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I INTRODUCTION

This report reviews Sri Lanka's security measures from a point of view of the guarantees provided in the International Covenant on Civil and Political Rights (ICCPR). It also contains comments on a number of existing and recently announced measures for the prevention of human rights violations. The report is being submitted to the Government of Sri Lanka and the members of the Human Rights Committee, who monitor the implementation of the ICCPR, to assist them in their consideration of Sri Lanka's third periodic report to the Human Rights Committee at the end of July 1995.[1]

Amnesty International attaches great importance to the systematic and periodic review by the Human Rights Committee of the implementation of a broad range of human rights by state parties to the ICCPR. When ratifying the ICCPR, state parties undertake to respect and ensure to all individuals within its territory the rights recognized in the ICCPR. International human rights treaty monitoring bodies, such as the Human Rights Committee, can play an important complementary role in the continuing process of promoting and enhancing the protection of human rights, to which both national as well as international bodies each make their specific contribution. The examination of a country report by the Human Rights Committee is an opportunity to identify areas for improvement and to adopt measures to remedy shortcomings in fully enforcing and protecting the human rights guaranteed in the ICCPR.

A substantial part of this report was incorporated in a memorandum submitted to relevant government officials prior to a visit to Sri Lanka by an Amnesty International delegation in February 1995. Several sections have since been updated.

To date, the government has not responded to the recommendations contained in the memorandum. Amnesty International therefore reiterates its appeal for a thorough review of Sri Lanka's security laws to bring them fully in line with relevant international standards.

II BACKGROUND

[1] The Human Rights Committee examines reports by States Parties about how they have implemented rights set forth in the ICCPR. Such reports are to be submitted by a state within one year of becoming a State Party to the ICCPR, and thereafter every five years according to current rules.

The Human Rights Committee is a body of 18 experts from a wide range of legal systems established under the ICCPR to monitor implementation of the ICCPR and its Optional Protocols. As of the end of May 1995, 129 states had ratified or acceded to the ICCPR; Sri Lanka did so on 11 June 1980. Under Article 40 of the ICCPR, state parties commit themselves to submit a report on the measures they have taken to give effect to the rights recognized in the ICCPR. One of the tasks of the Human Rights Committee is to examine these reports.

Sri Lanka's first report (CCPR/C/14/Add. 4 and Add. 6) was examined in 1983; its second report (CCPR/C/42/Add.9), due in 1986, was submitted on 22 March 1990 and examined in April 1991. Its third report (CCPR/C/70/Add.6), due in 1991, was submitted on 18 July 1994. It is scheduled to be examined on 24 and 25 July 1995 at the Committee's fifty-third session in Geneva, Switzerland.[2]

In contrast to the United Nations (UN) Commission on Human Rights, a body which consists of representatives of 53 governments, the 18 members of the Human Rights Committee each sit in their personal capacity as human rights experts and do not represent governments.[3] Election of members takes place by secret ballot in a meeting of state parties to the ICCPR every two years. State parties can nominate not more than two of their own nationals. Members serve for four years. The Human Rights Committee has a reputation of impartiality. It is not a disciplinary organization and its recommendations are not binding. However, because of the prestige it carries, its recommendations carry importance and are deemed to reflect an international consensus.

At the outset of the committee's hearings, which are held in public and can be televised or tape-recorded, a representative of the government of the state whose report is being examined gives an introductory statement, highlighting points in the government's written report. Human Rights Committee members then ask questions to which the government's representative responds orally. Individual committee members then make concluding observations. Starting at its 44th session (23 March to 10 April 1992) the Committee adopted the practice of issuing written comments after the examination of each state report. These comments contain the collective views of the Human Rights Committee on factors and difficulties impeding the application of the ICCPR, the positive aspects of the human rights situation in the state party, principal subjects of concern, suggestions and recommendations. These comments do not replace the individual comments, but supplement them. The Committee also appoints one of its members as a rapporteur to

[2] The Committee is also due to examine reports submitted by Ukraine, United Kingdom, Latvia and the Russian Federation during this session.

[3] A list of the 18 members of the Human Rights Committee is attached as Appendix A.

monitor implementation of its recommendations. In addition to the written comments and press releases issued at the time of the examination, summary records of the Committee's proceedings are issued several months afterwards.

III CURRENT HUMAN RIGHTS CONCERNS

Amnesty International for several years has expressed concern about a wide range of gross violations of human rights in Sri Lanka[4]. In particular, Amnesty International has highlighted the persistent resort to widespread extrajudicial executions and "disappearances" by the security forces in a context of extensive opposition violence.

