amnesty international

Report of an Amnesty International Mission to Sri Lanka

9-15 January 1975

Second Edition

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N O T E

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As of 17 November 1976, the government has withdrawn a series of emergency regulations, including powers to keep persons in the custody of the police for more than 24 hours without producing him or her before a magistrate.

Amnesty International

December 1976

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FOREWORD

This foreword reviews some positive steps taken by the Sri Lanka government, which follow, in part, the recommendations made in this report, which was presented to Prime Minister Mrs Sirimavo Bandaranaike on 8 May 1975. Amnesty International welcomes the changes which have been made by the Sri Lanka government and the fact that some recommendations of the Amnesty International mission have been implemented. However, we continue to believe that the overall concern reflected in the major recommendations made in this report have not been met by the positive steps so far taken. Below we give an account of the measures taken by the government, in so far as they are known to Amnesty International, and indicate the remaining areas of our concern.

In a letter of 14 October 1976, Mr Nihal Jayawickrama, the Secretary of the Ministry of Justice, confirmed to the Secretary General of Amnesty International reports that restrictions in force on certain persons who had been held in connection with the 1971 insurrection had been removed. (This report describes, in chapter 4, a series of restrictions imposed on persons arrested in connection with the insurrection and subsequently released from detention under emergency regulations, or after receiving suspended sentences from the Criminal Justice Commission (see page 35).) In his letter of 14 October 1976, the Secretary of the Ministry of Justice stated that:

> "With effect from October 1st 1976, I have revoked all the conditions referred to above. As of 30th September, nearly 11,500 persons were still subject to one or more of these conditions. Authority for the revocation of the conditions was given by the Prime Minister, having regard to the stabilizing security situation in the relevant parts of the country."

The government's order seems to cover the recommendations made under III.a in this report. Other recommendations, however, still await implementation.

For example, this report reflects Amnesty International's regret about the establishment of the Criminal Justice Commission as a means of trying political prisoners. Throughout this report, it has been argued that political prisoners should not be discriminated against. Consequently, the first and main recommendation made concerns the revocation of the Criminal Justice Commission Act. In his letter of 14 October, the Secretary of the Ministry of Justice informed Amnesty International that:

> "You may be interested to know that the Criminal Justice Commissions appointed to inquire into the 1971 insurgency have

> virtually completed their tasks. Only one inquiry in which there are eight accused is still pending."

However, in spite of the fact that the Criminal Justice Commission (Insurgency Branch) have now almost completed their task, Amnesty International is not aware of any plans of the government to consider the revocation of the Criminal Justice Commission Act in the immediate future. Orders like the ones described in this report, which discriminate against political prisoners, are also still in force (recommendations I.a-b).

It should also be noted that the judgement of the Criminal Justice Commission passed in "Inquiry Number 1" (the so-called "main case" of alleged leaders of the insurrection) has not yet been published, in spite of assurances given to the delegates at the time of the Amnesty International mission. Although there is no possibility of appeal against sentences passed by the Criminal Justice Commission, the President has the constitutional right to grant pardon to any person sentenced in any court in Sri Lanka, including the Criminal Justice Commission. So long as publication of this judgement is withheld, those sentenced in "Inquiry Number 1" remain deprived of the opportunity of making substantial representations for pardon to the President.

Furthermore, this report is critical of the power existing under the emergency of keeping prisoners in detention without trial for an indefinite period. Amnesty International welcomes the recent steps taken by the government, which restrict the possibilities for long term detention without trial on suspicion of having committed offences punishable under the emergency regulations (article 19, Emergency (Miscellaneous Provisions and Powers) Regulations) (EPR).[1] However, it should be noted at the same time that there continues to be a possibility to detain persons indefinitely on suspicion under article 19 of the EPR, if the Attorney General so desires (article 64, EPR).

Similarly, executive powers to detain persons indefinitely without trial for security reasons, on orders of the Secretary to the Ministry of Defence and External Affairs (article 18,EPR), have been retained and have been used to arrest and detain a number of young Tamils after this report was written. As recently as 27 August 1976, the Ceylon Daily News reported comments by Prime Minister Mrs Sirimavo Bandaranaike in connection with the continued detention of these Tamils:

> "She was not saying that the youths now held in custody were behind those incidents but for security reasons they could not be released." (Ceylon Daily News, 27 August 1976.)

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1. In June 1976, the government amended article 64 and abolished article 20A of the EPR, thereby improving the release procedure of persons kept in detention on suspicion of having committed offences under the emergency regulations.

The Amnesty International report recommends that all provisions for detention without trial be brought to an end (see recommendation II.b-c).

In December 1975, the government amended police power, under articles 19/20 of the Emergency Power Regulations, to detain suspects in the custody of the police for a period of up to 15 days. (The dangers in the exercise of this power, as we see it, have been described in chapter 2 of this report.) By requiring, under the amendment, that anyone arrested under this provision be produced before a magistrate or a police officer not below the rank of Superintendent of Police within 24 hours of arrest, a degree of control by superior officers is now ensured during the period of police custody. While welcoming this measure, Amnesty International notes that the power to detain a person in the custody of the police for 15 days, under emergency regulations, continues to exist. (The Amnesty International report recommends total abolition of the 15-day rule, recommendation II.a.)

AI's main concern about the continuation of the 15-day police custody rule stems from the position (described in this report) that police brutality has taken place and still appears to take place precisely during the period of police custody. Reports of deaths in police custody continue to appear from time to time in the Sri Lanka press. AI notes the frankness of the Sri Lanka government in admitting in a recent government report, Human Rights in Sri Lanka, that problems with respect to police behaviour do exist:

> "Police excesses, however, do take place from time to time in all parts of the world, and Sri Lanka cannot claim to be completely free of what is perhaps an inveterate practice." (Human Rights in Sri Lanka, by Nihal Jayawickrama, Department of Government Printing, Sri Lanka, page 14.)

Some reports of ill-treatment of prisoners have reached Amnesty International after this report was written. As an example, we attach as an appendix, details of one of the cases which came to our notice more recently.

The Sri Lanka delegation at the United Nations gave full support to the UN Resolution number 3452, XXX, the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by the General Assembly on 9 December 1975). During the discussion of the resolution, the Sri Lanka delegation stated that:

> "It was essential that the proposed code should set out in unambiguous terms the humanism so clearly spelled out in the Universal Declaration of Human Rights, so that it would provide effective safeguards against torture or cruel treatment. His delegation, believing that torture had no place in civilized society, was in favour of developing such an international code of police ethics which could,

generally speaking, serve as a guide for law enforcement authorities throughout the world." (United Nations General Assembly, Third Committee Hearings, 14 November 1975.)

AI hopes that this statement will now be followed by practical steps of the nature described in UN Resolution 3452, XXX, of 9 December 1975, to prevent the sort of police excesses which appear to continue to occur occasionally in spite of official assurances.

Finally, mention should be made of an important judgement given on 10 September 1976 by the High Court at Bar, in a trial at Bar set up under the emergency regulations. (The court was set up to try three members of parliament and a former member of parliament, all belonging to the Tamil community, on charges of possessing and distributing leaflets calling for a separate state for the Tamils - an offence under the emergency.) According to press reports, the court held that there had not been a proper declaration of the emergency in accordance with constitutional requirements and, consequently, that there was no proper delegation of legislative power to the president (to enact emergency regulations). (The attorney general has filed an appeal against the judgement on 15 September, the outcome of which is not yet known at the time of writing this foreword.) If the judgement were to be upheld in appeal, the declaration of the emergency and the measures taken thereunder would be constitutionally invalid and would have to come up for government review. A number of these have been criticized within Sri Lanka and also in this report for their apparent inconsistencies with certain norms laid down in the Universal Declaration of Human Rights (see recommendations I and II and the relevant pages in this report to which they refer).

If the court's judgement is upheld in appeal, AI trusts that the government, while reviewing the emergency, will once more consider the major recommendations in this report. We are encouraged in our belief by the declared concern of the government in general questions relating to human rights, as reflected in the recent government publication, Human Rights in Sri Lanka.

Martin Ennals
Secretary General

31 October 1976

Apart from this foreword, the text of this report is identical to the first edition, which was released to the public on 25 May 1976.

PREFACE

The Amnesty International mission, which forms the basis of this report, visited Sri Lanka from 9-15 January 1975. The delegates were Louis Blom-Cooper, QC, a British lawyer, and Yvonne Terlingen, a Dutch member of the International Secretariat of Amnesty International.

Although the report describes the situation in Sri Lanka at the time of the Amnesty International mission, it has been up-dated on major developments and figures of detention where possible. Thus, an appendix C has been added, bringing chapter 2 up to date as regards the prisoners sentenced to death for criminal acts committed during the insurgency, after the mission took place. Also, the sections on Tamil prisoners (chapter 5 of the report and appendix D) have been up-dated to include the new arrests following the killing of the Mayor of Jaffna in July 1975. But, apart from these changes, the text of the original report, presented to the government of Sri Lanka together with its recommendations, has not been substantially altered.

The report was presented to the Prime Minister of Sri Lanka, Mrs Sirimavo Bandaranaike, on 8 May 1975. She was informed that the report would remain confidential until Amnesty International had learned the government's reaction. On 15 May, the report was presented to the Minister of Justice, Felix Dias Bandaranaike, as well as to a small number of officials whom the delegates met during the mission. Receipt of the report was acknowledged by the Acting Secretary to the Prime Minister in a letter dated 11 June 1975.

