

Opinion No. 30/2008 (Sri Lanka)

Communication addressed to the Government on 19 December 2007

Concerning Mr. Gunasundaram Jayasundaram

The State is a party to the International Covenant on Civil and Political Rights.

1. (Same text as paragraph 1 of Opinion No. 17/2008.)
2. The Working Group conveys its appreciation to the Government for having provided it with information concerning the allegations of the source.

3. (Same text as paragraph 1 of Opinion No. 17/2008.)
4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source, and has received its comments.
5. The case was reported to the Working Group as follows: Mr. Gunasundaram Jayasundaram, a dual Sri Lankan-Irish citizen, resident in Singapore, married and father of three children, was arrested on 4 September 2007 at Katunayake International Airport by agents of the Police's Terrorist Investigation Division (TID). He had just arrived from Singapore on a business trip to Colombo.
6. It appears that Mr. Jayasundaram has been detained on remand during three months and a half on the orders of the Secretary of the Ministry of Defence. No reasons for his arrest were communicated to him.
7. Mr. Jayasundaram has only been allowed access to a defence lawyer once during this period, despite repeated written requests to the authorities for regular access to legal counsel. On 29 October 2007, a writ of *habeas corpus* was filed on his behalf by Senior Counsel Mr. Appapillai Vinayagamoorthy, without any results.
8. The source adds that consular access to the detainee is also severely restricted. The Honorary Consul of the Republic of Ireland in Colombo has been allowed to visit him only once, on 14 December 2007.
9. According to the source, Mr. Jayasundaram's arrest and detention is arbitrary, since no reason was communicated to him to proceed to his arrest and no arrest warrant was shown to him. The source adds that, despite the time already elapsed, no charges have been brought against Mr. Jayasundaram. He has not been brought before a judge and no date for a trial has been set. The source concludes that Mr. Jayasundaram's detention is arbitrary.
10. In its response, the Government of Sri Lanka states that according to the investigation conducted by the authorities, on 4 April 2007, customs officers at Colombo International Airport arrested Visvalingam Gobidas —a resident of Colombo— for bringing high-powered communication sets to Sri Lanka without a permit.
11. Subsequent inquiries revealed that Visvalingam Gobidas is a member of the procurement team of the LTTE, a terrorist outfit banned in many countries, including the United States of America and the member countries of the European Union. These high-powered communication sets were brought for the use of the LTTE. On revelations made by Gobidas, Mr. Jayasundaram was providing monetary and material support to the LTTE. Mr. Jayasundaram was informed of these charges, and he was detained at the Terrorist Investigation Division (TID) in Colombo under Emergency Regulations No.19/(2). A copy of the detention order has been handed over to Mr. Jayasundaram.
12. The arrest of Mr. Jayasundaram was officially notified to the International Committee of the Red Cross (ICRC) and the National Human Rights Commission of Sri Lanka. Accordingly, representatives of the ICRC visited him a couple of times. The Honorary Consul of the Republic of Ireland in Sri Lanka visited Mr. Jayasundaram on 18 September, 26 October, 15 November and 14 December 2007. The defense lawyers, Mr. Appapillai Vinayagamoorthy and K.D. Kalupahana, visited Mr. Jayasundaram on 24 October, 20 November, and 21 December 2007.
13. According to the Government, further inquiries have revealed that Mr. Gunasundaram Jayasundaram is a member of the LTTE international procurement team and had been involved in the following:
 - (a) After the signing of the Ceasefire Agreement between the Government of Sri Lanka and the LTTE in 2002, he visited Vanni (an area in Sri Lanka temporarily

controlled by the LTTE) with his spouse Biretta and children and met LTTE leader Velupillai Prabhakaran and Sea Tiger leader Soosai, and discussed opening up businesses in foreign countries for the LTTE;

(b) He had sent a plastic-bag manufacturing machine worth RS. 5 million to the LTTE through his company in Sri Lanka named "Lamipack Private Ltd.";

(c) In early 2005, Mr. Gunasundaram Jayasundaram visited Vanni with an Australian citizen and held discussions with the LTTE and its front organization, the Tamil Rehabilitation Organisation, regarding raising funds for a primary education centre in Vanni for the family members of the LTTE cadres.

14. Upon instructions of the LTTE leader in London in the years 2005/06, Mr. Jayasundaram purchased radar, satellite phones, deep-sea cameras, walkie-talkie sets, generators, marine boat engines, diving kits and spare parts for radar from Singapore on six occasions, shipped them to Colombo and sent them to the LTTE through his company and contacts in Colombo and Vanni. (The Government reports that the name of the leader in London, names of the ships, invoices, and e-mails are withheld due to security reasons). Mr. Gunasundaram Jayasundaram is presently in detention at the TID pending arraignment.