Since it came to power in August 1994, the People's Alliance government, a coalition of parties headed by the Sri Lanka Freedom Party, has taken a number of important steps in the field of human rights, including the establishment of three commissions to investigate past human rights violations that had occurred in the country since 1 January 1988.[5] The new government also introduced legislation to give effect to the UN Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment, to which Sri Lanka under the former government had acceded in January 1994. But several provisions which are stipulated in the text of the Convention against Torture are not fully provided for in the law (see pages 18-19 for more details). The government also ordered a review of the cases of all detainees held under the Emergency Regulations (ERs) or Prevention of Terrorism Act (PTA).

In addition, the new government announced "a review of Sri Lanka's status under international human rights instruments" and said it would bring to justice the perpetrators of human rights violations, grant compensation to the victims, strengthen the constitutional protection of human rights and establish a national human rights commission. To date, although some progress has been made towards implementation of some of these measures, none of them have as yet been fully implemented.

The government also initiated a dialogue with the Liberation Tigers of Tamil Eelam (LTTE), the main armed opposition group fighting for a separate state in the northeast of Sri Lanka since the late 1970s. Representatives of the government and the LTTE met in

[4] See Appendix B for a list of Amnesty International documents issued since 1991.

[5] For more details on the work of the commissions, see *Amnesty International: Sri Lanka: Time for truth and justice Observations and recommendations regarding the commissions investigating past human rights violations*, AI Index: ASA 37/04/95 published in April 1995.

mid-October 1994 and early January 1995 in Jaffna, the main town in the northern part of Sri Lanka which is under control of the LTTE. On 8 January 1995, a cessation of hostilities agreement between the two parties came into force. A further two meetings between delegates of both parties took place in mid-January and mid-April. On 18 April, however, the LTTE called an end to the truce. A few hours later, 12 navy personnel were reportedly killed when members of the LTTE bombed two navy gunboats in Trincomalee harbour. In the following days, many more members of the security forces were killed in LTTE attacks on army camps and police stations in the area. During the night of 25-26 May 1995, members of the LTTE killed at least 42 Sinhalese civilians at Kallarawa, Trincomalee District. This attack was the first involving what appears to be the deliberate targeting of civilians since the resumption of hostilities.[6]

Following the resumption of the armed conflict between the security forces and the LTTE, there have been reports of arbitrary arrests of hundreds of Tamil people under the Emergency Regulations and Prevention of Terrorism Act, particularly in the east of the country and in the capital, Colombo.

The arbitrary arrest of Tamil people in Colombo is not new. There have been waves of such arrests in previous years, particularly after assassinations or other attacks, like the assassination of President Ranasinghe Premadasa in May 1993.[7]

In Colombo, people are usually detained until their identity and background is checked in central records. Most are released within 24 hours, or at least within two or three days. Contrary to past practice, apart from the police, no other agencies are currently known to be carrying out arrests. Lawyers also report that detention procedures are more strictly adhered to. However, the issuing of "arrest receipts" to relatives (a measure introduced by the previous government as a preventive measure against "disappearances") is still not complied with.

In the east, arrests are being carried out by the army, navy, air force, Special Task Force (a police commando unit) and the police. Members of armed Tamil groups opposed to the LTTE assist the security forces during their operations, including by carrying out arrests, particularly in remote villages.

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6 For more details, see *Amnesty International: Sri Lanka: Deliberate and arbitrary killings/ Fear of further killings: 42 villagers at Kallarawa* (UA 121/95, AI Index: ASA 37/09/95) published on 26 May 1995.

7 For more details on Amnesty International's concerns about arbitrary arrests in Colombo in that period, see *Sri Lanka: Balancing human rights & security: abuse of arrest & detention powers in Colombo*, AI Index: ASA 37/10/94 published in February 1994.

In addition, Muslim and Sinhalese Home Guards have been re-armed following threats by the LTTE against members of the Sinhalese and Muslim communities in the east.[8] In 1990, Amnesty International expressed concern that the policy of arming civilian groups, particularly in the east, had contributed to an intensification of violence in the area. There were a series of large scale deliberate killings of Tamil civilians by Home Guards in reprisal for killings by the LTTE of Muslim and Sinhalese civilians.

To date, since the resumption of the armed conflict, the security forces operating in the northeast have refrained from resorting to widespread extrajudicial executions and "disappearances".[9] Amnesty International is concerned, however, that as the ERs and PTA, under which the large majority of arrests of suspected opponents of the government take place, provide the security forces with wide powers to detain them *incommunicado* and without charge or trial for long periods. They provide a ready context for deaths in custody, "disappearances" and extrajudicial executions, as borne out by the widescale human rights violations that occurred in the recent past.