Seven months after the presentation of the report, on 11 December 1975, the mission delegates met the Sri Lanka High Commissioner in London, Vernon L.B. Mendis, requesting the government to send its comments to the International Executive Committee of Amnesty International before its meeting on 15 January 1976. When no comments were received, the International Executive Committee decided to publish the report.

BACKGROUND TO THIS REPORT

The Sri Lanka mission report describes the judicial process and conditions of detention applying to the estimated 2,000 prisoners held at the time of the Amnesty International mission in connection with the insurgency. It also describes the circumstances of arrest and detention of a small number of young Tamils, who are kept under the emergency regulations for different reasons, but have not been tried or charged.

The government of Sri Lanka was constitutionally elected in May 1970, when the United Front, a coalition of left opposition parties (the Sri Lanka Freedom Party, the Trotskyist Lanka Sama Samaya Party and the pro-Moscow Communist Party) won a large majority in parliament. The socialist election program of the coalition had been supported by the Janata Vimukhti Peramuna (People's Liberation Front, JVP), a group of young Marxist revolutionaries, on the condition that specific points of the election program would be implemented at an early stage. These points related to the reduction of unemployment, the nationalization of foreign-owned estates and a sharp reduction of foreign investment. When it became clear that the government could not fulfil these conditions, the JVP took an increasingly critical attitude of the government, withdrew its support and finally staged an armed rebellion on 5 April 1971, in an attempt to bring about an immediate socialist revolution.

The JVP originated from a split in the pro-Chinese Communist Party in 1965, when it became disillusioned with the traditional political parties. It advocated socialism to be achieved through armed revolution, carried out by the Sinhalese peasantry. During the first five years of its existence, the JVP worked underground in the rural sector, giving classes in Marxism-Leninism. It gained support among many young unemployed Sinhalese against the background of a deepening economic crisis which affected Sri Lanka in the sixties, when the price of imports was no longer matched by the value of exports, as a result of the fall in prices of its traditional primary export earners on the world market. The JVP emerged at the time of the May 1970 elections, and functioned publicly for some months following the elections.

But on 6 March 1971, a policeman was killed during a demonstration before the United States Embassy and, four days later, a serious explosion took place in which several people were killed. Faced with these incidents of violence, the government proclaimed a national emergency on 16 March 1971 (which continues to be in force at present). The police and armed forces were given full powers of arrest without warrant and by 26 March about 300 persons had been arrested for suspected involvement with the JVP. They included their leader, Rohana Wijeweera. The JVP decided to take swift action and staged an armed rebellion on 5 April which came close to unseating the democratically elected government of Sri Lanka.

In the months following the uprising, bitter fighting ensued, during

which atrocities were committed on a large scale, and summary executions were widely reported to have taken place, which the Sri Lanka government has not denied (see also: Report on a Visit to Ceylon by Lord Avebury, published by Amnesty International in March 1972). The government arrested a total of 18,000 persons, but adopted at an early stage plans for the release and rehabilitation of prisoners. (Already in her statement of 20 July 1971 before parliament, the Prime Minister stated that a special investigation unit had been set up: "The task of this Unit is to go into each one of these 14,000 cases and to categorize them according to the degree of involvement of these persons, and to release those who, in the opinion of the investigators, need not be detained any longer." Although the government has been criticized for the slow implementation of its release program, it should be noted that only 2,000 persons remained in prison at the time of the Amnesty International mission - January 1975 - out of a total of 18,000 taken into custody (amounting to a release rate of 89%).

In his statement reported in the Ceylon Observer of 22 July 1971, the Permanent Secretary to the Ministry of Justice referred to plans for rehabilitation of prisoners accused of minor involvement with the JVP and promised to the remaining prisoners that "a fair trial will be given and justice will be meted out expeditiously". In April 1972, the government introduced the Criminal Justice Commission Act, which provided for special tribunals, called Criminal Justice Commissions, to be set up to try those alleged to be seriously involved with the insurgency. On the whole, the commission adopted a liberal sentencing policy (as of 31 December 1975, 2,322 persons had been released on suspended sentences of a total of 2,919 then brought before the Criminal Justice Commission charged with criminal offences). But a major part of this report deals with the concept of the Criminal Justice Commission, as a means to try political offenders outside the ordinary criminal process.

RECOMMENDATIONS ARISING OUT OF A MISSION TO SRI LANKA ON BEHALF OF AMNESTY INTERNATIONAL IN JANUARY 1975 SUBMITTED TO HER EXCELLENCY THE PRIME MINISTER OF SRI LANKA

Mindful of the fact that in April 1971 the elected government of Ceylon was faced with a grave emergency, Amnesty International has noted with appreciation the steps it has taken since to release the bulk of the 18,000 prisoners arrested in the months following the insurrection, so that only some 2,000 remain in detention today. However, we venture to make the following recommendations:

I. Sri Lanka has traditionally been known for its great respect for the rule of law, upheld by a judiciary which is among the most distinguished in Asia. While appreciating your government's intention to bring the prisoners arrested in the months following the April 1971 insurgency to a speedy trial, we cannot but express our regret at the way in which it has sought to achieve this end, ie by establishing the Criminal Justice Commission. In our view, the commission represents a compromise of the high standards of criminal justice previously set in Sri Lanka and, however commendably its members may have exercised their duties, it inevitably puts in jeopardy the public regard for the independence of the judiciary. (See pages 24-28 of the report.)

a) We therefore respectfully submit that your government consider revoking the Criminal Justice Commission Act.

With regard to political prisoners, it is our view that they should be tried in the same manner as other prisoners before the fully independent courts, whose decisions are subject to the proper appellate process and can only be altered by recognized methods of penal treatment such as remission and parole. Amnesty International has always held that as a matter of principle political prisoners should not be the subject of discrimination.

b) We therefore respectfully submit that your government revoke any orders which may discriminate against political prisoners, such as the order made by the Secretary of the Ministry of Justice on 9 January 1975 under section 5 of the Public Security Ordinance, depriving prisoners convicted by the Criminal Justice Commission (Insurgency Branch) of their normal automatic remission of one third of the term of their prison sentence (page 19of the report).

c) We further submit that your government announce a time limit by which all those charged with offences committed in connection with the insurgency should have been tried.

II. Under the emergency regulations, prisoners can still be arrested and

kept in custody of the police for 15 days without judicial control or access to legal assistance (article 19(c) and article 20(2) of the Emergency Regulation Number 12 of 1974). While this provision may not at present be used on a wide scale, its continued existence has given rise to allegations that police brutality has taken place during the period of police custody (see pages 21-22 of the report). Such allegations are difficult to dismiss if no safeguards exist against the use of uncontrolled police powers during the 15-day period.

a) We therefore respectfully submit that your government consider the immediate abolition of the 15-day rule, so that prisoners appear before a magistrate within 24 hours of arrest. (If such abolition is not possible in the near future, persons arrested under the provisions could nevertheless be allowed immediate access to their lawyers and their families.)

There are still a number of persons arrested and detained on suspicion of having committed offences punishable under the emergency regulations (article 19 of the Emergency Regulations) who have neither been charged nor tried. We found that some of these prisoners have been detained in this way since 1971 (see pages 28-29 of the report). They also include a number of young members of the Tamil community. (See chapter 5 of the report.) Apart from the humanitarian and legal objections against long term detention without trial, your government has itself expressed concern about the intolerable delay in such cases.

b) We therefore respectfully submit that your government institute an inquiry into this problem with a view to bringing to trial those against whom specific charges can immediately be brought and to releasing all others against whom no such charges can be brought (see page 29 of the report).

Apart from the above category, a small number of prisoners are held on order of the Executive for security reasons (article 18 of the Emergency Regulations). (They also include some members of the Tamil community.) Such prisoners can be detained indefinitely, and the powers of the Advisory Board which advises on their release are restricted. In our view, even when faced with an unprecedented emergency, a constitutionally elected government should apply such a policy of detention with the utmost restraint. Article 10 of the Universal Declaration of Human Rights states:

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations, and of any criminal charges against him."

c) We therefore respectfully submit that your government review provisions for detention without trial with a view to bringing them to an end. (If this is not immediately

possible, your government could impose a maximum period for which prisoners can be so detained and establish an independent machinery to review such cases.)

III. Encouraged by your government's own emphasis on the rehabilitation of political prisoners, we submit that the practice of imposing restrictions on prisoners at the time of their release may have an adverse effect on rehabilitation efforts (see page 35 of the report and appendix D).

a) We therefore respectfully submit that your government institute an independent inquiry into the conditions imposed on prisoners on and after their release, with a view to revoking any measures which restrict the released prisoners' freedom of speech, association and movement.

b) We further submit that your government consider implementing the specific recommendations regarding prison conditions of political prisoners outlined in pages 32-34 of the report, such as the implementation of the existing provisions for independent Visitors Boards for all prisoners, including detainees, unlimited access to reading material and libraries, normal access to visits without restrictions on the person of the visitor, and special facilities for writing and accommodation. They should similarly apply to the Tamil prisoners and we suggest that particular attention be paid to the financial situation of their families (see appendix D). In our view, the implementation of these recommendations, which are in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners, would contribute greatly towards your rehabilitation program.

