

£SRI LANKA

@New emergency regulations

The President of Sri Lanka issued a new set of Emergency (Miscellaneous Provisions and Powers) Regulations on 17 June 1993 which alter the emergency procedures for arrest and detention, among other things. The regulations of the same name issued in June 1989, and their amendments, have been rescinded. The new regulations have been issued in a single volume which appears to provide a consolidated set of all regulations currently in force. This is deceptive, however, as regulations on other subjects dealt with under the emergency after June 1989 still remain in force, and their provisions are not included in the newly published regulations of 17 June even when they affect detention procedures.

This report is concerned with only certain aspects of the regulations related to Amnesty International's main concerns in Sri Lanka. Amnesty International works, among other things, for the release of prisoners of conscience; for the prompt and fair trial of all political prisoners; for an end to torture and the death penalty in all cases; and for a halt to extrajudicial executions and "disappearances". In addition to campaigning on behalf of individual victims of such violations, Amnesty International also examines laws and procedures which might facilitate the commission of these violations, and makes recommendations for legal and procedural safeguards to protect against them.

Of particular concern are the emergency regulations governing arrest and detention procedures and those governing post-mortems and inquests when deaths have occurred in custody or as a result of the official action of the security forces. Amnesty International has expressed concern to the Government of Sri Lanka for several years about the broad powers of arrest and detention granted under emergency regulations and the fact that detainees can be held in conditions which facilitate torture and "disappearance". The regulations have been altered to address some, but not all, of these concerns. On the positive side, for example, secret detention has now been prohibited and defined as a punishable offence under the regulations, and a list of authorized places of detention has been published. But the regulations still provide for indefinite preventive detention on renewable, three-monthly detention orders - including of people whom Amnesty International would consider prisoners of conscience. They also continue to permit detainees to be held in conditions conducive to torture: they provide for detainees to be held for long periods in police and, in the northeast, military custody. As a basic safeguard against torture, Amnesty International has for many years recommended that no prisoner should be held for long periods in the custody of those responsible for their interrogation. In addition, this report also looks briefly at the issue of impunity and emergency law.

The introduction in law of new procedures and safeguards is not in itself sufficient to protect human rights. Illustrative cases included in this report demonstrate that many procedural safeguards are not implemented in practice, and that secret detention continues.

The emergency regulations governing post-mortems and inquests have not been altered significantly. The thorough investigation of all such deaths is an important means of

preventing illegal killings by security forces personnel. The procedures provided under the regulations still fail to provide an adequate investigative procedure and could be used to cover-up illegal killings.

Amnesty International continues to urge the Sri Lankan authorities to ensure that all laws in force, including the Emergency Regulations and the Prevention of Terrorism Act, are brought into line with international human rights standards such as the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka acceded to in 1980, and the United Nations (UN) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

Background

Sri Lanka has been ruled under emergency law continuously since 1983, except for five months during 1989 when the then President, Ranasinghe Premadasa, lifted the emergency. Emergency Regulations have granted sweeping powers to the security forces and others, and have facilitated the commission of gross human rights violations. Amnesty International and other human rights organizations have for many years drawn these problems to the attention of the Government of Sri Lanka and urged it to ensure that all laws in force are brought into line with international human rights standards.

In September 1991 Amnesty International made a series of recommendations for human rights safeguards in the context of a report on human rights violations in northeastern Sri Lanka¹. The government announced its acceptance of 30 out of 32 of the recommendations, some of which were concerned with arrest and detention procedures, and with the need for the full and impartial investigation of alleged extrajudicial executions.²

In January 1992, the United Nations Working Group on Enforced or Involuntary Disappearances published its report on its October 1991 visit to Sri Lanka, and the Government of Sri Lanka also announced its acceptance of their recommendations. With regard to the Emergency Regulations, the Working Group said:

The Prevention of Terrorism Act, the Emergency Regulations currently in force, as well as other pertinent parts of the present legislation, should be brought into line with accepted international standards regarding due process and the treatment of prisoners. Grounds for and powers of arrest, as well as grounds for the transfer of detainees, should be clearly circumscribed. Time limits for

¹ See *Sri Lanka - The Northeast: Human rights violations in a context of armed conflict*, AI Index: ASA 37/14/91, September 1991.

² The two recommendations that the government rejected were both concerned with impunity: it refused to extend the mandate of the Presidential Commission of Inquiry into Involuntary Removals to enable it to investigate "disappearances" which took place before 11 January 1991. It also refused to repeal the Indemnity (Amendment) Act.

bringing a person before a judge following his arrest should be drastically shortened, as the present time limits appear excessive.