Amnesty International believes that a thorough review of the ERs and PTA to bring them fully in line with international standards, in particular the ICCPR and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter, the Body of Principles), would be an important measure to prevent grave human rights violations.

Below is an analysis of the provisions of the Emergency Regulations (ERs) and Prevention of Terrorism Act (PTA) from a point of view of the guarantees provided in the ICCPR.

IVREVIEW OF CURRENT SECURITY MEASURES

Emergency Regulations

Amnesty International is seriously concerned about the emergency provisions[10] relating to arrest and detention, as well as the emergency procedures for conducting post-mortems and

8 For more information on the functioning of Home Guards, see *Sri Lanka: Deliberate killings of Muslim and Tamil villagers in Polonnaruwa,* AI Index: ASA 37/10/92 published in June 1992.

9 See *Sri Lanka: Reports of extrajudicial executions during May 1995,* AI Index: ASA 37/10/95 of June 1995 for details of killings reported from the east since the resumption of hostilities and *Sri Lanka: "Disappearances",* Urgent Action 139/95, AI Index: ASA 37/13/95 published on 15 June 1995.

10 The relevant provisions are contained in the Emergency (Miscellaneous Provisions and Powers) Regulations which were issued by the then President, Dingiri Banda Wijetunga, on 4 November 1994. Each

inquests following deaths resulting from the actions of security forces personnel. These provisions fall far short of international human rights standards, and have facilitated serious violations of human rights. In January 1994, Amnesty International published an analysis of these areas of the revised ERs, which had been issued in June 1993, explaining its concerns.[11] The few amendments made to the regulations since then have not addressed these key concerns. There remains an urgent need for a thorough revision of the regulations to ensure that they contain the necessary human rights safeguards. On 24 November 1994 Amnesty International wrote to the President and the Minister of Justice and Constitutional Affairs urging that a thorough review of the ERs be undertaken at the earliest opportunity. On 28 April 1995, Amnesty International reiterated this appeal in a letter to the Minister of Justice and Constitutional Affairs in which it expressed concern about reports of indiscriminate arrests of hundreds of Tamil people in Colombo, Trincomalee, Batticaloa, Vavuniya and Kandy in the aftermath of a number of incidents in the northeast after the resumption of hostilities in the area.

Following the election of the People's Alliance government in August 1994, the state of emergency was lifted throughout most southern areas of the island[12]. The areas subject to emergency rule have been altered from time to time. As of early June 1995 it remained in force throughout the northeast, as well as in parts of Puttalam, Anuradhapura and Polonnaruwa Districts, and in Colombo and surrounding areas (Dehiwala-Mount Lavinia, Nugegoda, Kolonnawa, Wattala, Ja-Ela, Negombo and Katunayake International Airport).

1Preventive detention (ER 17)

ER 17 provides for preventive detention for an indefinite period, and there is no provision for a substantial judicial review of detention.

Previously detainees could be held under ER 17 on renewable, three-monthly detention orders issued by the Secretary to the Ministry of Defence (hereafter, Defence Secretary), with no limit to the number of times detention orders could be renewed. The regulations issued on 16 August 1994 shortly after the new government came to power introduced a change to this procedure, but indefinite detention remains possible. ER 17 now limits to one year the period of time for which a person can be detained on orders issued by

provision is being referred to by the corresponding number of the regulation. For instance, regulation 17 is being referred to as ER 17.

11 See *Sri Lanka: New emergency regulations*, AI Index: ASA 37/04/94 of January 1994.

12 Sri Lanka had been ruled under emergency law continuously since 1983, except for five months during 1989 when the then President, Ranasinghe Premadasa, lifted the emergency.

the Defence Secretary. Beyond a year, the detention can only be extended by a magistrate for up to three months at a time, again with no limit on the number of renewals.

However, the regulation severely limits the magistrate's powers to exercise discretion in deciding whether or not to extend the detention. The magistrate must be "satisfied that there are reasonable grounds for extending the period of detention of such person", but must apparently reach a decision solely on the basis of a report from the Defence Secretary explaining the grounds for detention and the need for the extension. Under ER 17(2) the Defence Secretary's report "shall be prima facie evidence of its contents", and "[T]he Secretary shall not be required to be present or called upon to testify before the Magistrate". There is no requirement for the detainee to be provided with a copy of the Defence Secretary's report so he or she is effectively unable to prepare and to challenge its contents. The possibility of a substantial judicial review of the detention is still not provided for.