IV. Since 1972 there has been a large increase in the percentage of executions carried out in Sri Lanka (see pages 30-31 of the report). Sri Lanka was among the first countries in the post-World War II period to abolish the death penalty, a decision which was effective from 1956 to 1958 and subsequently endorsed by the government's own report prepared by the 1959 Commission of Inquiry on Capital Punishment. We feel that the abolition of the death penalty was very much in line with Sri Lanka's long-standing Buddhist tradition of compassion and tolerance. As a human rights organization, Amnesty International opposes the death penalty.

a) We therefore respectfully submit that your government reconsider the findings of the 1959 Commission of Inquiry Report, which puts most strongly the argument for the abolition of capital punishment.

INTRODUCTION

The mission to Sri Lanka was undertaken for two purposes: to collate and verify the disparate information which Amnesty International had been collecting over the past three years relating to the political prisoners detained following the uprising in April 1971, and to re-establish a dialogue between Amnesty International and the government of Sri Lanka. Since Amnesty International had already commented on the events of April 1971, priority was given to investigating and reporting on the legal processes by which these prisoners were now being tried and sentenced. Hence, the report concentrates on the situation following the establishment of the Criminal Justice Commission in 1972.

Amnesty International is very glad to report that the mission was given every assistance by the Minister of Justice, Felix Dias Bandaranaike, and by the main officials of his department whom they met. The delegates were allowed unhindered access to many parts of the penal system. (In practice, the visits were limited to the establishments in Colombo.) The delegation had extensive discussions with the Commissioner of Prisons and with some of the staff of the Sri Lanka prison service, and were not debarred from seeing anything or talking to anyone to whom they wished. They, in fact, met a large number of prisoners held since the insurgency, both convicted and unconvicted, without hindrance. Those who accompanied the delegates on that visit were scrupulous to let them talk out of earshot, although not out of their sight. They were asked to visit death row in Welikada Prison, Colombo, one of the two prisons where 59 men currently await execution of sentences of death upon them. (Some of these men in the condemned cells have been convicted in the ordinary courts of law of murder committed in the course of the uprising in April 1971, a matter to which we shall refer hereafter.) The delegates declined to accept the offer.

Since the prisoners for whom Amnesty International feels concern had all long ago passed out of the custody of the police into the care of the prison service, all meetings concentrated on that aspect of the matter. Moreover, it is not the Minister of Justice (or indeed the Home Affairs Minister, who is in fact the same person) who has responsibility for the police in Sri Lanka. Police come under the Ministry of Defence, a portfolio held by the Prime Minister. Much of what is said therefore that pertains to police involvement with the prisoners must be heavily qualified by the fact that the delegates did not meet with officials in the Ministry of Defence, or to serving members of the police force, since the official part of the mission had been arranged through the Ministry of Justice. However, some issues were raised with the present solicitor general who was involved in taking statements from detainees during the weeks following the arrests in and around April 1971.

The Sri Lanka government acted with complete openness and frankness about the plight of political prisoners. If what follows appears to read like sustained criticism, it is because matters that do not call for adverse comment have been omitted. It should be recalled that the

democratically elected government of Sri Lanka, in reacting to an uprising organized by the Janatha Vimukhti Peramuna (JVP), adopted at an early stage positive plans to promote the rehabilitation of prisoners.

1. GENERAL OBSERVATIONS

Sri Lanka has a strong tradition of upholding the precepts of the rule of law, generally adhered to by successive governments and a distinguished civil service, and vigorously maintained by an independent judiciary. Stung by the insurgency, the present government has felt compelled to compromise - at least temporarily - some of the basic liberties. While the Civil Rights Movement has commendably and stoutly opposed substantial changes, one gains the impression that many Sinhalese, directly unaffected by the emergency laws, are indifferent to the invasions upon liberty. One has the further impression that the values implicit in the maintenance ofthe rule of law never in the past percolated down from the professional classes to the mass of the people. When liberties are in jeopardy, a government will not be halted in its tracks unless there is a groundswell of public feeling to support those who are both literate and articulate in campaigning against the ruling power. The tiny minority of professional people can achieve only so much in their advocacy against governmental interference in civil liberties. In sustaining any kind of determined opposition, the legal profession is the one group in society which must be both vigilant and concertedly engaged in organizing legitimate opposition. The impression is that the lawyers (with a few very notable exceptions) in Sri Lanka have largely opted out of the problems arising from the insurgency. The examples that prompt this conclusion are: the fear of offending the government in general (for example, the intrusion of government into legal education); the paucity of legal representation before the Criminal Justice Commission - to some extent induced by the absence of anything approaching an adequate legal aid scheme; the disinclination of the lawyers to invoke the fundamental provisions of the 1971 republican constitution before the courts. The judiciary maintains a high degree of independence, but there are distinct signs that it feels its independence threatened.

The drift away from the high standards that Sri Lanka has held until very recent times is not irreversible. But international experience is that once abandoned, civil liberties are not readily restored. One can only hope that the encroachment upon individual rights is as temporary as the emergency situation itself. A state of emergency was declared on 16 March 1971, and the emergency undoubtedly existed in April 1971. But emergency legislation continues to pervade the political scene long after the emergency for which it was designed has evaporated. There are, unfortunately, signs that memories are anything but short-lived and tend still to infect the judgement of those who wielded power in resisting the insurgency. An example will suffice.

On 9 January 1975, the Secretary of Justice made an order by virtue of delegated legislation under section 5 of the Public Security Ordinance, the effect of which was to deprive the insurgents of the normal automatic remission of one third of a prisoner sentence. While this order applied on the face of it to all persons convicted of offences against the state, as well as offences under the Exchange Control Act and the Bribery Act, it was popularly seen - and justifiably so - as a vindictive act towards the insurgents. For a government which officially proclaims the

virtue of human treatment towards its political prisoners, this legislation is plainly contradictory of its stated policy that it wants to reclaim its dissidents as responsible citizens. Moreover, a majority of the 195 sentences passed on insurgents as of 31 December 1974 had been handed down by the Criminal Justice Commission in the knowledge that ordinary remission for all prisoners would apply (see appendix A). This new order, therefore, is to that extent retrospective and objectionable.

There may or may not be an argument for a special category status of political prisoners. But political prisoners should not be discriminated against, as compared with prisoners convicted of ordinary crimes, in the penal consequences of determinate sentences passed by either criminal courts or quasi-criminal courts. The order should be repealed.

2. JUDICIAL PROCESS

Those who were captured during and after the insurgency of April 1971 were dealt with in a variety of ways. Some were made the subject of detention orders under emergency powers by the Permanent Secretary to the Ministry of Defence and External Affairs (article 18 of the Emergency (Miscellaneous Provisions and Powers) Regulations, number 2 of 1971). Others were arrested by the police and armed forces on suspicion of having committed offences under the Emergency Regulations (article 19). Many of the latter were released within a relatively short time. Those arrested by the police and army could be kept in custody in police station cells for up to 15 days, after which time the detainee had to be transferred to the prison system under the authority of a magistrate. Amnesty International was informed that the decision of the magistrate was a mere formality, since article 20(3) of the Emergency Regulations makes the remand order by the magistrate obligatory; in many instances the detainee never actually appeared before the magistrate who signed the warrant of committal to prison. While something not very dissimilar has recently been introduced in the United Kingdom under the Prevention of Terrorism Act 1974, the 15 days in custody without any kind of judicial control or access to legal assistance is, of course, objectionable wherever it may occur. Amnesty International was told of many abuses by the police upon detainees held durign the 15-day period. At least four suspects in the case of the alleged JVP leaders have made allegations before the Criminal Justice Commission that they have been tortured during police interrogation. While the delegates had neither the time nor the opportunity to assess these allegations, it was clear that the emergency had influenced the attitude of police officials, who have virtually uncontrolled powers of interrogation. The present acting solicitor general who, at the time, was a member of the police force recording the statements of most of the accused in the main case, stated before the Criminal Justice Commission (see pages 4758-59 of the CJC proceedings):

> "I was a police officer carrying out a job under the Emergency Regulations ... If I wanted, I could have destroyed not only his (Wijeweera's - the main suspect) name, I would have destroyed him also, if I was so inclined. The Emergency was on, and there was no question being asked."

The special powers of arrest and prolonged detention in custody of the police are dangerous, particularly in view of the incentives given to them to obtain confessions, as introduced in the Criminal Justice Commission Act (see ii,page 25). Amnesty International feels that the well-documented cases of atrocities committed by the government forces in 1971, in their attempts to combat the April armed revolt, need no further elaboration since we are here concerned with present-day conditions, but allegations that police brutality still takes place during the 15-day period were being made as recently as January 1975, during the Amnesty International mission. Unfortunately, the schedule did not allow the delegates to verify the reliability of a substantial number of these allegations, but they spoke to three members of the Tamil community who alleged that they had been seriously beaten by the police following their

arrest between August 1972 and May 1974. At least one of them showed convincing evidence that serious beatings on all parts of the body and the head had taken place. The government itself has recognized the problem of the police exceeding their lawful duty. On 7 August 1973, the present Minister of Law, Felix Dias Bandaranaike, stated in parliament:

> "I merely want to say that I am in entire agreement with the Members who have expressed doubts and fears about the way in which the security forces, particularly the police, operate nowadays, especially having regard to the incidence of complaints of police assaults and the like. There is no question of our standing up in defence of police excesses in the courts." (National Assembly Debates, volume 7, number 1, 7 August 1973.)