The government has said that the changes made to the Emergency Regulations in June 1993 were made taking into consideration the recommendations of the Centre for the Study of Human Rights at the University of Colombo (CSHR) and other human rights organizations. However, the regulations have not yet been completely revised and many of the recommendations for revision of arrest and detention procedures made to the government by international and local human rights organizations have not been incorporated.

In 1992 the CSHR undertook a systematic study of the emergency regulations and submitted to the government a set of recommendations for reform. The CSHR report was made public in February 1993. The CSHR made four overall recommendations and also commented on each regulation of which it was aware. It noted that the protection of human rights was undermined by the piecemeal manner in which the regulations were issued, which made public access difficult, and created uncertainty about which regulations were in force at any given time.

The CSHR's general recommendations were:

- that emergency powers should never be used for reasons of expediency to circumvent the normal legislative process;
- that those regulations with no bearing on public security concerns, and those which are no longer relevant, should be rescinded;
- that those regulations which are too broadly framed, and those which do not contain sufficient safeguards for basic rights, should be revised;
- that wide publicity should be given to emergency regulations when they are promulgated; that each regulation should have a preamble explaining why it has been promulgated; and that an official compilation of regulations should be published with an index of amendments and with periodic updates.

At the United Nations (UN) Commission on Human Rights in Geneva in March 1993, the Government of Sri Lanka undertook, among other things, to complete "a comprehensive review and revision of the emergency regulations relating to arrest and detention, taking into account the recommendations of the study being carried out by the Human Rights Centre of the University of Colombo", and to compile and publish "a consolidated version of all current Emergency Regulations to promote public awareness". The new set of emergency regulations issued on 17 June 1993 appears to fulfil the government's commitment to publish a consolidated volume of regulations currently in force, but in fact it fails to do so (see below). There was very little publicity when the new set of regulations were promulgated, and even when the text became available from the government printers in July 1993 many lawyers were still unaware that they had been altered

and reissued. More recently, however, further emergency regulations promulgated by President Dingiri Banda Wijetunga have been publicised and reproduced in the press.

At the UN Sub-commission on Prevention of Discrimination and Protection of Minorities in Geneva in August 1993, the Sri Lanka Government described the changes it had made to the regulations. It stated that the revisions made fewer acts - and only those which necessarily threaten national security - punishable under the regulations and that powers of arrest and detention had been limited to acts which necessarily threaten national security. The statement also referred to changes in arrest, detention, rehabilitation and surrender procedures. The government said that further revisions would be made in the future to revoke unnecessary regulations and to identify those which could be enacted through the normal legislative process.

As the analysis of the regulations given below shows, the revised regulations still fail to protect adequately against the abuse of prisoners in custody, and the acts covered by the regulations, including those for which people can be held in preventive detention, are not restricted to those which necessarily threaten national security. For example, it remains possible under the regulations to detain a person for the expression of legitimate grievances against the government or public officers.

In addition, it is clear that no attempt has yet been made to amend or remove all those regulations which are too broadly framed, which do not provide necessary safeguards, or which are impractical and anyway not enforced. One example of such a regulation is ER43, which remains unaltered³ and requires that police officers and members of the armed forces who have caused a death in the course of their duty must be detained in police or military custody. This regulation does not recognise that police and armed forces personnel may, entirely lawfully, cause deaths in the course of duty and fails to specify the circumstances in which the detention of police and armed forces personnel may be appropriate.

Although the government undertook to remove from the Emergency Regulations any regulation which has no bearing on public security concerns, it has since promulgated new regulations with no apparent connection to public security. On 22 December 1993 the president promulgated new regulations requiring the registration of non-governmental organizations (NGO) and monitoring of their income and expenditure. Any NGO which does not register or which fails to submit the required statement of accounts can be fined, and its officers imprisoned for up to five years. According to a news release issued by the Presidential Secretariat, these matters were dealt with under emergency law "as the enactment of legislation is going to take time". The statement attempts no justification of these regulations in terms of public security concerns.

Arrest and detention procedures

The regulations provide for several different kinds of administrative detention, each of which has its own procedures which are outlined below. **Preventive detention** can be used to hold

³ Previously, this regulation was numbered ER55A.

a person indefinitely in order to prevent him or her from committing specified acts; **detention for purposes of investigation** can be used to hold a person for a specified period of time if they are suspected of having committed a particular offence under the regulations; **detention for rehabilitation** provides for detainees to undergo a specified period of rehabilitation before release, despite the fact that they have not been charged or tried for any offence; and for people who **surrender** to the security forces, specific detention procedures are now provided.

