impunity which has facilitated these violations.

Amnesty International urges Sri Lanka's Presidential candidates to commit publicly to fulfilling Sri Lanka's international human rights obligations and to setting – and meeting – benchmarks on good governance, rule of law and respect for human rights. As a first important step the organization calls on all candidates to commit to the 10-point human rights agenda outlined below.

Accountability for violations of human rights and humanitarian law has become an important campaign issue in the run up to Sri Lanka's Presidential Election scheduled for 26 January, which Amnesty International welcomes. Although more than 20 candidates are contesting, two main contenders have dominated the political landscape: the incumbent, President Mahinda Rajapaksa, and his former Army Commander and Chief of Defence Staff, retired General Sarath Fonseka. Since Fonseka announced his candidacy in late November 2009, both politicians have courted voters by claiming credit for the military victory over the Liberation Tigers of Tamil Eelam (LTTE) in May, while at the same time attempting to evade blame for violations of human rights and humanitarian law reported in the final stages of the fighting.

Sri Lanka has recently emerged from more than 25 years of armed conflict between government forces and the LTTE. In the course of fighting, both sides violated

humanitarian law. The LTTE forcibly conscripted adults and children, and forced civilians to travel with its retreating forces and to serve as a buffer against the approaching Sri Lankan army. Thousands of these civilians died when government forces fired artillery into areas densely populated with civilians, who were forced to remain at risk in the conflict zone. The LTTE reportedly opened fire on and killed civilians who attempted to escape.

Accounting for the conduct of soldiers, their commanding officers, and civilian superiors during the fighting is crucial. However, it is only part of the challenge Sri Lanka faces in repairing its battered human rights record and restoring public faith in its government, justice system and the rule of law. Today Sri Lanka has a chance to rebuild its institutions so that they can protect efficiently and without discrimination the human rights of every woman, man and child. To achieve a better Sri Lanka, voters must be given assurances that all presidential candidates are committed to embarking on such reforms.

Human rights agenda for all candidates:

- 1. END ARBITRARY ARREST AND DETENTION UNDER EMERGENCY LEGISLATION;
MAKE PUBLIC A LIST OF ALL THE DETAINEES**

Sri Lanka's next President must fulfil promises made by the present government and opposition candidates to release the many thousands of people who have been arrested and detained on suspicion of links to the LTTE, unless they are charged with internationally recognisable offences, remanded by an independent court, tried and prosecuted in a civilian court in proceedings that meet international standards for fairness, without recourse of death penalty. In addition to more than 11,000 people detained by the army in northern camps as suspected LTTE members after they fled the conflict zone, there are hundreds of other suspected LTTE members detained without charge in jails and lock-ups elsewhere in the country.

While awaiting or undergoing trials all detainees must be allowed to apply for bail. Detainees must be allowed access to lawyers, families and doctors, and have the right to challenge the lawfulness of their detention in front of an independent court.

Authorities must ensure that all future arrests of criminal suspects are only made by officials who are authorized by law to do so, who should identify themselves to the person being arrested and, on demand, to others witnessing the event. Persons arrested must be held only in publicly recognized places of detention, and must be brought before a judicial authority without delay after being taken into custody.

Accurate information about the arrest of any person and about his or her place of detention, including transfers and releases should be available to relatives, lawyers and the courts.

Relatives and lawyers should have access to effective judicial remedies so they can find out immediately where a prisoner is held and under what authority. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally; and the information in these registers should be made available to relatives, lawyers, judges, official bodies trying to trace people who have been detained, including human rights NGOs, and others with a legitimate interest.

The Sri Lankan government resorted to abusive practices under the pretext of countering the threat of terrorism. Special security legislation, such as the Prevention of Terrorism Act, and the Public Security Ordinance and its accompanying emergency regulations (intended for states of national emergency, but imposed almost continuously for decades), remains in place and grants extraordinary powers to the authorities to arbitrarily arrest and detain individuals almost indefinitely.

Candidates should commit to introducing legislation to amend or repeal all emergency laws which violate international law and standards, and in particular, provide for or encourage impunity for perpetrators of crimes under international law. Candidates should also commit to ending the use of irregular places of detention by the security forces, as well as the dangerous practice of incommunicado detention, which increases the likelihood of torture and enforced disappearances.

2. END TORTURE AND OTHER ILL-TREATMENT; END ENFORCED DISAPPEARANCES

Sri Lanka has a long history of enforced disappearances, which continue to be reported in many parts of the country, particularly in northern and eastern Sri Lanka and in Colombo. Torture has also been widely reported both in the context of government security operations against suspected LTTE members and in civil policing.

Candidates should commit to ending these practices, bringing national laws into accordance with international standards that prohibit torture and enforced disappearances, and ensuring justice and reparations for victims and their families, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, in accordance with international standards.

3. ENSURE PROTECTION AND RESPECT FOR THE RIGHTS OF INTERNALLY DISPLACED PERSONS AND RETURNEES

With 100,000 conflict-displaced people in camps and dependent on government for shelter and relief, and many more in the early stages of attempted resettlement or relocation closer to their home villages, ensuring protection and humanitarian assistance to and respect for the rights of the displaced remains an urgent priority.