But this statement has not been followed by practical measures to prevent police excesses when they may occur.

Amnesty International is of the opinion that the need for detention in police custody without judicial process no longer exists, and therefore recommends the immediate abolition of the 15-day rule. It is believed that the government is seriously considering the abrogation of this police power.

Numbers

Some 18,000 Sinhalese were taken into custody following the insurgency according to the Law Minister. So far, 16,000 have been released; the remaining 2,000 are being held for trial as convicts or for further investigation. (We were reliably informed that these also included a number of people held without charge - referred to later. See appendix A for detailed statistics on releases, trials and sentences of prisoners.) A total of 2,919 were brought before the Criminal Justice Commission where they were formally charged with criminal offences (which always included a charge under section 115 of the Penal Code - conspiracy to wage war, conspiracy to overthrow the government - and often accompanied by one under section 114 - waging war against the Queen, sometimes complemented by specific charges relating to the circumstances of the case) and where their pleas were recorded. Only in exceptional cases were the accused tried before an ordinary criminal court. Of those produced before the commission, 2,506 pleaded guilty. In the vast majority of the cases, suspects who pleaded guilty before the Criminal Justice Commission were immediately released on two-year suspended sentences, provided their involvement in the insurgency was not considered serious (see appendix A). In the other cases (for the proceedings before the Criminal Justice Commission see pages 24-28), State Counsel would ask for a deterrent sentence. Usually, such requests were granted by the commission, but in 17 cases the requests for deterrent sentences were not granted, and the

suspects were released. Amnesty International was reliably informed that, when this sentencing policy became known, prisoners started pleading guilty to the charges made against them, in order to be released (the verdict of guilty therefore now shows on their criminal records).

Those pleading not guilty were brought in batches before the Commission according to the geographical area in which they operated or the specific police station which they were supposed to have attacked. There are 134 of such area inquiries. The only exception is Inquiry Number 1, the main case, consisting of the 41 suspects considered to be the main architects of the insurgency. As regards the main case, the trial lasted for over two years, verdicts being recorded and sentences being passed on 20 December 1974. The reasoned judgement of the commission was reserved and had not been handed down by the end of January 1975.[2] Of the 41 dealt with in the first protracted trial, four were found not guilty (of which three were released by the minister, the commission having the power to acquit but not to release persons found not guilty; the one not released was regarded by the authorities as continuing to present a secuirty risk). The remaining 32 were found guilty; in two cases one of the five members of the commission dissented from the verdict. In one of these two cases, the sentence was two years' imprisonment, and in the other, two years' imprisonment suspended for five years. The leader of the insurgents, Rohana Wijeweera, was sentenced to life imprisonment (later amended by the commission to 20 years' imprisonment - see page 27); the others received sentences ranging from three to 12 years (see appendix A-III), three of them being suspended sentences. Of the 32 sentences, four were recommended for clemency. Three of the four were released by order of the Minister on 10 January 1975; they were in fact brought to the Ministry of Justice where, in front of the minister and ministry officials, the Amnesty International delegates were invited to ask them questions. All three had pleaded guilty from the outset, and one had in effect turned state evidence - hence the state pardon given to them. The one who had pleaded not guilty was not released by the Minister.

By 31 December 1974, out of the remainder, a total of 192 prisoners had been sentenced to prison terms ranging from two to 20 years. At the end of January 1975, there remained another 399 to appear before the tribunal (381 after pleading not guilty, 18 after pleading guilty). (For up-dated figures for those awaiting trial before the Criminal Justice Commission, see appendix B-III.) It was officially anticipated that by the end of the year all of the remainder will have been dealt with, and the work of the commission with respect to the insurgency would have been completed.

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2. As of April 1976, the time of publication of this report, the judgement of the commission had still not been published. Although the Criminal Justice Commission Act does not provide for an appeal against sentence, the constitution of Sri Lanka provides in article 22 that the President may grant a pardon to every person convicted in Sri Lanka. By with-holding publication of its judgement, the commission denies in practice the possibility to those convicted in Inquiry Number 1 to make representations to the President.

Criminal Justice Commission

The Criminal Justice Commission, established under the Criminal Justice Commission Act 1972 in the face of vocal opposition from many politicians and civil rights workers, introduced for the first time the concept of a commission to try persons on criminal charges outside the established courts (with changes in the normal rules of procedure). It was intended to meet a very special and unprecedented situation for which the government felt the procedures of the ordinary courts were unsuitable. It nevertheless called the inquiry before the commission to be a "judicial proceeding" (section 7 of the Act) and the commission can commit for contempt (section 8). While we will deal here only with the Criminal Justice Commission (Insurgency Branch) which has been set up to deal with the insurgents, Criminal Justice Commissions may be set up to investigate not only matters relating to the insurrection or rebellion, but also large-scale currency offences or widespread destruction of property (article 2, CJC Act). The act is effective for eight years and can be renewed for any period of up to five years. For a number of reasons spelled out below, Amnesty International is of the opinion that semi-judicial tribunals like the Criminal Justice Commission should not be set up to deal with political offenders. It recommends that the sole responsibility for the continued detention and release of detainees should fall squarely on those who carry out the detention. Ministers should not seek to shuffle off their responsibilities onto any tribunal other than the fully independent courts exercising the ordinary criminal jurisdiction, whose decisions, subject to the proper appellate process, should be inviolate and only interfered with by recognized methods of penal treatment, such as remission and parole.

There are many reasons why the judicial process should not be diluted to serve political purposes. The Minister may properly set up a kind of release advisory committee, composed in part of lawyers, to advise a release. But there should never be a compromise of the standards of criminal justice such as were undergone in the Criminal Justice Commission. The effect of so doing is very seriously to put in jeopardy the public regard for the independence of the judiciary and to inflict a kind of second-class system of justice for political offenders. Although the Criminal Justice Commission operated generally with a scrupulous regard for the principles of justice, it cannot retain the respect of the public. The abandonment of long-standing, cherished legal procedures - the exclusion of hearsay, the inadmissibility of confessions, the partial shifting of the onus of proof - to mention a few - provide ample justification for propaganda that this is not "justice". Only when authority insists upon the maintenance of civilized standards of justice will that authority retain public respect. Either the ordinary criminal law should be used in an undiluted form or the government must take the full burden of political action against revolutionaries. In this respect, Amnesty International endorses what what the Gardiner Committee[3] said in its report on measures to deal with terrorism in Northern Ireland. A number of

3. Report of a committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland, HMSO Cmnd 5847 - page 145.

instances are given below where the basic standards of justice have been jettisoned to serve a political cause, with the fatal effects mentioned.

i. The Criminal Justice Commission Act (and the commission itself) is specifically designed not to serve primarily the interests of justice but the political ends of the government in that the fundamental questions inherent in a charge of conspiracy to overthrow the state were precluded from the commission's inquiry. Section 2(3) provides that the opinion expressed in the Warrant establishing a commission shall be final and conclusive, and cannot be called into question in any court or tribunal. The commission had, of course, to inform itself of the nature and extent of the insurgency, and to that end certain reports from persons competent to speak of what happened during the period were placed before the commission so that it would at least have the background against which it could adjudicate on the accused's complicity. But by section 1(2)(g) an official report relating to the occurrence of certain events within the knowledge of the reporter in the course of his official functions or duties "shall be conclusive proof of the statements contained in such report without such person being called to testify at the inquiry". The only limitation upon this startling provision which even denies the opportunity of cross-examination of the reporter, is that the report may not contain any statement as to the identity of any person concerned in the occurrence. The authors of the reports were in practice called before the commission so that they were read out and were available to answer any questions from the commission.

These provisions struck at the essence of a conspiracy charge. The defence alleged in several cases that the events of April 1971 were a planned massacre of the government's extreme political opponents and that subsequently governmental action was a cover-up by labelling the opponents' activities as an insurrection. However improbable that might be, the commission was debarred from concluding that there was no insurrection, but only a defensive action against the hostilities of government forces. The commission's work was tantamount to giving a court terms of reference which conclusively proved one, if not the main, ingredient of a criminal charge. It was more than just shifting the onus of proof onto the defence; it was declaring that a part of the prosecution's case was proved in advance of the trial. This procedure is by itself a distortion of the criminal trial.

ii. The proceedings before the commission are not bound by the formalities of the procedure for criminal trials, the commission being at liberty to make their own rules "best adapted to elicit the truth concerning the matters that are being investigated" (section 1 (1)). A more fundamental departure from the ordinary rules of evidence was the admissibility of any confession or other incriminatory statement made "to whomsoever and whatsoever circumstances"

(section 11 (2) (b)). This is a striking departure from any known rule about confessions. It would allow a confession to be admitted even if it were extracted by torture, although of course if it were , the commission would be entitled to treat it with circumspection and be entitled to discount the evidence if it thought fit. The departure from the ordinary rule about confessions was even more radical in Sri Lanka because under the Evidence Ordinance, a confession made to any police officer or while in police custody is inadmissible in evidence except where the confession is made before a judicial officer. (This rule of evidence which is based on the Indian Evidence Ordinance has been reaffirmed in the Administration of Justice Law number 44 of 1973.) Any confession is not evidence against a co-accused, but if the confessor went into the witness box to retract any part of his confession, and his retraction was disbelieved by the commission, his confession then became evidence against any co-accused. This could only be seen to be a kind of judicial blackmail not to withdraw a confession. As such it is highly objectionable.