From the point of view of any particular prisoner, however, these forms of detention need not be entirely distinct. Individual prisoners might find themselves held in different kinds of detention at different times during a continuous period of imprisonment. For example, a person arrested on suspicion of having committed a particular offence - which should mean under the regulations that there is a clear limit to the length of time he or she can be detained while investigations are carried out - might find that the basis for his or her detention has been changed to preventive detention, which means he or she can now be held indefinitely on renewable, three-monthly detention orders. The regulations now explicitly envisage this possibility. The same person could then find that a committee had recommended them for a certain period of "rehabilitation", after which he or she would be released. Similarly, a person who surrendered might first be held in custody under the provisions for those who surrender and then be put into preventive detention, or detained for the investigation of specific offences.

A further form of detention in police or armed forces custody for a limited period is also provided under the ER, even after a detainee has been transferred to prison custody. ER39 enables police and armed forces personnel who are investigating emergency offences to take prisoners back into their custody for up to 48 hours with the written approval of a Deputy Inspector General of Police, and after notifying the relevant magistrate. This is an improvement on the earlier provisions, which permitted the police to move prisoners from place to place for investigations for up to seven days without any safeguards. The CSHR had commented that this earlier provision was "unjustifiable" given the high level of reported "disappearances" of detainees. The new provisions, however, fall short of providing the safeguards which the CSHR had recommended: these were that court permission should be required before a prisoner could be taken back into custody in this manner, and that a prison officer should accompany the detainee as required under Section 115(4) of the Code of Criminal Procedure Act.

Preventive detention

Most long-term detainees in Sri Lanka are held under ER17, which provides for preventive detention on renewable, three-monthly detention orders.⁴ These detention orders must be issued by the Secretary to the Ministry of Defence (hereafter, Defence Secretary). No limit

⁴ Long-term detention without trial is also possible under the Prevention of Terrorism Act (PTA), up to a limit of 18 months' detention.

is set on the number of times these orders can be renewed, so in practice a person can be detained under ER17 for as long as the emergency remains in force.

The CSHR had recommended that a limit be set on the length of time a person could be detained. No such limit has been introduced. It had also called for there to be a judicial review of the detention order. No such review has been introduced. It made the following points on these matters, all of which remain valid:

The most undesirable element of Regulation 17 is that it provides for indefinite detention which could be in police custody and does not provide for any judicial review of the detention order. So far, the only form of scrutiny of such detention orders has been made by the Supreme Court under its fundamental rights jurisdiction and even that has its limitations; it is not possible for every detainee detained under ERs to go to the Supreme Court; hence, it [is] necessary to provide for a systematic form of judicial review of a detention order made under this ER [Emergency Regulation] within a reasonable time of the arrest and detention of a detainee and also give power to the authorised judicial officers to either detain the person in judicial custody or to order the release of the detainee if necessary after providing security; it is essential that a limit to the period of detention under the Regulation be stipulated.

Grounds for detention

People can be held in preventive detention when the Defence Secretary is satisfied that they must be imprisoned to prevent them from committing certain kinds of act. The grounds for holding people in preventive detention have been changed, but it cannot be said that they have been narrowed overall. Some offences have been removed and others have been added. Although the government claimed that powers of arrest and detention have now been confined only to those acts which necessarily threaten national security, this is not in fact the case. For example, acting "in any manner prejudicial ... to the maintenance of essential services" remains a broadly-phrased ground for placing a person in preventive detention, and could include within its scope trade-union activity within sectors defined as "essential services".

In some respects the grounds for detention have been broadened. The regulations previously defined as a punishable offence the act of "influenc[ing] ... any person ... with the intention of inducing ... a public officer ... to exercise ... in any manner the lawful powers of the public officer". Previously, the expectation that a person intended to commit this "offence" did not provide grounds for putting them into preventive detention. Yet now it does: people can be held in detention to prevent them from criticizing public officers' failure to perform their duty, for example (now ER25(c)).⁵

⁵ New Emergency Regulations promulgated on 20 December 1993 amend ER25 and prescribe up to 20 years' imprisonment and a fine for sedition and incitement. They provide potential for greatly restricting the right to freedom of expression, and for the imprisonment of prisoners of conscience. The new regulations are almost

Places and conditions of detention

Detainees can now only be held in places of detention which have been authorized by the Defence Secretary, and a list of authorized places was published by the Defence Ministry on 29 June 1993. It lists 343 authorized places and includes prisons, certain army camps and hundreds of police stations. It is now a specific offence under the regulations to hold a detainee in any other place, which is a welcome development, and fulfils one of Amnesty International's long-standing recommendations for human rights safeguards. However, Amnesty International remains seriously concerned that secret detention continues in practice.

