

ESRI LANKA

@Appeal for full implementation of commitment to human rights

In mid-June, the government of Sri Lanka took several initiatives to strengthen human rights protection in the country. It re-established the powers of the Human Rights Task Force to monitor the welfare of detainees and issued directives to the heads of the security forces to ensure the fundamental rights of people arrested and detained are respected. It also reiterated its resolve to fully investigate incidents of human rights violations, bring to justice those responsible and pay compensation, in particular in relation to incidents of extrajudicial executions. In addition, the President and the Minister of Justice declared their personal opposition to the death penalty.

While welcoming these recent steps, Amnesty International is concerned about continuing reports of arbitrary arrests, torture, including rape, "disappearances" and extrajudicial executions being reported from the northeast of the country and the capital, Colombo, in particular. Amnesty International is therefore urging the government to take all necessary steps to ensure strict implementation of the recently announced measures to prevent any future such human rights violations.

Amnesty International welcomes an undertaking by the government to abide by international human rights and humanitarian law, which is particularly important at a time when the security forces are faced with a difficult law and order situation as currently prevailing in the northeast of the country. Amnesty International is urging the government to instruct all relevant members of the security forces to exercise continuing vigilance, accompanied by prompt intervention and disciplinary action, to check abuses and reform practices which lead to human rights violations.

Background

Since the resumption of hostilities between the security forces and the Liberation Tigers of Tamil Eelam (LTTE) in the northeast in mid-April 1995, there have been reports of arbitrary arrests, torture, including rape, extrajudicial executions and "disappearances"; albeit on a far more limited scale than in previous years.¹

Amnesty International and local human rights organizations expressed concern about these reports to the government and urged that effective measures be taken to prevent further human rights violations. Amnesty International also appealed to the leadership of the LTTE for an immediate halt to deliberate and arbitrary killings of non-combatant civilians. The appeals were made to LTTE offices outside Sri Lanka after members of the LTTE killed 42 Sinhalese

¹ See *Sri Lanka: "Disappearances"*, Urgent Action 139/95, AI Index: ASA 37/13/95 of 15 June 1995 and *Sri Lanka: Reports of extrajudicial executions during May 1995*, AI Index: ASA 37/10/95 of June 1995

civilians at Kallarawa, Trincomalee District on 25/26 May 1995 and another report on the same day that LTTE members had killed a Buddhist priest known for his stand against them. In late June, in response to appeals by members of Amnesty International to the LTTE office in Paris, France, the director of the Tamil Co-ordinating Committee, France stated that Amnesty International's concerns have been brought to the attention of the LTTE headquarters in Jaffna.

Recent government initiatives

1 Re-establishment of the Human Rights Task Force

On 7 June 1995, new emergency regulations (ERs) were issued to re-establish the HRTF. The Human Rights Task Force was originally set up in 1991 by ERs made under the enabling provisions of section 19 of the Sri Lanka Foundation Law No 31 of 1973. One of the objectives of the Sri Lanka Foundation Law is "the promotion of an understanding and belief in the democratic way of life and the protection of human rights". ERs were promulgated in Gazette No 673/2 of 31 July 1991 to cover the establishment of the HRTF and to strengthen its powers and in Gazette No 674/17 of 10 August 1991 under the title "Monitoring of Fundamental Rights of Detainees Regulations 1991". The latter two ERs lapsed together with the June 1993 ERs on 15 July 1994 following the dissolution of Parliament prior to the general elections of August 1994.

Under ERs issued by the new government in September 1994, the important requirement that all arrests under ER 18 had to be reported "forthwith" to the Human Rights Task Force (HRTF), which had been introduced by the previous government in June 1993, was removed. The status of the HRTF itself became very unclear. It continued to function under the Sri Lanka Foundation Law but without any real powers. Amnesty International and other human rights organisations expressed concern that there was no longer any organisation independent of the police and armed forces with adequate powers to monitor and safeguard the welfare of detainees held under the ERs or the Prevention of Terrorism Act.

Following the resumption of hostilities in the northeast of the country in mid-April 1995, there was a sharp rise in the number of arrests. There were also reports that members of the security forces increasingly refused to inform the HRTF of arrests and that its officers were denied access to places of detention. Amnesty International and local human rights organizations raised concern about the lack of independent monitoring of the welfare of detainees.²

Under the new Emergency (Establishment of the Human Rights Task Force) Regulations No. 1 of 1995 the powers of the HRTF have been enhanced. Under ER9(1), the HRTF must now be informed of all arrests or detentions "forthwith, and in [any] case not later than forty-eight hours from the time of arrest or detention where it is not possible due to any circumstances

² See *Sri Lanka: fear of torture/fear of "disappearance"*, Urgent Action No. 103/95, AI Index: ASA 37/07/95 of 28 April 1995 and its update, AI Index: ASA 37/08/95 of 2 May 1995.

prevailing in any area" whereas the earlier 1993 provision had only specified that arrests had to be notified "forthwith". The new regulation also explicitly provides that the place at which the person is being held in custody or detained should be notified to the HRTF. In addition, there is also a requirement that transfers and releases are notified to the HRTF within the same time limit (forthwith and in any case no later than 48 hours).