The rules of evidence do not vary with the importance or nature of a criminal case, or indeed the personalities involved. The same tests and the same considerations must apply. This principle was proclaimed by Judge T.S. Fernando in the trial of those responsible for the 1959 assassination of Prime Minister Solomon Bandaranaike: see Rv Buddhavakkitha and Others. Ironically, it was unnecessary for the commission to admit in evidence all confessions, however obtained, since one of the accused in practice turned state evidence such as to provide sufficient evidence against their co-conspirators. Convictions would have been equally obtained in an ordinary criminal court.

iii. Representation at any inquiry before the commission is granted to the accused, but the state is allowed to appear only to assist the commission to conduct the inquiry. The commission thus appears to act, and does act, as the prosecutor. Moreover, the absence in Sri Lanka of anything more than a very restricted form of legal aid (the legal aid system provides for very inadequate fees) in practice means that now few are represented, and then in most cases only by the more junior and inexperienced members of the Bar. It is recommended that the whole question of legal aid in serious criminal cases be reviewed by the government of Sri Lanka. Since Amnesty International is particularly concerned with the defendants still to be tried before the commission, who have far less resources and ability to defend themselves adequately than those already tried in the main case, Amnesty International recommends that immediate provisions be made for adequate defence arrangements.

iv. The commission brings in its verdicts of guilty or not guilty. If it finds a person not guilty, it records an acquittal, but has no power to discharge the accused, who may

be kept in custody by the executive in spite of the verdict (section 15 (A)). If it finds a person guilty, the commission must sentence the person as if he had been tried and convicted by the Supreme Court (section 15 (b)). Thus the commission has extensive penal powers, without the full authority of an ordinary criminal court. In its findings announced on 20 December 1974, the commission states:

> "There is no purpose in calling upon the suspects to address us in mitigation of punishment. From the statements of the suspects, the evidence and the written and oral submissions, and from the conduct of the suspects during our long inquiry, we are already fully aware of the matters which may in each case be urged in mitigation."

This denial of the right to address the court on sentence is further indicative of the abandonment of the precepts of a civilized system of justice. While no doubt the commission had gained much insight into the conduct of the accused during the course of the insurrection and their behaviour in court, that is no substitute for a speech in mitigation, during which factors of social, medical and psychiatric background would all be highly relevant. The failure to allow any address on sentence may have led in one instance to the commission inflicting an illegal penalty. It sentenced Rohana Wijeweera to life imprisonment. When the illegality of that sentence was informally drawn to the commission's attention, it was compelled to alter the sentence to 20 years' imprisonment. This is an eloquent testimony to the fact that courts, unassisted by pleas in mitigation, can easily go wrong. Amnesty International remains unconvinced by the assertion made privately to the delegates by the chairman of the commission that pleas in mitigation were quite unnecessary in the circumstances of the inquiry lasting over two years and in the course of which the commission had acquired all the information it needed for the purpose of passing appropriate sentences on those found guilty. This argument holds even less for those presently being tried in the "area inquiries". These usually last no longer than a few weeks, during which only very limited information can be obtained about the personality of the accused.

v. The introduction more recently of a new element in sentencing policy. On the whole, the Criminal Justice Commission had pursued a liberal policy in releasing - on suspended sentence - persons who pleaded guilty before the commission, provided their involvement in the April 1971 events was not considered serious. However, during the proceedings of 21 October 1974 (Inquiry Number 48, page 3), three suspects came up for sentence who had not taken part in an actual attack on a police station. They had been awaiting trial since April 1971 when they had surrendered to the police. Contrary to its previous policy, the chairman of the commission sentenced them to two years'

imprisonment. He stated:

> "If State Counsel is unable to recommend that it is safe to release them (the three prisoners), we should not release. In each case, we impose a sentence of two years' rigorous imprisonment."

Sentencing persons to imprisonment not for their past action but for their possible future activities is another example of the bad effects of compromising traditional standards of justice.

These examples should amply justify the conclusion that the concept of a commission of inquiry to try offenders outside the ordinary administration of criminal justice is wrong and ought never to be repeated.

Prisoners held without trial or charge

Towards the very end of our stay, the mission was invited to visit Pallekelle Camp, near Kandy, the last camp for alleged insurgents, scheduled to be closed down this year. Because of the late timing of this visit, the main findings of the visit could not be discussed with ministry officials. The visit was arranged with approval of the Rehabilitation Department. Officials in the department, in charge of the Pallekelle prisoners, had certainly made laudable efforts to make the prisoners' stay in the camp as useful as possible. Apart from an acute shortage of reading material, brought to Amnesty International's attention both by the prison staff as well as the prisoners themselves, there was little to criticize and much to praise.

However, during talks with many of the prisoners detained in Pallekelle, of which there are between 140 and 160, it became clear that the vast majority had no information about the reasons for their present imprisonment. On the whole they appeared to come from poor families and were less articulate than the prisoners the delegates had spoken to in Colombo. Some claimed to have written repeatedly to the Ministry of Law and/or the Ministry of Defence and External Affairs, but so far without any reaction. None of the prisoners spoken to had been visited by a lawyer and visits from families had, for financial reasons, become increasingly rare. Prisoners themselves (and this was later confirmed by the camp officials) informed Amnesty International that four prisoners had been so detained since 1971 (see appendix B-I for their names) and 25 prisoners since 1972. Prisoners were clearly held under the Emergency Regulations, and while Amnesty International was unable to establish the precise legal authority under which they were being detained for reasons outlined above, it appeared that they belonged to the large category of prisoners originally detained under the Emergency Regulations by the police and the armed forces, and subsequently held for investigation -

without, however, any specific charges having been brought against them. This impression was confirmed by the fact that all prisoners stated that at no time had they been charged, nor had they appeared before the Criminal Justice Commission.

Under the Emergency Regulations still in force, prisoners can be held without trial indefinitely - the magistrate having no power to release them. There is no administrative machinery for review of such cases. Nor can lawyers take up the cases with the authorities, since they have access to their clients in prison only after they have been charged with specific offences. The families of the prisoners appeared to be of poor and illiterate background and not in a position to help. Amnesty International was shocked to find - four years after the insurgency - that an unknown number of prisoners were still being kept in prison without charges. (The mission was not able to investigate the possible presence of similar cases in other prisons.)

If the government feels that the continuation of the state of emergency and the ensuing powers of detention without trial are at all necessary, it should at least build in an administrative procedure whereby such cases can be reviewed periodically. The Minister of Justice, himself, in December expressed concern about the long period for which persons are held in custody without having been told the reasons for their detention (Ceylon Daily News, 27 December 1974). The government, by establishing the Criminal Justice Commission, has set up a special machinery for the early trial of persons suspected of having taken part in the insurgency. Amnesty International therefore urgently requests the government to immediately conduct an inquiry into all 'prisons in Sri Lanka wit' a view to releasing - on bail, if not unconditionally - all those arrested in connection with the April 1971 events, against whom no specific charges can immediately be brought, and to bringing the remainder to trial without further delay.

Apart from the above category, Amnesty International learned of very few cases of persons kept without trial or charge for security reasons on order of the Permanent Secretary of the Ministry of Defence and External Affairs (see appendix B-II). These are prisoners not detained in connection with the insurgency. (One case, for example, is of a prisoner who left the JVP a year before the insurgency took place.) Some of them are prisoners suspected of belonging to proscribed organizations. There is an Advisory Committee (Reg 18-4), but its recommendations to the Ministry are not binding, nor are its members (like the comparable Advisory Board in India) required to be High Court judges. Moreover, the right of making representations before the Committee does not exist for prisoners suspected of being members of proscribed organizations. The arguments for the continuation of unlimited powers of detention without trial become less convincing with the lapse of time since the insurgency took place, and Amnesty International recommends that in the immediate future, the government consider imposing a time limit of twelve months maximum for detention without trial and consider establishing an independent machinery for review.

Capital Punishment

The Criminal Justice Commission has no power to pass sentence of death on any accused person. But the Attorney General may, in any case where the offence is punishable by a criminal court, issue a direction that such a person shall not be tried before the Criminal Justice Commission but before an ordinary court (section 17 (1)). So far as Amnesty International has been able to discover, this provision has not been used. However, a number of insurgents have been tried in the normal courts and convicted of murder and sentenced to death (for example, Rv Sarpin and Jayatilleka, Galle High Court, 18 October 1974). Their cases are currently under appeal. (Appendix C describes their position as of October 1975.)

Amnesty International had the occasion to examine the whole question of capital punishment in Sri Lanka. On the face of the statistical evidence, it does appear that there has been a change in the policy towards the death penalty in that there has been a revival of hanging which in the recent past had begun to fall into disuse.