Amnesty International believes that these provisions violate Articles 9(3) of the ICCPR which requires that anyone arrested or detained should be promptly brought before a judge and Article 9(4) which guarantees a detainee the right to effectively challenge the lawfulness of his detention.

The grounds for holding people in preventive detention have been revised. Amnesty International welcomes that a suspicion of involvement in offences relating to essential services, which previously provided a ground for preventive detention, has been removed from the ERs. Furthermore, offences under ER 24, which include conspiring to murder the President or a member of parliament, no longer provide grounds for preventive detention. It is surprising that offences against movable or immovable property (ER 26) which constitute far less serious offences, continue to be a ground for preventive detention. This anomaly may well be the result of a failure to check the accuracy of cross-references in the regulations after the numbering had been changed.[13]

There apparently is still no requirement that an "arrest receipt" must be issued to relatives of a person taken into preventive detention under ER 17[14], in contrast to the requirements for people arrested under ER 18 on suspicion of having committed an offence (see below, including for comments on recent directives issued by the President about the issuing of "arrest receipts").

[13] ER 17 (1)(c) remains exactly as it was in June 1993, and empowers the Defence Secretary to detain a person to prevent them from committing, aiding or abetting the commission of any offence under ER 25 or ER 26. Previously, ER 25 contained, among other things, the offences of murdering the President, members of parliament and others. This regulation is now numbered ER 24.

[14] This is in violation of the provision of Principle 16 of the Body of Principles) which provides for notification of family members promptly after arrest and any transfer of places of detention.

2Arrest and detention for investigation of suspected offences (ER 18 and ER 19)

Since June 1993, there have been some changes in the regulations concerning the arrest of people suspected of having committed offences, and their detention for investigative purposes. The reporting procedures with which the detaining authorities must comply following an arrest under ER 18, introduced in June 1993, now require that where an "arrest receipt" cannot be issued to relatives, an entry must be made in the Information Book by the arresting officer. Amnesty International appreciates that adherence to reporting procedures is now emphasised by providing a specific penalty for failure to observe them.

In another respect, however, reporting procedures were weakened under the ERs issued on 4 November 1994. The important requirement that all arrests under ER 18 must be reported "forthwith" to the Human Rights Task Force (HRTF), which was introduced in June 1993, was removed from the regulations in September 1994. Indeed, the status of the HRTF itself was unclear, as the emergency regulations under which it was created lapsed in July 1994[15]. It continued to function under the Sri Lanka Foundation Law, but most of its powers had been removed. There was thus no longer any organisation independent of the police and armed forces with adequate powers to monitor and safeguard the welfare of detainees held under the ERs and PTA.

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

On 7 June 1995, new regulations were issued to reestablish the HRTF. Under ER 9(1) of the Emergency (Establishment of the Human Rights Task Force) Regulations No. 1 of 1995 the HRTF must now be informed of all arrests or detentions "forthwith, and in [any] case not later than forty-eight hours from the time of arrest or detention where it is not possible due to any circumstances prevailing in any area". The regulation also explicitly provides that the HRTF should be notified of the place at which the person is being held in

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

custody or detained. In addition, the regulation also requires that the HRTF be notified of transfers and releases within the same time limit (forthwith and in any case no later than 48 hours).

Under regulation 8 (1) of the Emergency (Establishment of the Human Rights Task Force) Regulations, the President "may give such directions to the Heads of the Armed Forces and of the Police, as in her opinion are necessary, to enable the HRTF to exercise and perform its powers, functions and duties and to ensure that the fundamental rights of persons arrested or detained are respected". On 16 June 1995, the text of such directives were published in the Daily News, a Colombo-based newspaper. While some of the directives introduce welcome safeguards for the protection of the rights of detainees, in some other respects they weaken several provisions of the ERs under which they were issued and of the ERs of 4 November 1994.

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

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

Amnesty International is concerned that the directives do not impose an unconditional duty on the government to promptly inform and permit the detainee to inform his or her relatives of the fact of his or her arrest and place of detention, as safeguarded by Principle 16 of the Body of Principles.

3Places and conditions of detention

There are no minimum standards to govern conditions of detention for those held under the emergency regulations. The Defence Secretary can suspend provisions of the Prisons Ordinance and Prison Rules in respect of detainees held in prisons, and no laws exist specifying detention conditions 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 and safeguards. Article 10 (1) and 7 of the ICCPR respectively require that detainees and other prisoners should "be treated with humanity and with respect for the inherent dignity of the human person" and that "no one shall be subjected to torture or to cruel, inhuman or

degrading treatment". There should therefore be minimum standards requiring humane treatment, prohibiting *incommunicado* detention for long periods, and ensuring access to adequate food, bathing and toilet facilities. Detainees and other prisoners should also have prompt and subsequently regular access to lawyers and their relatives as well as be given the possibility to correspond with the outside world. In addition, they should be promptly medically examined on arrival by an independent doctor.