No attempt has been made to separate responsibility for custody and responsibility for investigation, which is a fundamental safeguard against ill-treatment and torture. Amnesty International, the CSHR, the CRM and others had all called for the strict separation of responsibility for custody and investigation. Prisoners held in the custody of their interrogators, be they military or police, are most at risk of torture. Under the regulations, prisoners in preventive detention can be held indefinitely in police or military custody, and there are time limits set on police and military custody for those detained for investigation (see below).

No minimum standards have been set to govern conditions of detention for those held under the Emergency Regulations.⁶ The CRM and the CSHR had called upon the government to remedy this situation and to ensure that certain minimum rules regarding conditions of detention should be guaranteed at all times. The regulations specify that the Defence Secretary can suspend provisions of the Prisons Ordinance and Prison Rules for detainees held in prisons, and they set no standards at all for those held in police stations and army camps. There is therefore no guarantee that detainees will have access to even the most basic facilities. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the United Nations General Assembly on 9 December 1988, sets out certain basic facilities which all detainees and other prisoners should have. These include access to lawyers, family visits and correspondence, and medical examinations. The Body of Principles also specifies that all detainees and other prisoners "shall be treated in a humane manner and with respect for the inherent dignity of the human person". For this requirement to be met, there should be minimum standards to ensure that detainees are treated humanely, without hindrance to the use of their senses, without being held *incommunicado* for long periods and ensuring their access to adequate food, bathing and toilet facilities at least. No such safeguards exist for those held under the Emergency Regulations or the PTA at present.

identical to the previous ER26 of June 1990. The expectation that a person might commit such an offence also provides grounds for holding them in preventive detention.

⁶ Similarly, no standards are set under the PTA for conditions of detention.

Judicial supervision of detention

Another basic safeguard for detainees is that there be prompt, judicial supervision of their detention. This is still lacking under the Emergency Regulations.⁷ Amnesty International, the CSHR and CRM had all recommended that systematic judicial supervision of detention should be introduced.

The regulations do not require detainees held under ER17 (that is, in preventive

Secret and unacknowledged detentions in Colombo: Some Tamil people have been arrested by groups of armed men in military or civilian dress, blindfolded and taken to secret places of detention, where they have been held for at least one week, interrogated and tortured or ill-treated to make them confess to involvement with the Liberation Tigers of Tamil Eelam (LTTE), the armed separatist group which is fighting government forces, especially in northeastern Sri Lanka. In these cases, according to Amnesty International's own findings, families have no idea who has taken their relative away, and no idea of where their relative is detained. Both the army and police deny to them that they are holding the missing relative. It appears that different sections of the security forces may have held people in different secret locations in and around Colombo. According to another report received by Amnesty International, the arrests may have been carried out by a special operational unit under the Director of Military Intelligence which reports directly to the Army Commander and which has links with the National Intelligence Bureau of the police. This unit is alleged to be operating in Colombo, in some areas with the knowledge and cooperation of the police. Some of the unit members are believed to be members or ex-members of the Peoples' Liberation Organization of Tamil Eelam, a group which opposes the LTTE and works alongside the security forces.

detention) to be brought before a court at all. They require magistrates to visit places of detention within their jurisdiction at least once a month, and oblige the officers-in-charge of detention places to ensure that the magistrate sees all detainees held there. The Defence Secretary is now required under the regulations to inform the relevant magistrates of the address of each place of detention within their jurisdiction, as recommended by the CSHR.

⁷ Prompt judicial supervision of detention is also lacking under the PTA.

Previously, there was no way for magistrates to know where they should go to make these visits.

The provisions for magistrates' visits do no more than provide for an additional record of the detainee's existence. This may provide some protection against "disappearance" (particularly if the magistrate happens to visit soon after a person is detained) but is wholly inadequate as a safeguard against ill-treatment, torture or wrongful detention. A detainee could be held for up to a month before being visited and the magistrate has no discretion over the detention itself. Indeed, the regulations specify that the visit "shall not affect the detention of any person" (ER19(7)).