Candidates should commit to respect and protect the human rights of all displaced people and returnees without discrimination, as guaranteed by the Sri Lankan Constitution and International law, including the rights to freedom of movement, liberty and security of person, the right to health, education and to adequate standards of living, freedom from torture and other ill-treatment and enforced disappearance and ensuring consultation with and participation of internally displaced people and their free and informed consent in all decisions regarding the running of IDP camps, resettlement and relocation.

All displaced people and returnees should be permitted to come and go from displacement camps and other temporary accommodation without harassment,

restrictions or time limits. Displaced people must not be discriminated against based on their ethnicity, place of origin or displaced status.

Displaced people should be provided with adequate relief whether they are inside a camp or in other temporary accommodation, including for example staying with family members, in temporary shelters or in old displacement camps.¹ People attempting to return home or resettle elsewhere must be aided in doing so, including with sufficient and sustained material assistance.

Government policies and procedures regarding the displaced must be made clear, so people can make informed and voluntary decisions about return and resettlement -- this includes providing accurate information about the rights and legal status of displaced people, procedures for tracing family members, and specific information about living conditions in their place of origin or relocation.

Humanitarian and human rights organizations, both national and international, should be permitted to monitor the safety of the displaced people and those attempting to return and resettle, to ensure that they are receiving adequate assistance and are protected against human rights violations.

4. LEARN FROM PAST FAILURES AND RECTIFY THEM:

Sri Lanka's justice system is extremely susceptible to political pressure, and with no effective witness protection scheme most human rights violations are never even investigated, let alone heard in court. Sri Lanka's new President should initiate a review of the criminal justice system that publicly acknowledges the system's failure to provide genuine human rights accountability and the inadequacy of ad hoc commissions which have frequently been presented as a substitute for proper criminal investigations. This should be a genuine, fully supported, independent and impartial review working within a clear and reasonable deadline. Many shortcomings of the justice system and potential remedies have already been identified.

The review should specifically:

¹ People are currently returning to places where homes and infrastructure have been destroyed, so rebuilding will take time.

- Expose the flaws that have hindered proper police investigations; commission of inquiry investigations; and prosecutions and punishment of persons suspected of crimes under international law.
- Examine and publish records of such investigations hitherto kept confidential; these should be made easily accessible, along with an official status report on implementation.
- Suggest ways to redress these flaws through legislative, administrative and practical measures, in accordance with international human rights law and standards;
- The review's report should be made public.

In particular, Amnesty International urges the immediate publication of reports of all inquiries and investigations concluded by the Presidential Commission appointed by President Rajapaksa in November 2006 to investigate 16 cases of "serious violations of human rights" from August 2005. These include the January 2006 killing in Trincomalee of five youths: Gajendran Shanmugarajah, Rohan Lohitharaja, Sivanantha Thangathurai, Hemachandran Yogaraja and Ragihar Manoharan; and the killing of 17 aid workers of the international NGO, Action contre la Faim, in early August 2006.

5. ENSURE THE RIGHT TO FREEDOM OF EXPRESSION INCLUDING MEDIA FREEDOM

Sri Lanka's security laws have also been used to silence dissent. For example, in September 2009, journalist J.S. Tissainayagam was sentenced to 20 years' rigorous imprisonment under the Prevention of Terrorism Act for writing articles that criticized the Sri Lankan government's treatment of Tamil civilians during military operations in the East. Although his release on bail on 11 January is welcome, Amnesty International considers him a prisoner of conscience and as such urges his sentence to be quashed.

In addition to restrictive laws and regulations, there is a pattern of regular threats and attacks against journalists², lawyers, witnesses against state forces, and human rights defenders by unidentified attackers presumed to have links to the state. These prosecutions, threats and attacks have combined to erode public faith in the rule of law, and have had a chilling effect on freedom of expression and association.

² Since 2004 15 journalists have been killed because of their reporting and at least 11 have fled the country between June 2008 and June 2009.

A free media is essential to ensure that Sri Lankan voters have sufficient information to assess candidates, develop informed opinions about policy, and monitor the conduct of officials. Journalists must be able to perform their professional duties without fear of prosecution, harassment or violence.

Media personnel and human rights defenders have been denied access to camps housing displaced persons and also report being prevented by the Ministry of Defence from visiting Jaffna, thus obstructing monitoring and reporting on conditions faced by survivors of the armed conflict and their experiences in the war zone – critical human rights issues that will fall to the next President to resolve.

Candidates should call for an end to prosecutions, threats and attacks on journalists and other people expressing dissenting views, and commit, if elected, to ensuring full and effective investigation and prosecution of all those responsible for attacks on journalists, human rights defenders and others exercising their right to freedom of expression. They should also:

- ensure that no government agencies or officials violate freedom of expression and that all complaints of abuse are investigated immediately and perpetrators brought to justice;
- introduce legislation to repeal the Press Council Act, which restricts freedom of expression in violation of Sri Lanka's Constitution and international human rights obligations;
- introduce legislation facilitating public access to information from governmental institutions.