The HRTF has also been given powers to file action in the Supreme Court against anybody committing an offence of contempt against its authority. This power was granted previously but to Amnesty International's knowledge was never used.

Under regulation 8 (1) of the Emergency (Establishment of the Human Rights Task Force) Regulations, the President "may give such directions to the Heads of the Armed Forces and of the Police, as in her opinion are necessary, to enable the HRTF to exercise and perform its powers, functions and duties and to ensure that the fundamental rights of persons arrested or detained are respected". On 16 June 1995, the text of such directives were published in the Daily News, a Colombo-based newspaper. Whereas some of the directives introduce welcome safeguards for the protection of the rights of detainees, in some other respects they weaken several provisions of the ERs under which they were issued.

In particular, the directive no. 6 (2) that "[E]very officer who makes an arrest or detention shall inform as early as possible and in any case **within four days** of such arrest, the HRTF" prolongs the period prescribed under ER 9 (1) of the regulations establishing the HRTF which provided that arrests should be notified "forthwith, and in [any] case not later than **forty-eight hours**".

Directive no. 3 (iii) that "arrests receipts" should be issued provides the welcome safeguards that the name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained or held in custody should be stated on the receipt. However, whereas under ER 18(8) of the Emergency (Miscellaneous Provisions and Powers) Regulations of 4 November 1994 the onus of issuing such receipts is put on the arresting or detaining authority, in the directives such receipts only need to be issued "upon request".

Amnesty International is concerned that the directives do not impose an unconditional duty on the government to promptly inform and permit the detainee to inform his or her relatives of the fact of his or her arrest and place of detention, as provided under Principle 16 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Amnesty International therefore urges that further directives are issued to ensure strict conformity of Sri Lankan legislation with international standards. It also reiterates its appeal for a

thorough review of the ERs and Prevention of Terrorism Act to bring them fully in line with the International Covenant on Civil and Political Rights, to which Sri Lanka is a party.³

2 Directives to the security forces to safeguard the rights of detainees

As stated above, in mid-June, directives were issued by the President to "enable the HRTF to exercise and perform its powers, functions and duties and for the purpose of ensuring that fundamental rights of persons arrested or detained are respected and such persons are treated humanely".

These directives issued to the heads of the security forces stipulate that the security forces should assist and facilitate the HRTF and any person authorised by the HRTF, that nobody should be arrested or detained except in accordance with the law and proper procedure and by an authorized person and that members of the HRTF should be permitted access to places of detention at any time and any place. (See above for comments on the time limits provided for the HRTF to be informed of the arrest or detention.)

They also specify that at the time of arrest or immediately thereafter, the person making the arrest shall identify himself by name and rank to the person arrested or any relative or friend of the arrested person upon inquiry, that they should be informed of the reason for the arrest and that an "arrest receipt" should be issued (see above for comments on the latter directive). In addition, the arrested person should be given "reasonable means" of communicating with a relative or friend to enable him or her to inform them of his whereabouts.

The directives also introduce specific measures to be taken in the case of arrests of children under 12 years and women. In these cases, a person of the child or woman's choice should be allowed to accompany them and "as far as possible" the child or woman should be placed in the custody of a women's unit of the security forces.

Finally, the directives introduce the welcome safeguard that a statement of a person arrested or detained should be recorded in the language of that person's choice who should thereafter be asked to sign the statement. A person who wants to make a statement in his or her own handwriting should be permitted to do so.

These directives meet most of Amnesty International's recommendations for the protection of detainees and their families, and are an encouraging manifestation of a desire at the highest levels of government to safeguard human rights. The issuing of orders does not in itself

³ For a detailed analysis of the Emergency Regulations and Prevention of Terrorism Act from a point of view of the guarantees provided in the International Covenant on Civil and Political Rights (ICCPR) and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, see *Sri Lanka: Emergency measures violate human rights*, AI Index: ASA 37/12/95 of July 1995.

ensure that procedures are modified or corrected in practice, however. There is therefore great need to follow-up to ensure that all relevant commanding officers are fully aware of the directives which have been issued by the President, and that they in turn ensure they are rigorously implemented. Finally, officers who violate these procedures should be disciplined or prosecuted as appropriate.