Reporting procedures following detention

The regulations now provide for a list of detainees held in each area to be displayed publicly at the relevant magistrates courts. They require the officer in charge of each place of detention to supply the local magistrate fortnightly with a list naming all people held under ER17 and ER19 (that is, all those in preventive detention and all those detained for investigation of offences). The magistrate is then required to display this list on the court noticeboard.⁸ By the third week of August 1993, when an Amnesty International delegate visited the Colombo magistrates court, no lists of detainees had been received there and so none were displayed. Indeed, court officials and lawyers there seemed unaware of the reporting procedures now required under the regulations.

The new version of ER17 does not specify that the Human Rights Task Force (HRTF) must be informed of those detained under its provisions. The provisions of an earlier regulation - No 673/2 of 31 July 1991 - have not been incorporated into the new ER17 despite the fact that this earlier regulation still remains in force. The earlier regulation created the HRTF, a government body to monitor the fundamental rights of detainees. It requires copies of all detention orders to be forwarded to the HRTF, but does not set a time limit within which this must be done. This illustrates the point that the new volume of Emergency Regulations issued in June 1993 is not in fact a consolidated edition of all the regulations currently in force.

There is no requirement under ER17 for a certificate to be issued to relatives at the time the person is taken into custody. In contrast, relatives of those arrested in connection with a suspected offence under ER18 must be issued with a certificate of arrest by the arresting officer (see below).

*All in all the new regulation 17 is cast in new form but it
remains unlikely that any change for the better will result...
Between the old and the new Regulation 17 in effect we
have a distinction without a difference.*

(Annual Report: 10 August 1992 to 10 August 1993,

⁸ This regulation is known as Regulation 17 of the Emergency Regulations. Magistrates courts have noticeboards. Public notices at the Colombo magistrates court, for example, are posted up on pillars because the court does not have a noticeboard.

The Advisory Committee

The regulations still enable detainees to have their cases reviewed by an Advisory Committee, appointed by the President. The procedures for petitioning the committee and for its work have been altered. Previously detainees had to petition the President and the matter was referred to the committee; now detainees can petition the committee directly. Previously the committee's working procedure was determined by the President; now the committee is responsible for its own procedure. Previously all detainees held under ER17 had to be informed of the review procedure; now only those "aggrieved" by an order need be informed. The committee must inform the detainee of the grounds on which the detention order was made and any other information it considers necessary for the detainee to present his or her case. The committee reports to the Defence Secretary, who may then either confirm or revoke the detention order. There is still no requirement for the detainee to be informed of the committee's recommendation, nor of the grounds for the Defence Secretary's final decision.

Arrest and detention for investigation of suspected offences (ER18 and ER19)

More changes have been made to the regulations on the arrest and detention of people suspected of having committed offences. For the first time, different procedures are specified for different areas of the country, enabling the relaxation of some provisions in the south and the introduction of some safeguards. For example, people arrested in, and people suspected of committing offences in, the northeast can be detained for a considerably longer period than is now permitted for those arrested in and suspected of committing offences in the south.⁹ The CSHR had pointed out that the regulations previously failed to specify the procedures to be followed by the arresting authority. This has now been remedied, although the procedures themselves still fall short of those required to properly safeguard the rights of those arrested and detained.

The regulations now specify that detention orders must be issued by the detaining authority within a specified period, which was not previously the case, and require improved reporting procedures following an arrest. However, they still fail to ensure separation of responsibility for interrogation and custody - which is a basic safeguard against torture - and

⁹ The term "northeast" is used to designate the former Northern and Eastern Provinces, which were temporarily merged under the Indo-Sri Lanka Accord of July 1987 pending a referendum which has yet to be held. This is the main zone of armed conflict between government forces and the Liberation Tigers of Tamil Eelam. The term "south" refers to all other areas of the island.

still provide for excessively long periods of detention in the custody of the police and armed forces, particularly in the northeast.

Certificates of arrest

The regulations now require the arresting officer - who may be any member of the police or armed forces - to issue a certificate of arrest to the relatives of all people arrested under ER18, be they in the northeast or the south, as recommended by the CRM. However, they do not specify the time frame within which the certificates must be issued. Previously (that is, from February 1993) certificates were only required under the regulations for people arrested during cordon and search operations. The certificate must be in the prescribed format, which gives no information on the grounds for arrest.¹⁰ It must be produced before the appropriate authority when the prisoner is released from custody.

¹⁰ The form requires only the following information to be included: name and address of arrested person, place and date of arrest, signature and designation of the arresting officer, place and date of issue of the "receipt", name and address of person the receipt was issued to.