Amnesty International urges the government to issue regulations so as to guarantee that all people detained or imprisoned will be held in conditions and treated in a manner which respects their inherent human dignity. For these purposes, the UN Standard Minimum Rules for the Treatment of Prisoners serves as the general internationally accepted consensus of good principle and practice in the treatment of prisoners and management of institutions.

Amnesty International welcomes the greater emphasis given to the offence, introduced in June 1993, of holding a detainee in an unauthorized place. The regulations now define a specific penalty for this offence. However, Amnesty International remains concerned that detainees held under either ER 17 or ER 19 can still be held for long periods in the custody of the security forces. No attempt has been made to ensure separation of responsibility for custody and interrogation, which is an essential safeguard against torture and ill-treatment.

4Detention for rehabilitation (ER 20)

The regulations provide for detainees to be referred for "rehabilitation" by an administrative procedure. No upper time limit is set for the period of "rehabilitation" although it is provided that a certain period of "rehabilitation" has to be specified in the order by the Minister or the Secretary to the Minister of Defence. Article 9 (2) of the ICCPR guarantees that all people arrested shall be promptly notified of the reasons for their arrest and promptly informed of any charges against them. Article 9 (3) of the ICCPR specifies that "anyone arrested or detained on a criminal charge shall be promptly brought before a judge...and shall be entitled to trial within a reasonable time or to release". In accordance with these standards and Amnesty International's mandate, Amnesty International is concerned that all prisoners be promptly charged and tried in accordance with international human rights standards. They should not be held in untried detention for periods longer than strictly necessary to bring them to trial. Any political prisoners who have not used or advocated violence, whom Amnesty International would consider prisoners of conscience, should be promptly and unconditionally released. As no maximum period of "rehabilitation" is set, the provision effectively allows for indefinite detention of political opponents by arbitrary orders of the executive and Amnesty International recommends it should be repealed forthwith.

5Detention of people who surrender[16] (ER 22)

It is still possible for people who have surrendered, and who may be innocent of any offence, to be detained for several months. The regulations make the detention of anyone who surrenders mandatory. They do not envisage the possibility of people surrendering who have not committed any offence. Those who surrender may do so simply because they know the security forces have been looking for them and wish to question them. Currently, the authorities have no option to release them even if, on questioning, they are found to be innocent. There is also no provision for judicial review of the detention of people who have surrendered. These provisions clearly violate Article 9 of the ICCPR.

6 Admissibility as evidence of statements made to the police

Under ER 49 confessions made while the detainee is in police custody are admissible in evidence at the trial, provided that they were not made to a police officer below the rank of Assistant Superintendent. Normally, the rules of evidence specified in sections 25 and 26 of the Evidence Ordinance, exclude confessions made to the police as evidence. Amnesty International considers these provisions to constitute a direct incentive to interrogating officers to obtain information or "confessions" by any means, including torture.

In addition, the regulation puts the burden of proving that a statement was obtained under duress on the accused. (See page 14 for further comments on similar provisions in the PTA)

7Post-mortem and inquest procedures

The emergency provisions for post-mortem and inquest procedures into deaths resulting from the actions of security forces personnel have not been altered since June 1993 and remain of grave concern.

The procedure requires the police to produce a report on the death. 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. The Inspector General of Police may then apply to the High Court in Colombo for an inquiry to be held.

[16] The practice of surrendering people sought for questioning to the security forces, which often took place in the presence of a leading member of society, was introduced in 1989 in the south as a preventive measure against "disappearances".

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 has applied for a High Court inquiry under these provisions, there can be no judicial inquiry into the cause of death as normally required under ordinary procedures of criminal law. Under the emergency procedure, the judge may only record as evidence the post-mortem report and other evidence provided to him by the police. 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 be forwarded to the Attorney General alone and relatives have no access to them.

These procedures are wholly inadequate and fail to meet international human rights standards which require full, impartial investigations by independent authorities of all suspected cases of extra-legal, arbitrary and summary executions caused by security forces personnel, including cases where complaints by relatives or other reliable reports suggest unnatural death. Such standards include Articles 6 (1), 10, 14 of the ICCPR and Principles 1, 9, 16 and 17 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions. The current provisions could be used to cover-up extrajudicial killings by the security forces. They should be removed from the regulations.