6. ENSURE THOROUGH AND EFFICIENT CRIMINAL INVESTIGATIONS:

All candidates should commit to expediting criminal investigations into the cases of violations of international human rights and international humanitarian law, with full

support to be given to the police, and take prompt action in accordance with the law against anyone who obstructs investigations.

Sri Lanka lacks competent and credible mechanisms for investigating human rights violations. As part of its review of the criminal justice system, the government should explore the creation of such a mechanism (one suggestion is an independent prosecutor's office) with a mandate to conduct independent investigations in cooperation with a strengthened and revitalized National Human Rights Commission.

Moreover, the absence of a witness protection program is one of the primary obstacles to prosecuting cases of gross violations of human rights. A witness protection program must be adequately resourced and technically well supported. Amendments to the Criminal Procedure Code should be considered that would expressly permit witnesses, where appropriate, to give evidence by video link, and prohibit questioning about the location or new identity of the witness, or other sensitive information, and legally and securely provide new identities for witnesses and their families.

7. ENSURE THE INDEPENDENCE OF KEY INSTITUTIONS

Candidates should commit to implementing the 17th Amendment to the Sri Lankan Constitution and reviving the Constitutional Council to enable the reactivation and to restore the independence of constitutionally mandated commissions tasked with running and monitoring Sri Lanka's key institutions to ensure human rights protection. These include the Elections Commission, the Public Service Commission, the National Police Commission the Finance Commission, the Human Rights Commission, and the Bribery and Corruption Commission and the Delimitation Commission (responsible for determining electoral boundaries).³

In particular, the functioning and independence of the National Police Commission, mandated to monitor grave misconduct and abuse by police officers and to ensure an

³ The 17th Amendment to Sri Lanka's Constitution, passed in 2001, was an attempt to depoliticize some public appointments. Nominations would require approval by a Constitutional Council with representation from both ruling and opposition parties as well as non-political public figures. In 2006 the mandate of the Constitutional Council was allowed to lapse due to a disagreement between political parties over an appointment. President Rajapaksa chose to circumvent the Constitution and make his own direct appointments to important bodies, undermining their independence.

effective public complaints procedure, and the Sri Lankan Human Rights Commission (HRC) must be strengthened. The independence of the HRC should be restored and safeguarded, and it should be in a position to investigate all human rights violations.

The HRC's work must be fully supported financially to enable it to investigate human rights violations independently, thoroughly and efficiently. A system should be established to provide relevant authorities with detailed information to aid them in investigations and prosecutions. Procedures must be established in law to ensure that the HRC's recommendations are seriously considered.

It will also be necessary to establish rules for co-operation among the police, the Attorney General's office and the HRC in addressing human rights violations, without compromising the latter's independence. These rules must be made accessible to the public so that the population can understand how complaints are investigated and prosecuted.

8. ESTABLISH A NATIONAL POLICY AIMED AT BRINGING PERPETRATORS OF HUMAN RIGHTS VIOLATIONS TO JUSTICE

Impunity for violations of human rights and humanitarian law has been the rule rather than the exception in Sri Lanka, not just in the context of war, or in Sri Lanka's former conflict zones, but throughout the country and in the context of ordinary policing as well as counter insurgency. Sri Lanka's new President can begin to demonstrate his commitment to respecting human rights and bringing an end to the cycle of impunity by publicly acknowledging wrongdoing by Sri Lanka's security forces and speaking out forcefully against human rights violations. He should publicly declare that all violations of human rights and international humanitarian law, including those committed under previous governments, and irrespective of the identity of the perpetrator or the victim, will be investigated and that all those suspected of offences, irrespective of rank or political influence, will be prosecuted.

The government can translate words into actions by ensuring effective investigations, due process and prosecution of all perpetrators, including those with political influence and high social status.

9. RATIFY INTERNATIONAL TREATIES:

Candidates should commit to Sri Lanka ratifying, incorporating into national law and implementing in policy and practice the following treaties:

- the International Convention for the Protection of All Persons From Enforced Disappearance;
- the Optional Protocol to The Convention Against Torture And Other Cruel, Inhuman or Degrading Treatment or Punishment;
- the Rome Statute of The International Criminal Court;
- Establish legal procedures for implementing the views of the UN Human Rights Committee.

In addition, candidates should commit to ensuring that human rights treaties to which Sri Lanka is already a state party are incorporated into national law and implement in policy and practice.

10. ABOLISH THE DEATH PENALTY

The death penalty remains on the books in Sri Lanka and there are reported to be hundreds of prisoners on death row, although executions, which require the approval of the President, have not been carried out in recent decades.

Amnesty International considers the death penalty to be a violation of the right to life and is the ultimate cruel, inhuman and degrading punishment. There is no proof that it is a more effective deterrent to crime than imprisonment. Moreover, given the significant failings within the Sri Lankan justice system, including frequent reports of torture in custody to extract confessions, the chances of innocent people being sentenced to death are high.

Amnesty international urges all presidential candidates to commit to abolishing the death penalty and finding alternative solutions to address criminality.