Limits on police and armed forces custody

Clear limits are set on the length of time a person arrested in the south can be held in armed forces custody. They must be handed over to the custody of the police "forthwith", and anyway within 24 hours of the arrest. The police can hold people for investigation for up to seven days when the offence concerned was committed in the south.

People arrested in the northeast, however, can be held in armed forces or police custody for up to 60 days and there is no requirement for the armed forces in the northeast to hand detainees over to police custody.

These limits remain in excess of those recommended by the CSHR. The CSHR had recommended that in the northeast a 15-day limit should be introduced on police and armed forces custody, and that in the south detainees should be produced before a magistrate within 24 hours, as is required under normal criminal procedure in Sri Lanka.

Reporting procedures following arrest

The regulations require the arresting officer to report the arrest of a suspect under ER18 to a superior officer within 24 hours of the arrest. If a police officer carried out the arrest, he or she is required to report to the Superintendent of Police of the Division within which the arrest was made. In the case of armed forces personnel, they must report to the Commanding Officer of the relevant area. The Superintendent of Police or Commanding Officer is then required to notify the HRTF of the arrest "forthwith", using a form specified by the Defence Secretary and including "all information relating to such offence". The regulations

Example of an abduction in Colombo

On the morning of 26 August 1993 Mr M I Abdul Gaffoor went to the office of the Criminal Investigation Department (CID) in Colombo for questioning. As he left the CID office about three hours later, he was abducted by armed men in uniform, who removed his shirt to use as a blind-fold and then bundled him into a van and drove him away. His companion was not informed why he was being taken away, nor of where he was being taken. It was later discovered that it had been police and military officers from Ampara in eastern Sri Lanka who had abducted Abdul Gaffoor. Although the Emergency Regulations specify that a person arrested by the army in the south should be handed to the custody of the nearest police station, this does not appear to have been done. Instead, Abdul Gaffoor was taken to the Military Police Camp at Batticaloa, in eastern Sri Lanka where he was put under a 60-day detention order, issued by the DIG Batticaloa. The HRTF was only notified by the DIG Batticaloa of this arrest on 14 September 1993, over two weeks after the abduction, despite the fact that the regulations require prompt notification to the HRTF. No information about the alleged offence Abdul Gaffoor was suspected of having committed was provided.

thus introduce a welcome legal obligation to report arrests to the HRTF, as had been recommended by Amnesty International and the CRM. However, according to the HRTF *Annual Report* of 10 August 1992 to 10 August 1993 this obligation has yet to be fully implemented in practice and the HRTF still frequently first learns of arrests from relatives of prisoners, rather than from the agency which carried out the arrest.

In addition, as described above, the officer-in-charge of any authorised place of detention is required to supply a list of all detainees in his or her custody to the magistrate of the area every fortnight. The magistrate should then display this list on the court notice board (see above).

These reporting procedures apply in all areas of the country.

Issue of detention order

The regulations provide for the arrest without warrant of a suspect, followed by a preliminary period of detention without a detention order of up to seven days for investigation of offences committed in the northeast and 48 hours for those committed in the south. If there is "reasonable cause" for continuing to hold the prisoner in detention beyond these time limits, a detention order must be issued. Previously, there was no specific requirement for a detention order to be issued under ER19, although frequently an administrative order was issued by the police specifying the place of detention.

The detention orders can be issued by police officers of at least the rank of Deputy Inspector General of Police where the arrest was by a police officer, or by officers of at least the rank of Brigadier, Commodore or Wing Commander where the arrest was by a member of the army, navy or airforce respectively. People arrested in the northeast, and those arrested in connection with offences committed in the northeast, can be detained for a total of 60 days. Those arrested in the south in connection with offences committed in the south can be detained for a total of seven days.

Release procedures where there is no reasonable cause for continued detention

If a person is not going to be held in continued detention, the regulations require that he or she must be produced before a magistrate before being released. This must happen before the end of the initial period of detention - that is, within seven days in the northeast, and within 48 hours in the south. This procedure provides a safeguard for the prisoner upon their release.

Places and conditions of detention

The provisions on places and conditions of detention described above for prisoners held in preventive detention also apply to detainees held for investigation.

Judicial supervision of detention

The provisions on judicial supervision made above with respect to people held in preventive detention also apply to those detained for investigation.