8Accessibility of the regulations

There continues to be very little public information about the content of the regulations, and they are not made promptly available to the public after they come into force. For instance, in the period August 1994 to November 1994, the regulations were reissued four times, and some changes to them were made on each occasion. The problem of uncertainty about the law in force at any given time for both the security forces and the general population therefore remains.

Prevention of Terrorism Act

The Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 as amended by the Prevention of Terrorism (Temporary Provisions) (Amendment) Act No. 10 of 1982 and No. 22 of 1988 (PTA) suspends important legal safeguards guaranteed in the Constitution of Sri Lanka and recognized in international human rights instruments such as the ICCPR. The PTA was initially introduced as a temporary law but was made part of permanent law in 1982. Amnesty International has recommended that the government take immediate steps to ensure a prompt, comprehensive and thorough review of the PTA to bring the law into conformity with relevant international standards.

Many of the offences created by the PTA were already offences under ordinary law (causing death, kidnapping, abduction, robbery, intimidation, offences in relation to firearms and explosives, etc.). But other less serious offences are defined as "unlawful activities" such as the speaking or writing of words intended to cause religious, racial or communal disharmony, or feelings of ill-will or hostility between different communities or racial or religious groups, mischief to public property and the erasure, mutilation, defacing of, or other interference with, public notices.

For all these offences (including abetting, conspiring, attempting, exhorting or inciting their commission, or doing any act preparatory thereto), the Act imposes a penalty of life imprisonment for the most serious ones, and imprisonment of not less than five years and not more than 20 years for the rest. Under Section 5, it is a separate offence (punishable by up to seven years' imprisonment) to withhold information about the preparation, attempt or commission of such an offence, or of the movements or whereabouts of such an offender.

Several provisions of the PTA contravene international human rights standards. They include those relating to the circumstances and periods for which persons may be detained under the law, the remedies available to the detainees, their right to have visits from lawyers and relatives, the admissibility of statements to police officers as evidence against them and the burden of proof relating to whether or not such a statement was extracted under duress.

1 Arrest and detention procedures

Under Section 7 (1) of the PTA, unless a detention order under Section 9 (1) has been made (see below), a person can be held in police custody for a period not exceeding 72 hours in contrast to the normal 24 hours limit under the Code of Criminal Procedure. Furthermore, under Section 7 (3), after 72 hours, the police have the power to take a person who has been remanded out of their place of detention for purpose of interrogation without having to obtain judicial permission or supervision.

Section 9 (1) of the PTA permits detention on administrative order for a period of up to 18 months (renewable by order every three months). There is no requirement that people should "be brought promptly before a judge or other officer authorized by law to exercise judicial power and be entitled to trial within a reasonable time or release" as required by Article 9(3) of the ICCPR. Many members of the Human Rights Committee when examining Sri Lanka's second period report in April 1991, found that certain provisions of the PTA were not compatible with the Covenant. One Committee member expressed anxiety about the preventive detention provisions of the law and said the government must "make use of the procedures provided for arresting persons prone to terrorist acts instead of employing high-handed means, such as incarcerating persons for 18 months."[17]

In contrast to the presumption of release of detainees on bail pending trial provided for within Article 9 (3) of the ICCPR, Section 7 (1) also stipulates that the court has no discretion to order bail without the consent of the Attorney General. In addition, Section 15 (2) specifies that any person who has been charged under the Act and is awaiting trial, shall be remanded until the conclusion of the trial. The High Court has no discretion to order bail.

2Places and conditions of detention

Section 9 (1) of the PTA specifies that people can be held "in such place and subject to such conditions as may be determined by the Minister".

An order of the Ministry of Defence (in the form of a Schedule attached to a detention order) normally prescribes detention conditions for detainees held under Section 9 (1) of the PTA. These Schedules have no legal status. The large majority of them specify that

[17] Press release issued by the UN following Human Rights Committee, Forty-first Session, 1060th Meeting, 10 April 1991 (HR/CT/121).

"[T]he suspect will not be permitted to have any visitors, except with the written permission of the Ministry of Defence." In Amnesty International's view, this provision has facilitated grave human rights violations, notably "disappearances". In the past, in a large number of cases, relatives failed to establish the whereabouts of detainees held under the PTA for many months and the whereabouts of others were never established. Principle 15 (2) of the Body of Principles provides that "[A] detained person shall be entitled to communicate with a lawyer of his own choice within the shortest possible period after arrest." Principle 14 of the Body of Principles states that "[i]mmediately after arrest and after each transfer from one place of detention to another, a detained or imprisoned person shall be entitled to notify members of his family of his arrest or detention or of the transfer and of the place where he is kept in custody." The Schedule setting out detention conditions under the PTA is obviously not compatible with these two Principles.

