SRI LANKA: Subverting justice regarding the Muttur killings and repeating the legacy of immunity for gross abuses of human rights

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FOR IMMEDIATE RELEASE
AS-212-2006
September 11, 2006

A Statement by the Asian Human Rights Commission

SRI LANKA: Subverting justice regarding the Muttur killings and repeating the legacy of immunity for gross abuses of human rights

The journal entry of the magistrate's court of Muttur for September 4, 2006, regarding the case of the killings of the 17 aid workers in Muttur belonging to Action Contre La Faim reads as follows:

Hon. Mr. Suhada Gamlath through phone directed me to send the file to Hon. Magistrate Anuradhapura to handle the file on the instructions of the J.S.C. I send [sic] the file to Hon. Magistrate Anuradhapura today itself (4/9/06). Mr. Jegasothy (AAL) requested certified copy of the entire proceeding. Issue certified copy [*sic*].

M. Ganesharajah
Magistrate, Muttur
(sitting in Trincomalee)

This journal entry is a revelation of what happens to allegations of gross human rights abuses by the military or the police whenever they receive public attention. When demands for proper inquiries arise from local and international sources, the state swiftly sets in motion deliberate schemes to defeat the prospect of such investigations. This has been the pattern of behaviour of the Sri Lankan security forces since the 1970s whenever the military or the police are allowed to enter into operations with implicit instructions to engage in extrajudicial killings, disappearances, torture and the like in the name of public security.

In recent decades, tens of thousands of cases of a similar nature have been covered up in this manner. The killing of the Embilipitya children inside a military camp and the killing of the detainees at Bindunuwewa detention camp are two well-known examples.

The honourable magistrate in this case has taken the precaution of writing down the instructions of the Hon. Mr. Suhada Gamlath, the secretary to the Ministry of Justice. The first question that arises is, What is the authority of this ministry to order a magistrate to transfer a case from one court to another? This is direct executive interference in matters that are the sole responsibility of the judiciary. It is said that the secretary to the Ministry of Justice made the order on the instructions of the Judicial Service Commission (JSC). How though did the secretary to the Ministry of Justice become the conduit for the transmission of messages from the JSC to a judicial officer? If instructions went directly from the JSC to the magistrate, there would be some direct evidence of the JSC making such an order. Now no evidence exists that the JSC gave these instructions in the first place. It may be quite possible that the JSC has not even made such an order. Even if it did, the secretary of the Ministry of Justice is not a legally authorised medium to convey such instructions to a magistrate regarding legal proceedings. Moreover, the JSC has no legal authority to instruct the secretary to the Ministry of Justice to pass on such instructions. Furthermore, the JSC does not have the power to give instructions to magistrates to transfer cases from one court to another. The JSC powers are well defined in the Constitution. In law, the authority to order the transfer of a case from one court to another rests with either the Court of Appeal or the attorney general.

Thus, the act of the secretary to the Ministry of Justice in giving such an order to the magistrate is of a political nature. The question then becomes, Why was such a political order required?

This question can only be answered by whatever political discussions the secretary to the Ministry of Justice had with presumably his minister or even higher political authorities who are involved in this issue. Information about these discussions is not available. It is not difficult to see the consequences of this decision, for the witnesses will be afraid to travel to this predominantly Sinhala area where there is also a heavy military

presence to give evidence in the case. The usual formula in tens of thousands of cases where complaints of gross abuses of human rights violations have been made will be followed, i.e., there will be a decision made not to proceed with these cases due to the absence of evidence. Even the Attorney General's Department has closed many of the disappearance cases in the past in Sri Lanka on the basis of "absence of evidence."

"Absence of evidence" though is a situation that can easily be created through the use of terror. When conditions are fashioned that make the survivors of victims' families afraid to come forward to give evidence, the final verdict will be not to proceed with the case due to a lack of evidence. Where there is a genuine effort to ensure justice following allegations of serious human rights violations, the state takes steps to make it conducive for witnesses to come forward and provides witness protection. The survivors of such incidents already suffer from the trauma of the terror they have experienced. A state that does not provide a suitable atmosphere for witnesses to come forward and initiates proper criminal investigations is participating directly in protecting the perpetrators of such violence.

Thus, the instructions of the secretary to the Ministry of Justice need to be withdrawn, and the circumstances through which such instructions were given need to be explained to the public. However, what is more important is that a suitable atmosphere should be created for the witnesses to come forward and for proper investigations to take place. This is simply impossible with a purely local inquiry based on the experience of tens of thousands of cases in Sri Lanka in the past. Thus, President Rajapakse's statement that he agreed with an inquiry by a group of international experts may be the only realistic solution to the present problem. Already a U.N. rapporteur has welcomed this move on the part of the president, and a resolution of the European Parliament has requested the Human Rights Council and the Human Rights Commission of the United Nations to take appropriate action.

That the LTTE or JVP in the past have engaged in gross human rights abuses is no defence for sanctioning state forces to engage in the killing of innocent people and in acts that are considered in law to be war crimes. Such purely rhetorical statements help in no way to bring an end to several decades of massive extrajudicial killings, disappearances and torture on the part of the military and police. Such acts have destabilised the country, destroyed the capacity of law enforcement agencies to respect and abide by the law and have terrorised the entire populations in the South, North and East.

International human rights monitoring is an essential precondition for restoring the rule of law to the country. Such a mission is not a need only of the present situation; it is a need that has existed in the country for several decades. Sri Lanka is today a ruined democracy with a completely collapsed rule of law system. It is among the countries that have fallen to such a horrendous collapse. For several years, the Asian Human Rights Commission (AHRC) has characterised Sri Lanka as a country with an exceptional collapse of the rule of law. Today the situation is much worse.

If recovery is possible, it can come only if the more enlightened sections of the Sri Lankan population are allowed to come forward and express the frustration they have felt for many years as the arbitrary actions of politicians, the military and the police have continuously ruined their lives. The space that is needed can be created through enlightened international interventions as occurred in Nepal. The rights of the people of Nepal today are more secure due to a timely human rights intervention that has helped all democratically minded people assert themselves against state terrorism as well as the terrorism of other organisations.

The present situation regarding the Muttur incident and political meddling with the case to the point of even issuing illegal instructions to magistrates further proves the need for an international human rights monitoring mission to be established in Sri Lanka as soon as is practically possible.