



International Federation of Tamils

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Ms. Ann M. Veneman
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Dear Madam Veneman

The International Federation of Tamils -IFT-, writes to express concern over the manner in which the issue of Tamil child soldiers is being addressed. In our opinion both the substance of the discussion as well as its timing are troubling.

First of all it is apparent that UNICEF is itself publicizing a highly inflated number of so-called child soldiers in the LTTE ranks. This occurred most recently in a "list" handed over in June 2006 by UNICEF to the Liberation Tigers of Tamil Eelam (LTTE), the Tamil party engaged in the armed conflict that has been in a cease-fire mode since 2002. Of 1397 names, more than 800 persons were over the age of 18, and another 200 over the age of 17 -- leaving fewer than 300 persons between the ages of 15 and 17. Of those, some of them are listed more than once. We believe your office was informed that a 2005 UNICEF list of 80 underage soldiers in the Kokkadichchola district (Batticaloa) was found to contain the names of 25 persons actually living with their parents. Newspapers in Sri Lanka are currently reporting accusations made by UNICEF that the LTTE has abducted 64 children this spring. We are, understandably, not persuaded by this information.

The Geneva Conventions set the age of 15 as the youngest age for participation in armed conflict or recruiting into armed forces. As you know, Article 77 of Protocol Additional I to the Geneva Conventions obligates the Parties to the war in Sri Lanka to ensure that children under 15 "do not take direct part in hostilities."

Our understanding of the current situation in international law in relation to child soldiers may be summarised as follows:

- a. Conscripting or enlisting children under the age of fifteen years' into national armed forces or armed groups or using them to participate actively in hostilities is a war crime.
 - b. Conscripting or forcibly recruiting children under the age of eighteen years by State Parties or armed groups is a breach of the Optional Protocol to Child Convention.
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c. All feasible measures shall be taken by State parties to ensure that members of their armed forces under the age of 18 years do not take a direct part in hostilities and failure to take such 'feasible' measures is a breach of the Optional Protocol to Child Convention.

d. Enlisting children under the age of 18 years by State Parties is not a breach of international law.

e. Enlisting children under the age of 18 years by armed groups is not a breach of the Optional Protocol, (and not by any means a 'war crime') though armed groups may have a 'moral obligation' to avoid doing so.

If your understanding of the law differs from ours, it would be most helpful if you would let us know the matters on which you disagree. Here, we are also mindful of the comments of the International Red Cross in its Introduction to the Optional Protocol, in May 2000 -

"..The ICRC welcomes the fact that the issue of non-state actors has been included in the Optional Protocol, but regrets that the provision imposes a moral, as opposed to a legal obligation. Although Article 4 also provides for criminal prosecution under domestic law, this is likely to be of limited effect, because those who take up arms against the lawful Government of a country already expose themselves to the most severe penalties of domestic law, and because the capacity of a Government to enforce its laws is often very limited in situations of non-international armed conflicts. Third, it is uncertain whether non-state actors will feel bound by a norm which is different from that imposed on States, and thus whether it will be respected..."

Again, we believe that it is important to recognize that there were largely no direct hostilities from the time of the cease-fire agreement (2002) until fairly recently. Even though there are some military engagements occurring sporadically, the cease-fire appears to be holding. In any case, there have certainly been no under-15 soldiers in the few operations, and perhaps no one under 18.

There is a further circumstance which it appears that the various reports have failed to consider. The political reality is that the LTTE administers a de facto state within the lines of control recognised by the Ceasefire Agreement – which Agreement itself has received international recognition and acceptance. Some persons recruited by the LTTE serve in the administrative services of this de facto state – and these include the judiciary and court, school of law, police stations, police academy, medical and technical colleges, small industries, a community bank and children's homes. It appears to us that such participation is lawful – and given the conditions prevailing in these areas both humane and warranted.

Here we seek to persuade you that the assessment of the Australian Member of Parliament, Ms Virginia Judge after a visit to the Tamil Eealm in September last year is in accord with the reality on the ground. She said in the Australian Parliament on 15 September 2005 (after a visit to Tamil Eelam) -

“...I observed that in a remarkable three year period the Tamils developed a virtual state within the north and north-east of Sri Lanka. I visited their judiciary and court, school of law, police station, police academy, medical and technical colleges and small industries, a community bank plus a children's home housing 278 children left orphaned by the war and

the recent tsunami. The Tamil Rehabilitation Organisation (TRO) runs a variety of development, relief and reconstruction projects as well as assisting several non-government organisations with their projects. All this is a tribute to the spirit and resilience of the Tamil people...”