The following table would appear to indicate such a change:

	Sentenced to death	Executed	Percentage Executed
1970	65	1	1.60
1971	81	1	1.25
1972	66	9	13.60
1973	48	6	12.50
1974	84 (up to October 1974)	24 (up to December 1974)	28.60

The Secretary for the Ministry of Justice replied that there had been no change in policy, but that the figures merely disclosed "a marked speeding up of disposal of appeals and quick decision" about the exercise of the prerogative of mercy. Amnesty International does not think that this is a correct interpretation of the evidence. Unfortunately, it has not been able to obtain full figures of the numbers reprieved in the years 1970-1974, which would either support or refute the claim made by the Ministry. But two pieces of evidence strongly support Amnesty International's interpretation:

> According to the Administration Report of the Commission of Prisons for 1970-1971, as at January 1971 there were 54 men in the condemned cell (B.133). During 1971, 80 people were sentenced to death. None were executed during the year. The rest were 53 whose sentences were commuted to imprisonment. 15 were either awaiting re-trial or were released by the Court of Appeal. At the end of the year, 63 were awaiting execution or a final decision regarding the commutation or execution. The

large number of commutations (53 out of 134, or 40%) and the dearth of executions (none) does not suggest any dilatoriness in decisions about the execution of condemned men.

The table of comparable figures for the years 1946-1957, culled from the distinguished report of the Commission of Inquiry on Capital Punishment in 1959 (page 17), seems to confirm the view that there had in the 1950s been a regular series of executions which had almost ceased by the early 1970s. It is hardly likely that the administration of the death penalty had become lax in terms of delays in making decisions in the space of a dozen years.

	Sentenced to death	Executed	Percentage Executed
1946	51	35	69
1947	109	44	40
1948	91	35	38
1949	70	19	27
1950	49	19	39
1951	59	17	29
1952	39	21	54
1953	51	20	39
1954	55	35	64
1955	99	41	41
1956	91	7	--
1957	96	--	--

(Ceylon temporarily abolished capital punishment from 1956-1958.)

The question clearly calls for further investigation. As at present advised, Amnesty International concludes that there is a marked shift towards the continued retention of the death penalty, rather than, as in most civilized countries, a trend towards abolition. The Amnesty International delegates were fortified in their view when the Minister, in response to a question whether the death penalty might be abolished in the near future, said that there was no prospect of abolition. "We like it", he added. Recognizing that Ceylon was one of the first countries to abolish the death penalty, Amnesty International recommends that the government now reconsider the argument and conclusions of the 1959 Commission of Inquiry into Capital Punishment which puts strongly the argument for the abolition of capital punishment, in accordance with Ceylon's Buddhist tradition of tolerance and compassion.

3. PRISON CONDITIONS

The initial input of 18,000 alleged insurgents in the months following April 1971 into the prison system must have put enormous strains upon the prison administration. The prison authorities were completely unprepared to receive such a large number into custody. Prisons were already overcrowded, and the sudden influx seriously exacerbated that situation. The buildings of two universities were converted into prison camps, primarily to accommodate those who voluntarily surrendered. Accommodation for those rounded up by the police was found for some in certain sections of these two prisons. Other camps in various parts of the country were set up. It was found possible to disperse a large number of insurgents within a reasonable period of time. A special investigating unit headed by the former Inspector General of Police was set up by the government to investigate the cases of all insurgents taken into custody. By August 1971, the number in custody had been reduced to under 15,000. Progressively, the numbers were further reduced until all but about 2,000 remain. All but one of the improvised camps have been closed down. For reasons outlined in the introduction, the conditions prevailing in the months immediately following the insurgency are not considered here. What follows is a description of the conditions of the prisoners today, the vast majority of whom are now and will shortly be undergoing sentences passed largely by the Criminal Justice Commission.

Amnesty International has a favourable impression of the part of the prison administration that was seen by the delegates (the visits being limited to Welikada and New Magazine Prison, both in Colombo, and Pallekelle Camp, Kandy, only). Given the difficult physical circumstances of handling vast numbers in prisons constructed in the last century, there appears to be in many parts of the prison administration, a humane and concerned attitude towards the prisoners. But conditions can be improved, particularly in view of the fact that the prisons will now have to settle down to many years of housing and looking after quite a large number of convicted insurgents.

Boards of Visitors

When the insurgency occurred, it coincided with the moment for re-appointing the persons chosen to serve on the Boards of Visitors to the prisons. The government took advantage of their emergency powers not to re-appoint the members. For some three years therefore the independent body of supervisors of prison conditions did not operate, although they have recently been reinstituted, but so far as could be ascertained, not for those held under emergency regulations.

The Sri Lanka prison system is modelled on the English system, under

which boards of visitors form an integral part (see section 6 (1), English Prison Act 1952 and part III of the Prison Rules 1964). The importance of this independent element in the administration of the penal system can hardly be overstated. Three voluntary bodies in England - Howard League for Penal Reform, Justice and NACRO - recently set up a committee under the Earl of Jellicoe to review the workings of boards of visitors. Their report was published in June 1975. Such bodies are the more important in times of emergency. Political prisoners, just as much as ordinary prisoners, need the safeguard of such a body. And the public, both national and international, can feel assured of observance of minimum standards for prisoners only if the ordinary citizen is permitted free entry to prisons as a member of a board of visitors. Since these citizens will have been vetted for their probity and integrity, there is no excuse for any government to claim that emergency situations justify keeping them out or for temporarily disbanding the boards. We recommend that the government go ahead as soon as possible with fully implementing the provisions for boards of visitors to visit all prisoners, including political prisoners, whether they be tried, awaiting trial, or held without charge.

Access to Reading Matter

There was a serious deficiency in the library facilities of Sri Lanka prisons. This was due largely to the fact that until the insurgents were imprisoned, few prisoners made any kind of demands on the prison libraries. It is essential that there should be unrestricted access to all published material, including revolutionary and Marxist literature. All books and articles for study and research should be freely available, including facilities for regular borrowing of books from reputed public libraries. And access to personnel from the educational authorities should be allowed so as to assist the prisoners' studies.

The prison authorities readily acknowledge the need to supply such materials. The difficulties are that foreign currency is in short supply and strenuously enforced so that much literature is not readily purchasable. Amnesty International made arrangements to send funds from the United Kingdom for books to the Commissioner of Prisons who undertook to distribute them to the political prisoners. This arrangement was cleared with the Ministry of Justice.

Prisoners should also have adequate facilities for writing and should be allowed to retain what they write. They should be able to transmit their writings through the official channels to whomever they may wish.

Accommodation

Every prisoner should ideally have his own separate cell. For

political prisoners, it is essential that, apart from his bed, he should have a chair and small desk at which to work. Lighting is a problem, since individual cells do not have their own switch. There is only one switch for a whole ward or cell block. Every prisoner should have a switch to put the light on and off for himself.

Visits

Normal prisoners are entitled to one visit from each of three people once a month. Political prisoners should have the same rights without any restriction as to who visits them. (Presently, some restrictions are in force for security reasons. For example, insurgents convicted in the "main case" (the suspected leadership of the insurgency) may be visited by blood relatives only. Lawyers are no longer allowed to visit their clients.)

Letters

Normal prisoners are allowed unlimited incoming letters but only one per month outgoing. Since political prisoners are on the whole more literate, the prison rules about letters should be more liberally interpreted.

5. TAMIL PRISONERS

Separate from the prisoners detained in connection with the April 1971 insurgency were, at the time of the Amnesty International mission, 42 young members of the Tamil community, arrested and detained since the end of 1972. They were arrested for their agitation (generally peaceful, so Amnesty International understands) for a greater autonomy for the Tamils, who feel that the provisions in the 1972 constitution regarding language and religion discriminate against them. They had been detained without trial under the Emergency Regulations for periods ranging from one year to two and a half years. Fortunately, at the end of the January 1975 mission, 23 of the 42 youths had just been released and the Minister of Justice informed Amnesty International that all but three - against whom, he said, there were substantial criminal charges - would be set free or tried in the near future. But one year later, as of January 1976, five prisoners were still in detention without having been brought to court, despite the Minister's earlier assurance. (For their names, see appendix B-III.)

Whereas the Ministry of Defence and External Affairs, at the time of their release, claimed that all these youths had been held in connection with acts of violence in the north, none of them had ever been charged or tried.[4] Moreover, none of the eight released youths to whom the delegates were able to speak had ever been given the opportunity during their detention to consult a lawyer, since their arrest and detention under the Emergency Regulations does not allow for access to a lawyer unless specific charges have been made. (For a note on the conditions of their detention and release, see appendix D.)

The 1971 emergency was invoked in anticipation of the 1971 insurgency. However, the Emergency Regulations are now used to cover areas which have no relation to the original reasons for declaring the emergency. (Thus, although the political problem posed by the Tamil minority has no connection with the 1971 insurgency, the arrest of its members did, and still can, take place under the wide powers of arrest and detention provided for in the Emergency Regulations.) One of the latest examples of this practice (which particularly affected the Tamil community) was the arrest and

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4. On 2 September 1975 (National Assembly Debates 1975, page 684), the Prime Minister, referring to the detention of these Tamil youths, stated in parliament: "Though some of them admitted in their statements to having committed these offences, the Attorney General, after careful consideration on the material available, advised against the institution of criminal proceedings under the ordinary law. There was a case to continue to keep these persons in detention as security risks. However, on an assurance given by some of the parents and other politicians, including the late Alfred Duriappah, as an act of mercy, I took the responsibility of releasing the majority of them in the hope that they would refrain from participating in further acts of violence.