Remand, release or continued detention

Once the 60 days' detention for investigation permitted in the northeast, or the seven days permitted in the south, are completed, detainees "should"¹¹ be released unless they are produced before a court, or unless the basis for their detention has been changed to ER17 (that is, preventive detention), in which case they may face indefinite detention. If a detainee is produced before a court, the court has no option under ER19(9) but to remand him or her to prison custody. The prisoner must remain in prison custody for three months and cannot be released on bail any earlier without the written consent of the Attorney General (ER55(1)). The CSHR had said that it believed three months' remand before bail can be granted to be too long a period, but it remains unchanged. After three months, the magistrate "shall" release the prisoner on bail, unless the Attorney General directs otherwise (ER55(3)). In the case of some offences, however, bail is not permitted without the written consent of the Attorney General (ER55(3)). And in any instance where a magistrate has released a person on bail, the Attorney General can instruct that the person should not have been released, and should be taken back into custody and remanded (ER55(5)). In "exceptional circumstances", however, the Court of Appeal can release on bail a person who has been on remand for three months continuously, over-riding the Attorney General's objections (ER55(4)).

Detention for Rehabilitation

The regulations continue to provide for detainees to be referred for rehabilitation by an administrative procedure, and specify new procedures for the issue of rehabilitation orders and release from rehabilitation. The CSHR had said that subjecting detainees to rehabilitation when they have not been tried and convicted by a court is *"inappropriate as it amounts to a negation of the presumption of innocence"*. Amnesty International also believes that it is important for all political prisoners suspected of recognisably criminal offences to be promptly charged and tried in accordance with international human rights standards, and that they should not be held in untried detention for long periods. Any political prisoners who have not used or advocated violence, whom Amnesty International would consider prisoners of conscience, should be promptly and unconditionally released.

The revised regulations introduce rehabilitation for people detained under the Prevention of Terrorism Act (PTA) for the first time. Previously, rehabilitation was only a possibility for people detained under the ER, whether held under ER17 or ER19.

The regulations require that the rehabilitation order, issued by the Minister of Defence or the Defence Secretary, must specify the period a detainee is required to spend in

¹¹ ER19(2) reads that any person arrested under ER18 "should at the end of the period be released unless such person is detained under the provisions of regulation 17, or is produced before a court of competent jurisdiction..." (emphasis added). Elsewhere in the Emergency Regulations the word "shall" is used to indicate when a certain action must be done, not "should". The significance of the word "should" in this context is not clear. That it is an intentional usage is indicated by the fact that the penultimate draft of the revised regulations contained the word "shall" at this point.

rehabilitation but specify no maximum time limit.¹² They do not require the rehabilitation order to specify the place of rehabilitation. Without knowing the place of rehabilitation, it can be difficult for lawyers and the courts to follow-up on the cases of detainees under rehabilitation. The regulations now specify that once a rehabilitation order has been issued, any detention orders which had been issued earlier will be considered to have been revoked.

This clarifies an ambiguity which existed in the earlier regulations. Before issuing or revoking a rehabilitation order the Defence Secretary "may" consult the Advisory Board constituted under the PTA or the ER, or any other relevant administrative board, but is not required to do so.

Before a detainee under rehabilitation can be released, the regulations now specify that the rehabilitation order must be revoked (ER20(2)). The CSHR had recommended that a provision be introduced for the release of those undergoing rehabilitation. The new provision, however, seems to provide an unnecessary administrative burden given that the period of rehabilitation must anyway be specified on the rehabilitation order.

Detention of people who surrender

New procedures apply to people who surrender which improve upon the earlier position, but which could nonetheless lead to innocent people being detained for several months. This is because the regulations require that any person who surrenders must be detained, and do not envisage the possibility of people surrendering who have committed no offence. Such people may know that the security forces have been looking for them and wish to question them, for example, and so may "surrender", perhaps in the presence of a witness, for their own protection.

The CSHR and the CRM had recommended that there should be judicial review of the detention of those who have surrendered. This has still not been provided.

The regulations require that a person who has surrendered must be handed over to prison custody within seven days of the surrender (ER22(1)). This reduces the possible period of time in security forces custody from 28 days to seven days, in line with the CSHR's recommendation.¹³ The CRM, however, recommended that in most of the country a 24-hour limit should be imposed. The person can then be held in prison for up to 60 days (ER22(4)).

The regulations also require the officer to whom the person surrendered to report within seven days to the relevant Superintendent of Police (SP) on the circumstances of the surrender and on the offences for which the prisoner surrendered (ER22(2)). The SP, in turn, must send a copy of this report to the Defence Secretary, ensure that the offences are

¹² ER2(4) specifies that where any ER requires a time period to be specified in any order made under that ER, and the order does not include any such period, the period will be considered to be the period in which the regulation concerned remains in force.