Here it is not without relevance to point out that clause 2.3 of the Ceasefire Agreement between Sri Lanka and the LTTE, required the Sri Lanka armed forces to vacate all school buildings occupied by it, beginning on the date that the Agreement entered into force (i.e. 22 February 2002) and that ‘this activity shall be completed’ at the latest within 160 days from that date.

However, Sri Lanka acted in breach of the Ceasefire Agreement and refused to vacate the school buildings. As a result, in the Jaffna district alone, 52 schools continue to be occupied by the SLAF and 30% of schools in the North-East are closed. The breach of the Ceasefire Agreement by Sri Lanka, compounded the already serious situation caused by the armed conflict. The reality is that due to the armed conflict and the SLAF occupation of schools, around 40,000 children in the North-East are without educational facilities, 1 in 100 children are in children’s homes and child malnutrition amounts to 46%.

Given this ground reality, while there may be some Tamil youths between the ages of 15 and 17 who have joined the LTTE during the cease-fire, the nature of their recruitment and the actual circumstances may also have to be looked into. The LTTE is not simply an armed group but it also administers a de facto state. We trust that you will agree that recruitment by the LTTE does not necessarily mean recruitment as a ‘child soldier’. Again you may be persuaded that it is important to consider whether the recruits had any family to care for them and what steps that may have been taken in the context of the ground reality – and also whether, in any case, such recruits have been actually involved in the sporadic military operations that have taken place.

In our view, the issue of so-called child soldiers in the LTTE ranks is being used by many not out of genuine concern for Tamil youth but for political purposes -- especially to support the government of Sri Lanka’s unrelenting anti-Tamil campaigning both at home and around the world. The campaign is intended to demonize the Tamil people in the eyes of the world community. In our experience, this has been partially successful, as many Tamils in the communities where we live have been subjected to racial slurs implying that we are all “terrorist thugs.” An obvious proof of this is that when our Tamil civilians were recently attacked by government soldiers as they sought shelter in their churches, there was very little sympathy for them or public accusation of the Sri Lankan authorities who carried out this atrocity.

In this light we also point out that there have long been accusations made by Sinhala leaders that the Sri Lankan government has recruited youths even under age 15. For example, former Prime Minister Ranil Wickramasinghe pointed out in Parliament in 1998 that the Army had launched a campaign to recruit school children at the very time that Mr. Olara Otunnu was visiting. While denied by some authorities, there was little public condemnation of that at the time. Further, the JHU party has frequently and very publicly called on Sinhala youth to join the fight against the Tamils and actively encourages a military solution to the conflict.

The child soldier issue also draws attention away from the far more serious over-all situation of all Tamil children in Sri Lanka -- a condition made far worse due to the long armed conflict

and a variety of embargos imposed by the Sri Lanka authorities on food, water, medicine and other humanitarian relief protected by the Geneva Conventions. This too received no hue and cry.

Further, although the Tamil areas were far more affected by the Tsunami, the government of Sri Lanka impeded international relief to the Tamil areas. In an equally troubling move, the United States government told the American Red Cross it could not distribute in the Tamil areas any of the hundreds of millions of dollars donated for the Tsunami victims.

As you must be aware, no international relief organization has provided meaningful post-Tsunami aid to the Tamils except our own Tamil relief agencies. Now with increased attacks by the Sri Lanka military in the Tamil areas, more and more Tamils are seeking shelter, we estimate there are as many as 50,000 newly displaced Tamils, many of them children, who desperately need food, shelter and basic survival aid. Some are even seeking shelter in India's Tamil Nadu region -- already home to thousands of Tamils made homeless by the war and the Tsunami. It is the desperate situation of these thousands upon thousands of Tamil children and adults that require urgent attention, not a few in a "numbers game" involving at most a few hundred Tamil youth.

There are also serious problems affecting Sinhala children, in particular child slavery, child pornography and trafficking. There are credible child advocate groups that indicate as many as 30,000 Sinhala children between the ages of 11 and 17 involved in sexual slavery rings. Many are aware that Sri Lanka is a major "sex tourism" destination again, as the resort areas have been fully rehabilitated from Tsunami-caused damage. This cries out for public condemnation and for meaningful action by relief organizations.

Obviously, when so much is at stake in Sri Lanka at the present, our Federation questions what we consider to be an unbalanced approach (as well as an approach not properly founded on international law) to the Tamil child soldier issue. We hope UNICEF will join our appeal to those who care about the Tamil people and our children to do all within their mandates and capabilities to support us as we seek a just peace on the island.

Thanking you for your consideration and your efforts, I remain,

Yours sincerely,

Anton PONRAJAH

Secretary General
