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@Recent changes to Emergency Regulations

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On 3 February 1993 President Ranasinghe Premadasa made several amendments to the Emergency (Miscellaneous Provisions and Powers) Regulations¹ which apparently curtail certain excessive powers granted to the security forces under the state of emergency. They include alterations to arrest, detention and inquest procedures. Amnesty International had previously expressed concern about these procedures and called for specific safeguards to be introduced to protect prisoners from torture, "disappearance" and being deliberately killed in custody.² The recent amendments to the Emergency Regulations do not introduce the safeguards necessary to protect prisoners from such gross violations. This report summarizes the changes made to emergency arrest, detention and inquest procedures and points out their shortcomings. It updates *Sri Lanka: An assessment of the human rights situation*, which contains fuller discussion of the safeguards Amnesty International recommended to protect against gross abuse of human rights.

The government has claimed that the recent amendments to Emergency Regulations were recommended by the Human Rights Centre at the University of Colombo, which recently reviewed the Emergency Regulations for their conformity with international human rights standards. In fact, the amendments fall far short of the specific

¹ These will be referred to as the "Emergency Regulations" hereafter.

² See *Sri Lanka: Emergency Regulations regarding post-mortems and inquests*, AI Index: ASA 37/05/90, March 1990; *Sri Lanka - The Northeast: Human rights violations in a context of armed conflict*, AI Index: ASA 37/14/91, September 1991; *Sri Lanka: An assessment of the human rights situation*, AI Index: ASA 37/01/93, February 1993.

recommendations made by the Human Rights Centre. They also do not address more general issues raised by the Human Rights Centre such as whether an island-wide state of emergency remains justifiable and the problem that the texts of new regulations and of amendments to existing regulations are not readily available to lawyers and other members of the public.

Arrest and detention procedures

The regulations governing arrest and detention procedures have been amended in several respects. Crucially, however, they still fail to provide for prompt, independent judicial supervision of detainees and still permit long periods of detention in police custody. There is still no prohibition of secret detention: detainees can now be held indefinitely in any place authorised by the Secretary to the Ministry of Defence (where previously the Inspector General of Police or a Deputy Inspector General of Police could decide upon the place of detention), and there is no requirement that authorised places of detention must be made known publicly. The amendments do not require that certificates of arrest be issued as a matter of routine during cordon and search operations, which would help protect against the future "disappearance" of prisoners, despite the fact that orders requiring certificates to be provided were issued from Army Headquarters on 1 July 1992.³ They also do not require that all arrests, transfers of detainees and releases be reported promptly to the Human Rights Task Force, which is supposed to maintain a complete, central register of detainees but cannot fulfil this task if proper reporting procedures are not introduced.

Detainees held under preventive detention orders (ER 17) and those held for investigation (ER 18) should be seen by a magistrate within a month, as magistrates are required under the Emergency Regulations to visit places of detention at least monthly. However, the regulations still do not require that magistrates be informed of the places where these prisoners are held. It is therefore likely that many places of detention are not visited. The recent amendments only require that, *at the time of their visits*, magistrates must be given a list naming all detainees held there.

Persons held for investigation under ER 18 could previously be held in police custody for 90 days, and had to be produced before a court within this period. The time limit has now been reduced to 60 days. Given that the most serious abuse of prisoners usually takes place during the initial period of detention, when the prisoner is under interrogation, this reduction to 60 days in police custody appears primarily cosmetic. The University of Colombo Centre for Human Rights recommended that detainees be seen by a magistrate as soon as possible. It is possible for prisoners held in preventive detention (ER 17) to be held in police custody indefinitely. The basic principle that those responsible for prisoners' custody should be separate from those responsible for their interrogation has not been fulfilled.

Provisions governing the detention of people who surrender have been amended to limit the time they can be held in the custody of the police and armed forces. Previously

³ In practice, these orders were not implemented. Amnesty International delegates who visited Sri Lanka in October - November 1992 found that no certificates of arrest were being issued by the military.

"surrendees" had to be handed to the care of the prison or rehabilitation authorities within 28 days; the time period is now reduced to seven days.

Under the amended regulations, powers of arrest are limited to members of the police and armed forces; other persons authorized by the President are no longer empowered to make arrests. This is a welcome limitation of powers. The arresting officer is now required to report each arrest to a superior officer within 24 hours, but there is no requirement that this information be transmitted to the Human Rights Task Force or any other independent body. This procedure is thus of only limited protective value.

Previously, preventive detention orders did not need to be renewed. The amendments now limit the duration of each order to three months, which is a welcome development, but set no limit on the number of times an order can be renewed. Prisoners can thus still be held in preventive detention without time limit. The University of Colombo Human Rights Centre has recommended that a limit be placed on the time prisoners can be held in preventive detention. Detainees can also be referred for "rehabilitation" for prolonged periods of time. Those who have surrendered under ER 21 could technically be held for "rehabilitation" indefinitely.

Regarding the issue of certificates of arrest during cordon and search operations, the amended regulations require only that certificates be issued to a close relative "if a request is so made". This limitation renders the procedure meaningless; the procedure can only serve a protective function if enforced as a matter of routine. Security forces personnel are likely to deny that any request for a certificate was made, and prisoners and their relatives may fear requesting a certificate from the military.

Post-mortem and inquest procedures

Emergency Regulations (ER 55B-G) provide a special, secret inquest procedure in specified cases. Under this procedure only the evidence provided by the police is admissible; relatives of the deceased or other interested parties need not be informed that it is being held; the hearing must be held *in camera* and the judge can only report the findings to the Attorney General. Prior to the recent amendments, this procedure applied to deaths in custody when the Inspector General of Police deemed it necessary. Amnesty International was concerned that the existence of this procedure could facilitate the cover-up of deliberate killings of prisoners and of deaths resulting from torture. The amended regulations now limit application of this secret procedure to cases "where a police officer or a member of the armed services has reason to believe that the death ... may have been caused as a result of or in the course of any armed confrontation between the police or the armed services...". The procedure can therefore now be invoked, with no grounds for challenge, on the basis of a *claim* by the security forces that the death *may* have resulted from armed confrontation. Although apparently removing deaths in custody or other illegal, deliberate killings from this wholly inadequate investigative procedure, the amended regulations could still be used to cover up illegal killings. The amended regulations remove the very basis of an adequate inquest procedure, which is that it should publicly determine the causes and circumstances of death. The University of Colombo Human Rights Centre asked for this emergency to be removed, and for a return to normal inquest procedures in all cases.

Conclusion

Amnesty International continues to urge the Government of Sri Lanka to implement fully its recommendations for the protection of prisoners, for the prevention of extrajudicial executions and for the thorough investigation of human rights violations.