3 Investigation of human rights violations

On 15 May 1995, Amnesty International appealed to President Chandrika Bandaranaike Kumaratunga to order independent investigations into five incidents of alleged extrajudicial executions reported from the northeast of the country in early May.⁴

In a response of 5 June 1995 which was received by Amnesty International on 22 June, the Secretary, Ministry of Justice and Constitutional Affairs stated that the President "has already initiated inquiries into the reported incidents and is currently awaiting preliminary reports from the army and police." The letter further stresses that "[O]n receipt of the reports, if the circumstances warrant it, Her Excellency will have no hesitation in having the specific complaints,...., referred to the Human Rights Task Force for investigation and recommendations regarding follow up action such as judicial action against those responsible for human rights violations and the payment of compensation to those adversely affected."

The letter also clarifies that provisions for the establishment of a National Human Rights Commission are to be incorporated in proposed amendments to the Constitution put forward by the government and that, once this commission would be in place, all complaints of human rights violations would be investigated by it.

Finally, the letter stresses the government's commitment to "fulfilling its obligations to promote and protect fundamental human rights in terms of both national and international law".

While welcoming the commitment to human rights expressed in the letter and the undertaking to fully investigate reports of human rights violations, bring to justice those responsible and grant compensation to those affected, Amnesty International is urging that speedy, independent and impartial investigations would be set up immediately. This should be done under a civilian authority such as the Human Rights Task Force. To entrust these investigations in the first instance to the security forces while it is precisely their members who are thought to be responsible for these human rights violations could jeopardize future impartial investigations. For instance, eye-witnesses could withhold information about the circumstances of the killings during the police or army investigations out of fear of reprisals. In addition, the

⁴ These incidents and four others are described in *Sri Lanka: Reports of extrajudicial executions during May 1995*, as above.

unavoidable delays caused by the initial investigations carried out by the security forces could result in the loss of crucial evidence.

Amnesty International therefore reiterates its appeal for speedy, impartial and independent investigations into the recent reports of human rights violations.

4 Death penalty

Nearly 20 years after the last execution took place in Sri Lanka, the Minister of Justice and Constitutional Affairs announced on 20 June 1995 that the government was considering carrying out death sentences again.⁵

Amnesty International immediately appealed to the President and the Minister of Justice expressing alarm at the decision to restore this most cruel and inhuman form of punishment which, it said, represented a retrogressive step for human rights in Sri Lanka.

The organization said it was particularly concerned by the news of a possible resumption of executions as it had been encouraged by proposed amendments to the fundamental rights chapter of the constitution put forward by the government which incorporated a provision for the protection of the right to life.

The Minister's announcement came after two private member's motions calling for the return of the gallows were passed in parliament on 9 June. The main arguments put forward in the motions apparently were that this move would deter people from resorting to violent crimes such as rape and gang crime as well as drug-related offences, which have reportedly increased in Sri Lanka over the last few years. The motions also expressed concern about the early release of prisoners serving life imprisonment after their death sentences had been commuted.

In urgent appeals to the President and the Minister of Justice and Constitutional Affairs, Amnesty International said that study after study in diverse countries – including a study by a Commission on Capital Punishment instituted in Sri Lanka in the late 1950s – have failed to find convincing evidence that the death penalty has any unique capacity to deter others from committing particular crimes. Amnesty International also referred to a recent decision of the Supreme Court of South Africa which, on 6 June 1995, unanimously held that the death penalty is against the country's constitution. The president of the court said: "It has not been shown that the death sentence would be materially more effective to deter or prevent murder than the alternative sentence of life imprisonment would be".

The same lack of evidence applies to the use of the death penalty to deter drug trafficking. Hundreds of prisoners convicted of drug offences have been executed; the rationale being that using the death penalty will deter drug-traffickers more effectively than other punishments. But

⁵ The last execution took place on 23 June 1976.

despite all these executions there is no clear evidence of a decline in drug-trafficking which could clearly be attributed to the threat or use of that penalty.

As President Nelson Mandela commented on the South African Supreme Court ruling: it is in line with "contemporary civilised norms".

On 22 June, the Minister of Justice and Constitutional Affairs at a press conference stated that the government had still not made a firm decision regarding the resumption of executions. He explained that under the current procedure the Minister of Justice is required to ask for a report from the trial judge as well as from the Attorney General once he is notified of a death sentence. On the basis of the reports, the Minister of Justice evaluates the case and makes a recommendation to the President on whether or not a death sentence should be commuted.

He then told the journalists present: "You have a Justice Minister who does not believe in the death penalty. You also have a President who is also against the death penalty. So you need not fear that everyone sentenced to death will be hanged". (Daily News, Colombo, 23 June 1995)

Later, in a response to Amnesty International of 23 June, made public on 26 June, the Minister announced that, pending a full debate on the issue, no death sentences will be carried out.

Amnesty International welcomes the statement of personal opposition by two key politicians in the country and the assurances given by the Minister of Justice and Constitutional Affairs that no death sentences will be carried out for the time being. It continues to appeal to the government to take a clear stand against the death penalty and use the opportunity of the current process of constitutional reform to abolish the death penalty through a constitutional provision, as further evidence of its commitment to human rights.