Furthermore, Section 15A, which was introduced by an amendment to the PTA in 1982, provides that, even while a trial is in progress, the Secretary may order that the accused be held "in the custody of any authority, in such place and subject to such conditions as may be determined by him" "in the interest of national security or public order".

3Restrictions on freedom of movement

Section 11 (1) (a) to (c) of the PTA empowers the Minister to impose on any person **suspected** of having committed an offence under the PTA prohibitions or restrictions for a period of 18 months in respect to his or her movement outside of a specified place of residence or the place of residence and of employment of such person or his or her travel within or outside of Sri Lanka. This provision not only enables the confinement of a person to house arrest on mere suspicion but would also appear to grant the Minister the power to determine the place of residence of the person. This provision is in violation of Article 12 of the ICCPR guarantees that "[E]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

To Amnesty International's knowledge, to date, this provision has not been resorted to. Amnesty International recommends it should be immediately repealed.

4Restrictions on freedom of expression

Section 11 (1) (e) of the PTA empowers the Minister to restrict or prohibit a suspected person from addressing public meetings for a period of 18 months. Amnesty International is concerned that this provision could violate the right to freedom of expression as guaranteed in international standards, including Article 19 of the ICCPR.

To Amnesty International's knowledge, to date, this provision has not been resorted to. Amnesty International recommends this provision be repealed immediately.

5Admissibility as evidence of statements made to the police

Under Section 16 of the PTA confessions made while the detainee is in police custody are admissible in evidence, provided that they were not made to a police officer below the rank of Assistant Superintendent. Normally, the rules of evidence specified in sections 25 and 26 of the Evidence Ordinance, exclude confessions made to the police as evidence in future trials. Amnesty International considers the PTA provisions to constitute a direct incentive to interrogating officers to obtain information or "confessions" by any means, including torture.

Section 16 (2) of the PTA specifies that "[T]he burden of proving that any statement referred to in subsection (1) is irrelevant under section 24 of the Evidence Ordinance shall be on the person asserting it to be irrelevant". This means that the accused has to prove that statements admitted in evidence were obtained by violence or under duress. In dozens of trials before the High Court of people arrested and charged under the PTA, the accused have pleaded that statements purported to have been made by them during interrogation and submitted by the police as evidence were extracted under torture. During *voire dire* inquiries ordered by the High Court to establish whether or not the 'statements' were made voluntarily, the court recently very often found that they were not.

VADDITIONAL MEASURES FOR THE PREVENTION OF FURTHER HUMAN RIGHTS VIOLATIONS

Apart from the specific recommendations for the review of security measures as outlined above, Amnesty International has over the years recommended several other measures for the effective prevention of human rights violations. The main recommendations for the prevention of extrajudicial executions, "disappearances" and torture were listed in its September 1990 report *Sri Lanka: Extrajudicial Executions, "Disappearances" and Torture, 1987 to 1990* (AI Index: ASA 31/21/90). In *Sri Lanka - The Northeast: Human rights violations in a context of armed conflict* of September 1991, 32 specific recommendations were made in the light of the specific law and order situation prevailing in the northeast at the time. In December 1991, the then government accepted 30 of the 32 recommendations, some of which have been implemented fully. Several existing and recently announced measures and Amnesty International's recommendations, all of which relate to the government's obligations under international human rights standards, are set out below.

1Ratification of outstanding international human rights standards

Shortly after coming to power in August 1994, the government announced "a review of its status under all international human rights instruments". To date, to Amnesty International's knowledge, the review promised in August 1994 has not as yet taken place. Amnesty International has repeatedly urged the government to ratify all international human rights and humanitarian standards to which Sri Lanka is not as yet a party.

In particular, Amnesty International has recommended that Sri Lanka become a party to the Second Additional Protocol to the Geneva Conventions which provides standards for the protection of non-combatants in internal conflicts from murder, mutilation, torture or cruel treatment and prohibits hostage-taking by both parties to the conflict.

Amnesty International has also urged the government to become a party to the two Optional Protocols to the ICCPR. The first Optional Protocol enables individuals, who claim that their rights protected by the Covenant have been violated and who have exhausted all available national remedies, to submit communications to the Human Rights Committee. The Second Optional Protocol provides the world's first treaty of universal scope aimed at abolishing the death penalty. States that become party to this protocol are bound not to carry out executions, except in certain limited circumstances: "in time of war for a most serious crime of a military nature committed during wartime."