4. RELEASED PRISONERS

Prisoners who have been released are, according to reliable information received by the Amnesty International mission, still subjected to all kinds of harassment. Thus, a cabinet decision was in force at the time of the mission, barring 183 teachers arrested for their involvement with the insurgency and subsequently released from re-employment. Others have, as a condition on release, to report to the police regularly, while at the same time, restrictions were being imposed on their freedom of movement and political activity (see also appendix D on Tamil prisoners). A prisoner who had been acquitted by the Criminal Justice Commission was barred from participating in any political activity, from entering university and from leaving his home area without permission from the police. The Minister assured Amnesty International that all such cases which came to their notice would be dealt with sympathetically. While the matter could not be investigated during the mission in sufficient detail, Amnesty International feels that a government which puts an admirable stress on rehabilitation of prisoners should certainly exercise the greatest caution in imposing measures which may alienate, rather than contribute towards, the rehabilitation of released prisoners. Moreover, they constitute violations of the government's constitutionally proclaimed aims of freedom of speech, association and movement, as defined in article 18 of the Sri Lanka Constitution. The Sri Lanka government may consider setting up an independent inquiry into the conditions inflicted on prisoners on and after their release from prison.

re-arrest under this legislation of between 150 and 200 Tamil youths, following the killing of the Mayor of Jaffna, Alfred Duriappah, on 27 June 1975. Although the majority of those arrested have been released, unfortunately the prisoners now detained include at least 20 of the 42 Tamils who had just been set free from long periods of detention under the Emergency Regulations. It appears that they have been re-arrested for security reasons, rather than for suspected involvement with the 27 July incident. The Deputy Minister ofDefence and External Affairs stated in parliament on 2 September 1975 that "about 30 of them still continue to be kept under detention on Detention Orders made by the Secretary, Ministry of Defence and External Affairs, as it is considered necessary to continue to have them under detention in the interests of security" (National Assembly Debates, 2 September 1975, page 694). According to information available to Amnesty International as of January 1976, 50 Tamils are detained under the Emergency Regulations, of whom none have been brought to court on criminal charges. (For a list of their names, see appendix B-III). Amnesty International does not question the right of any government to try any persons who can be charged with criminal offences. In accordance with the recommendations made under III above regarding prisoners held following the insurgency, Amnesty International recommends that the process of investigation be speeded up so that those against whom evidence exists that they have committed acts of violence can be brought to trial and the remainder be released in the immediate future.

Another use of this practice was the declaration on 21 December 1974 of the Emergency (Prevention of Subversion) Regulations number 143/1 which states that:

> "No person shall otherwise than in proceedings in the National State Assembly, or in the proceedings before any court of law by words or conduct or by any other representations made or uttered deny or in any other manner defy, challenge or question the validity of the constitution of the Republic of Sri Lanka or any provisions thereof."

This provision constitutes a serious curb on the freedom of expression provided for in article 18 (g) of Sri Lanka's constitution, and particularly restricts the means for democratic opposition of the Tamil minority.

APPENDIX A

RELEASES, TRIALS AND SENTENCES OF PRISONERS ARRESTED FOLLOWING THE APRIL 1971 INSURGENCY

I. Releases

According to the Secretary of the Criminal Justice Commission, alleged insurgents had been classified and released according to the following system: five concentric circles representing involvement in the insurgency, from the outermost, "A", standing for those with minimal involvement (ie taking part only in a few of the five classes which had been organized by the JVP), to the innermost, "E", representing the leaders of the movement, already tried in the "main case". Categories A and B were the first to be released, the vast majority in 1972. Categories C,D and E actually consisted of "combats", those who had taken an active part in the fighting or the planning of it. They numbered 2,900 according to the Secretary. Most of the prisoners in Category C (minor involvement in the fighting) had been released on suspended sentences, provided that they had pleaded guilty to the charges. Those who pleaded "not guilty" were kept in detention to be tried later in the area inquiries. It is these persons, as well as prisoners in Category D (major involvement in the fighting) who are now being tried before the commission.

II. Trials before the Criminal Justice Commission

On 31 December 1974, 3,816 suspects had been charged with criminal offences. Of these, 2,919 persons were brought before the Criminal Justice Commission (the rest consisting of cases of persons released by order of the Ministry of Justice, or of suspects who had not been taken into custody). All these persons have been brought before the commission where their pleas of guilty or not guilty were recorded.

Total number of insurgents who pleaded guilty before the commission	2,538
Total number of insurgents who pleaded not guilty before the commission	388
Total number of prisoners brought before the commission	2,919
Total number of prisoners released on suspended sentences	2,322

Total number of prisoners released due to lack of evidence	1
Total number of prisoners released despite State Counsel request for deterrent sentences	17

Prisoners are tried in 134 area inquiries. Inquiry Number 1, the "main case", consists of those thought to be the leaders of the insurgency. Inquiry Number 2 consists of those thought to have taken part in the attack on the Prime Minister's house. The remaining 132 are inquiries relating to the 132 alleged attacks on police stations.

III. Sentencing by the Criminal Justice Commission[5]

So far, 16 inquiries have been completed, and 195 prisoners have been sentenced to terms of imprisonment ranging from one to 20 years.

Sentences passed in the "Main Case" (Inquiry Number 1)

Not guilty	4
Life imprisonment (later commuted to 20 years)	1
12 years imprisonment	3
8 years imprisonment	1
7 years imprisonment	4
5 years imprisonment	13
3 years imprisonment	6
2 years imprisonment	1
2 years imprisonment - suspended	3
TOTAL	37

(41 suspects in all, of which 37 were produced before the commission.)

5. The Minister of Justice reported in parliament on 25 November 1975 (National Assembly Debates, volume 17 (1) - 176), that 300 persons were in custody awaiting trial before the Criminal Justice Commission. Of these, the Minister considered 200 to be recommended for bail.

Sentences passed as of 31 December 1974 in other inquiries

8 years imprisonment	8
7 years imprisonment	9
6 years imprisonment	7
5 years imprisonment	21
4 years imprisonment	27
3 years imprisonment	25
2 years imprisonment	80
TOTAL	177

Total number of prisoners awaiting trial before the Criminal Justice Commission after pleading guilty	18
Total number of prisoners awaiting trial before the Criminal Justice Commission after pleading not guilty	381
TOTAL awaiting trial before the Criminal Justice Commission	399

APPENDIX B

I. Prisoners detained under Emergency Regulations without trial in Pallekelle Camp, Kandy, since 1971:

Nandasena
Chara
Maydagoda
Tikkeribanda (alias A. Wijeesoria) (reportedly released following mission)

II. Prisoners known to be detained without trial or charge on orders of the Permanent Secretary of the Ministry of Defence and External Affairs:

- Ananda Wijeweera — Arrested December 1972. Brother of Rohana Wijeweera, leader of JVP. Held Bogambara Prison, Kandy.
- Dharmasekera — Arts graduate of Vidyalanka University. President of Student Union. Connections with JVP broken in April 1970. Took no part in 1971 insurgency. Taken into custody in 1973. Held since without trial or charge.
- Gamini Yapa — Member "East Wing". Arrested 1973. No charges are known.

III. Tamil prisoners held without trial under Emergency Regulations:

NAME	DATE OF ARREST	PLACE OF DETENTION
N. Amerasingam (A)*	12 July 1972	Bogambara
Ponnuthurai (A)	20 February 1973	Welikada
G. Gnanasekaram (A)	15 January 1973	Bogambara
P.V. Tissaverasingam (A)	16 March 1973	Welikada

* (A) - Prisoner adopted by Amnesty International
(I) - Prisoner whose case is under investigation by Amnesty International

NAME	DATE OF ARREST	PLACE OF DETENTION
P. Nadesananthan (A)	24 July 1974	Bogambara
K. Sivanandan (A) (alias Kasianandan)	first arrest: 9 June 1972; released late 1974; re-arrested 2 August 1975.	Welikada
A. Mahendran (I)	c 22 August 1975	Welikada
Namasivayam Ananda-Vinayagam (A)	first arrest: 10 June 1972; released June 1975; re-arrested 28 July 1975.	Welikada
Somasundaram Senathirajah (I)	first arrest: 9 March 1973; released May 1975; re-arrested 1 August 1975.	Welikada
M. Sinniah Kuventhirarajah (A)	first arrest: c 9 July 1972; released March 1975; re-arrested 2 August 1975.	Welikada
A. Mylvaganam Rajakulasuriar (I)	first arrest: 30 June 1972; released May 1975; re-arrested 2 August 1975.	Welikada
Anandar Poopathy Balavadivetkaran (I)	first arrest: 9 March 1973; released March 1975; re-arrested 2 August 1975.	Welikada
Sivaramalingam Chandrakumar (I)	first arrest: 9 March 1973; released March 1975; re-arrested 28 July 1975.	Welikada
Sivaramalingam Suriakumar (I)	first arrest: 28 July 1973; released March 1975; re-arrested c 20 August 1975.	Welikada
Thambithurai Muthukuarasamy (A)	first arrest: 18 May 1972; released c November 1972; re-arrested c November 1972; released c September 1974; re-arrested 28 July 1975.	Welikada
Aseervatham Thasan (I)	first arrest: 15 January 1973; released December 1974; re-arrested c 1 August 1975.	Welikada