¹³ The CSHR had recommended that people who surrender should be handed over "as soon as possible, not exceeding seven days".

investigated, and keep the Defence Secretary informed of the progress of the case (ER22(3)).

Previously there was no mechanism to inform the Defence Secretary about those who surrendered, despite the fact that he was responsible for their release, as CRM had pointed out.

People who surrender may risk spending a longer period in detention than those who are arrested under ER18 on suspicion of having committed an offence. After 60 days in prison, the person who surrendered must be released unless they have meanwhile been detained under ER17 (preventive detention), in which case their detention can be for an indefinite period, or produced before a court under the provisions of ER19 (detention for investigation). If the latter, the court has no option but to order their further remand for three months (ER19(9) & ER19(10); see above). No other provisions are given for the release of people who surrendered. In the case of a suspect arrested under ER18, then the regulations provide for up to seven days in police custody (for offences committed in the south), followed by three months on remand before bail can be granted in normal circumstances. A person who surrenders, however, risks spending seven days in police custody followed by 60 days in prison before being remanded by the court to a further three months in prison before bail can be granted.

The CSHR had recommended that a limit be introduced on the length of time a person who surrendered can be detained, as this was absent from the regulations previously. A limit has now been set, but as explained, is unjustifiably long.

Post-mortem and Inquest Procedures

Only one alteration has been made to the emergency provisions for post-mortems and inquests into deaths resulting from the actions of security forces personnel: previously the inquests had to be held *in camera*, a requirement which has been removed. The emergency provisions remain wholly inadequate for the full and impartial investigation of deaths caused by security forces personnel and could still be used to cover-up illegal killings by the security forces. The CSHR had asked for the procedure to be removed from the regulations altogether, and for a return to normal inquest procedures under ordinary law. The CRM had said *"Assuming for the purposes of argument, without conceding, that normal inquests may not always be practicable in the combat areas, there is no reason why the ordinary law on this subject should not be fully restored in the rest of the country."*¹⁴ Amnesty International has also urged for several years the removal of these (or similar) provisions.

The procedure requires the police to produce a report on the death (ER45). If the body is found, the police must inform a magistrate, who must order a post-mortem examination and order that the body be returned to the police once the examination is concluded (ER46). The police may then apply to the High Court in Colombo for an inquiry to be held. Should they do so, any proceedings into the death already taking place in a magistrates court are transferred to the High Court. The High Court judge may only

¹⁴ *Emergency Regulations - the recent amendments*, CRM, E 03/2/93 of 25 February 1993.

record as evidence the post-mortem report and other evidence provided to him by the police.¹⁵ There is no provision for any other person to give evidence and relatives of the deceased or other concerned individuals need not be informed that any inquiry is taking place. The findings must then be forwarded to the Attorney General alone.

This procedure can be invoked by the police on the basis of a belief by any security forces officer that a death resulted from armed confrontation. Once the Inspector General of Police decides to apply for a High Court inquiry under the emergency procedures, no other inquiry into the cause of death can be held according to the procedures provided under the normal law. The proper investigation of deaths caused by the security forces can thus be prevented, and this procedure could be used to cover-up illegal killings.

Impunity

Previously, ER71 specified that no civil or criminal action could be instituted in any court in respect of anything done "in good faith" under the provisions of the ER, unless consented to or initiated by the Attorney General. The CSHR commented that this regulation encouraged abuses to be committed in a climate of impunity and recommended that it should be repealed. This has been done.

However, it should be remembered that impunity does not result from the existence of this regulation alone. Certain other Emergency Regulations which are still in force may contribute to a continuing climate of impunity, such as the regulations on post-mortem and inquest procedures, which could still be used to cover-up illegal killings (see above). At times, too, the regulations have granted very broad powers indeed to members of the security forces and others, including the means to destroy the evidence of illegal killings by permitting the disposal of bodies without post-mortem or inquest. The impunity granted by such regulations at the time they were in force cannot easily be overcome. This is both because the physical evidence of such killings has been destroyed within the framework provided by emergency law, and because by promulgating such regulations, the government itself signalled its willingness to facilitate the commission of gross human rights violations with impunity during these periods. In addition, the Indemnity (Amendment) Act remains in force, and protects against prosecution for acts committed "in good faith" by security forces personnel and other public officers from 1 August 1977 to 16 December 1988.

¹⁵ An earlier provision which enabled other persons who appeared to be acquainted with the circumstances of the death to present evidence was withdrawn under an amendment to the ER in July 1989.