15. In its observations on the Government's response, the source denies that Mr. Jayasundaram is a member of LTTE international procurement team. It also claims that Mr. Jayasundaram's original detention order has expired and that he has never been provided with another order extending his detention. As regards Visalingam Gobidas' revelations about Mr. Jayasundaram procuring high-powered communication sets, the source notes that this is a mere allegation unsubstantiated by evidence. Mr. Jayasundaram does not know of and has never met with a person known as Visalingam Gobidas.

16. Mr. Jayasundaram had not visited Vanni in 17 years and when he had the opportunity to visit in 2003, his family and he visited Vanni solely for the purpose of seeing his family and helping rebuild the orphanage there. It is denied that Mr. Jayasundaram met any LTTE leaders. In fact, he and his family met many foreign dignitaries and well-wishers of the Tamil people, including the Ambassador of Norway.

17. The plastic-bag manufacturing machine sent to Sri Lanka was merely a business deal that Mr. Jayasundaram had been involved in. Furthermore, Mr. Jayasundaram's partner at Lamipak Private Ltd. in Sri Lanka is Sinhalese and has not been arrested or detained within five years for sending this machine or, for that matter, all the other equipment mentioned to Sri Lanka.

18. The source does not deny that Mr. Jayasundaram did visit Vanni with an Australian woman. He had the backing of the World Bank and the Norwegian Government, which agreed to jointly fund an overhaul of the early childhood and primary curriculum for the North and the East of Sri Lanka. Mr. Jayasundaram merely introduced that Australian woman as an expert in the area and the project was meant for the general public. The source alleges that it is not true that the project was for the family members of the LTTE cadres.

19. The source further states that Mr. Jayasundaram has only had access to his appointed lawyer on two occasions and not three. The other lawyer, K.D. Kalupahana, was appointed by Mr. Jayasundaram on the recommendation of the TID and she demanded USD 1,000 a day to represent Mr. Jayasundaram. She was subsequently discharged from acting on his behalf since she had the interest of the TID rather than that of Mr. Jayasundaram in mind.

20. A *habeas corpus* case was brought against the Government of Sri Lanka on 29 October 2007 and subsequently three hearings took place as late as 23 January, 5 and 26 March 2008. However, Mr. Jayasundaram was not brought before the court on any occasion.

21. The Working Group, in summing up this information, would like to draw attention to the following circumstances: Mr. Jayasundaram was arrested without an arrest warrant on orders of military authorities under the Emergency Regulations No.19/ (2) which resulted in his prolonged detention. The accusations against him are based solely on statements of another person, with whom, as the source attests, Mr. Jayasundaram has never met. Moreover, the Working Group finds the argument of the Government that Mr. Jayasundaram was providing monetary and material support to the LTTE unsubstantiated.

22. At any rate, the activities listed in the Government's response could only hardly amount to a criminal act, which could justify the arrest and detention of Mr. Jayasundaram for such a long term without proper charge or detention. Doubts are further confirmed by the fact that, for a similar business, Mr. Jayasundaram's partner, a member of the Sinhalese ethnic group, was never arrested. The arrest and detention seems to be, among others, discriminatory towards Mr. Jayasundaram, as a member of the Tamil ethnic group.

23. The Working Group further notes that Mr. Jayasundaram has been detained without being charged before an independent judicial authority. He was arrested and held in detention without prompt access to a lawyer. He was not informed timely about his right to contact the Consul of the Republic of Ireland, as is provided for in the 1963 Vienna Convention on Consular Relations. In addition, the Government's response does not contain any information about whether Mr. Jayasundaram's detention was officially extended, when the initial detention order had expired. Finally, the Working Group also notes that Mr. Jayasundaram was not brought *in personam* before the court during the *habeas corpus* hearings.

24. All these acts violate fundamental human rights guaranteed under article 14 of the International Covenant on Civil and Political Rights, which states in particular the following: "1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. ... 3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; ... (d)... to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; ... (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him".

25. In the light of the foregoing, the Working Group renders the following Opinion:

The deprivation of liberty of Mr. Gunasundaram Jayasundaram is arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9, 14, and 26 of the International Covenant on Civil and Political Rights, and falls under categories II and III applicable to the consideration of cases submitted to the Working Group.

26. Consequent upon the Opinion rendered, the Working Group requests the Government of Sri Lanka to remedy the situation of Mr. Gunasundaram Jayasundaram and to bring it into conformity with its international human rights obligations under the International Covenant on Civil and Political Rights.

27. Finally, the Working Group reminds the Government that, according to the recommendations of the Human Rights Council,⁴ national laws and measures aimed at combating terrorism shall comply with all obligations under international law, in particular international human rights law.

Adopted on 12 September 2008

⁴ Human Rights Council resolution 7/7 of 27 March 2008.