NAME	DATE OF ARREST	PLACE OF DETENTION
K. Sundarampellai Sabaratnam (I)	first arrest: 10 March 1973; released January 1975; re-arrested 1 August 1975.	Welikada
Annamalai Varatharajah (I)	detained for three or four months in 1972; re-arrested 2 August 1975.	Welikada
S. Appathurai Nithianandan (I)	first arrest: May 1973; released 2 March 1974; re-arrested 28 July 1975.	Welikada
Sithamparam Pushparajah (I)	first arrest: June 1974; released June 1975; re-arrested 1 August 1975.	Welikada
Ramalingam Balendran (I)	first arrest: June 1974; released June 1975; re-arrested 28 July 1975.	Welikada
Ponnuthurai Satkunalingam (I)	first arrest: May 1974; released May 1975; re-arrested 30 July 1975.	Welikada
Kurululesingam	30 July 1975	Welikada
T. Jeevarajah	1 August 1975	Welikada
M. Balaratnam	1 August 1975	Welikada
P. Veeravagn	August 1975	Welikada
K. Sutharsen (I)	17 July 1975	Bogambara
K. Sivajeyam (I)	first arrest: 9 June 1972; released December 1974; re-arrested 31 July 1975.	Bogambara
Thambipillai Santhathiar (I)	6 August 1975	uncertain
Amirthalingam Anandakumar (I)	6 August 1975	uncertain
Yogarajah	31 July 1975	uncertain
Vaithulingam Sritharan (I)	12 August 1975	uncertain
V. Sathasivam Sathanandasivan	27 August 1975	Jaffna Prison
Somu Kulasingam	27 August 1975	Jaffna Prison
Selvaratnam Selvakumar (I)	28 August 1975	uncertain
Ratnapala (I)	31 August 1975	Welikada
Joha Chandran (I)	August 1975	Welikada
Rajendram Jeyarajah	8 September 1975	uncertain
Visvajothy Ratnam	19 September 1975	Kings House, Jaffna
P. Kalapathy (I)	19 September 1975	Kings House, Jaffna

NAME	DATE OF ARREST	PLACE OF DETENTION
S. Logenathan (I)	19 September 1975	Kings House, Jaffna
Arumugam Kirubakaran (I)	21 September 1975	Kings House, Jaffna
Ranjan	August 1975	Welikada
Varithamby Sivarajah	18 September 1975	Welikada
Muthuthamby Vasanthakumar	18 September 1975	Welikada
Mr Mary Alphonzo	September 1975	Welikada

(as at May 1976)

APPENDIX C

DEATH PENALTY IMPOSED ON PRISONERS FOR ACTS COMMITTED DURING THE 1971 INSURGENCY

Although a number of persons charged with murder committed during the 1971 events were tried before the Criminal Justice Commission (which is prohibited from imposing the death penalty), as of June 1975, 12 young men had been sentenced to death by hanging by the ordinary courts for similar acts committed during the insurgency. The fact that some prisoners have been given prison sentences, but that others are awaiting execution of death sentence for committing similar offences is merely the result of an administrative decision of the Attorney General's department not to try them before the Criminal Justice Commission.

Encouraged by the Sri Lanka government's emphasis on a policy of rehabilitation of all political prisoners who took part in the 1971 insurgency, Amnesty International appeals to the government that executive clemency be extended to those prisoners whose appeals to the Supreme Court are not successful.

Up till June 1975, the following 12 prisoners had been sentenced to death, of which ten are awaiting execution in death row:

1. Robert Wickremasinghe: approximately 20 years old. Unemployed. Convicted by the Galle High Court (HC 165) of charges under S 140, S 296 read with S 146, S 300 read with S 146, S 296 read with S 32 and S 300 read with S 32 of the Penal Code.

2. Kaluwa Dewa Premasiri: 18 years old, student. Convicted as Robert Wickremasinghe in the same case before the Galle High Court (HC 165). Also sentenced to death in HC 168. (Reportedly escaped from prison.)

3. Illandari Dewa Tilakasena: convicted as Robert Wickremasinghe in the same case before the Galle High Court (HC 165).

4. Illandari Dewa Wipulasena: convicted as Robert Wickremasinghe in the same case before the Galle High Court (HC 165).

5. Illandari Dewa Piyasena: convicted as Robert Wickremasinghe in the same case before the Galle High Court (HC 165).

6. Illandari Dewa Siripala (alias Jagath): convicted as Robert Wickremasinghe in the same case before the Galle High Court (HC 165).

7. Udawala Hewage Wyman Jayatileke: sentenced by the Galle High Court (HC 168) on charges under S 140, S 296 and S 296 read with S 146 of the Penal Code. (Reportedly escaped from prison.)

8. Ambalangoda Guruge Gunasiri: sentenced as Jayatileke in the same case before the Galle High Court (HC 168).

9. Wedarasa Hahuru Wimaladasa: sentenced as Jayatileke in the same case before the Galle High Court (HC 168).

10. Sudu Hakuru Sapin: 43 years old, married, six children. Sentenced on 19 October 1974 before the Galle High Court (HC 71) on charges of murder.

11. Wellawatte Aratchchige Gunapala Jayatilleke: in his twenties, married. Sentenced on 19 October 1974 by the Galle High Court in the same case (HC 71) on charges of murder.

12. Thomme Hakuru Tillakaratna: sentenced on 24 June 1975 before Galle High Court on charges of murder.

(as at May 1976)

APPENDIX D

CONDITIONS OF DETENTION AND RELEASE FOR TAMIL PRISONERS

The prisoners were arrested from the Tamil-speaking area in the north, mostly from Jaffna and the surrounding area. But soon after their arrest, prisoners were moved to prisons such as Bogambara (Kandy) and Welikada (Colombo), far away from where their families live. Often the prisoner was the breadwinner of his family and his detention had serious repercussions on the family's financial situation. Amnesty International met families who had not been able to visit the prisoner for a year, since no money was available. When Amnesty International proposed to the Permanent Secretary to the Ministry of Justice that if their continued detention were considered necessary, the prisoners should at least, for humanitarian reasons, be transferred to an area easily accessible to their families, the Secretary replied that this was not possible for security reasons. While we have no first-hand knowledge of this, we were told that the government has conscientiously carried out a scheme providing for financial support for the families of prisoners held in connection with the insurgency, if the detainee is the breadwinner of his family. However, no such facilities exist for the families of Tamil prisoners.

Prisoners were detained under the Emergency Regulations both on order of the Permanent Secretary of the Ministry of Defence and External Affairs for security reasons, as well as in some cases formally on remand. The 15 days detention in police custody did apply and four of the eight released prisoners alleged that they had been severely assaulted by the police in the police station in Jaffna or in the CID headquarters in Colombo. Released prisoners had said they had little access to literature and, contrary to other political prisoners, had no access to any political literature. Before release, the families of the prisoners were often asked to assure that the prisoner would not engage in any political activities. On their release, most of the prisoners had to sign bonds issued by the superintendent of the prison from where they were released to report regularly to the police, not to leave the area without the consent of the police, and to undertake not to break any law (including regulations made under the emergency). Apart from any other considerations, such bonds have the effect of creating difficulties for the prisoner when seeking re-employment.

Amnesty International has noted a statement regarding the prisoners' detention of the Prime Minister, made in parliament by the Deputy Minister of Defence and Foreign Affairs on 2 September 1975, reading:

> "Regarding the Honourable Member's request for relatives and lawyers to see these persons, each case will have to be dealt with individually."

It is suggested that the recommendations made in chapters 3 and 4 of

this report, particularly relating to the unrestricted access of visitors, similarly apply to Tamil prisoners and that the government pay special attention to the matter of financial assistance to families of Tamil prisoners, along the lines of the existing provisions for the families of prisoners held in connection with the insurgency.

APPENDIX E

We give here an example of the three cases of ill-treatment in police custody which occurred and were reported to Amnesty International after the AI mission took place.

Selvaratnam SELVAKUMAR, a member of the Tamil minority, was arrested on 28 August 1975 under the emergency regulations, in the period that a number of young Tamils were arrested, following the killing of the Mayor of Jaffna on 27 July 1975. According to reliable reports which reached AI, Mr Selvakumar was assaulted by an officer of the Criminal Investigation Department on 10 September 1975. He was admitted to the Government General Hospital, Jaffna, on 1 October 1975 with complaints of back-ache and chest pains. He was lodged in Ward 14B, bed number 12, till his discharge on 5 November 1975, to be further examined. He was re-admitted to the same ward in the same hospital on 12 November 1975 with the same complaints, until discharged on 29 November. After his transfer to Welikada Prison, Colombo, he was moved into the prison hospital in February 1976. X-rays were taken, revealing marks on his back and chest and, on 27 May 1976, an operation had to be performed in connection with his complaints. Only recently it became known that Mr Selvakumar was one of the seven young Tamils who had been charged with conspiracy to murder the Mayor of Jaffna. They are to be tried before a trial at Bar under the special provisions of the emergency regulations.

There is still concern about Mr Selvakumar's health.

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