Furthermore, Amnesty International has urged the government to consider making declarations under Article 21 and 22 of the Convention against Torture to recognize the competence of the Committee against Torture (established by the Convention against Torture to receive communications from another state party (Article 21) or from individuals under their jurisdiction (Article 22) who wish to complain about alleged violations of the provisions of the Convention.

2Constitutional reform

A Parliamentary Select Committee on Constitutional Reform chaired by the Minister of Justice and Constitutional Affairs and its sub-committee including members of parliament, of the government and of the opposition, was instituted in mid-September 1994. On 23 January 1995, the Minister of Justice and Constitutional Affairs released to the press a document issued by the Ministry of Justice and Constitutional Affairs entitled *First Working Draft for Consideration by Select Committee of Parliament on the Constitution of the Democratic Socialist Republic of Sri Lanka*. It included amendments to the fundamental rights chapter of the Constitution to strengthen human rights protection in the country. Following presentations by political parties and individual members of the public, a revised draft was

published on 21 May 1995. Amnesty International understands that further changes have since been considered by the Select Committee.

Currently, the Constitution does not provide for the protection of the right to life which is a right from which no derogation is permitted under any circumstances under the ICCPR. The government's proposals as published on 21 May 1995 state "8. Every person has an inherent right to life and no one shall be intentionally deprived of his life".

Since 1976, no judicial executions have been carried out in Sri Lanka. Amnesty International has been encouraged that Sri Lanka had in fact abolished the death penalty in practice. On 20 June 1995, the Minister of Justice and Constitutional Affairs announced that Sri Lanka is reconsidering carrying out death sentences, nearly 20 years after the last execution. The decision to resume executions was taken after a private member's motion calling for the return of the gallows was passed in Parliament on 9 June. Amnesty International expressed its deep concern about the news of a possible resumption of executions. It said it would be a retrogressive step for human rights in Sri Lanka and went against the official position of the UN General Assembly that it is desirable to abolish the death penalty and that the crimes to which it applies should be progressively reduced. Earlier, it had expressed its hope that the review of the Constitution would be used as an opportunity to abolish the death penalty in law. In doing so, Sri Lanka would join the 55 other states around the world that have abolished the death penalty totally for all offences. Fifteen others have done so for all but exceptional offences, such as crimes committed during war.

In a response to an appeal by Amnesty International, the Minister of Justice and Constitutional Affairs clarified on 26 June that the question of resumption of executions arose from a private member's motion to consider whether "in extreme cases of murder in circumstances which shock the public conscience because of unusual cruelty or for any other reason, some element of direction should be exercised in respect of commutation of the death sentence". The letter continues: "However, even in these exceptional cases, the government has made no decision to carry out the death penalty. The recent legislative intervention will no doubt trigger off a public debate on the issue involved. Meanwhile, no sentence of death will be carried out." Earlier on 22 June, when questioned by journalists, the Minister of Justice had reportedly stated: "The country has a President and Justice Minister who don't believe in the death penalty."

Amnesty International has welcomed the assurances that no executions will be carried out and the personal declarations of opposition to the death penalty by the President and the Minister of Justice. It reiterates its appeal for abolition of the death penalty in a constitutional provision.

3Implementing the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

In January 1994, Sri Lanka acceded to the UN Convention against Torture. In doing so, it undertook to "take effective legislative, administrative, judicial and other measures to prevent acts of torture". The Convention requires that torture be made punishable as a crime of a "grave nature", and the authorities have to examine allegations of torture promptly and impartially. In addition, the Convention against Torture requires that victims or their families must be able to get fair compensation and receive rehabilitation and that statements made under torture may never be used as evidence in court - except when alleged torturers are being tried, when such a statement can be introduced in court as evidence that the statement was made.

On 25 November 1994, a law was passed by parliament to give effect to the Convention against Torture. However, several provisions which are stipulated in the text of the Convention against Torture are not provided for in the law.

For instance, the definition of "torture" provided for in the law is more narrow than the one in the Convention against Torture. The latter defines "torture" as "any act by which severe pain or suffering, ..., is intentionally inflicted on a person for such purposes as..."(emphasis added). In subsection (1) of Article 2 of the new law, however, the causing of "suffering" is not explicitly made part of the definition of "torture" and the purposes for which torture is inflicted are listed in an exclusive (rather than inclusive) way by use of the wording "for any of the following purpose[s]".

Amnesty International is also concerned that subsection (3) of Article 2 of the law[18] allows for ill-treatment to be inflicted on the order of a competent court. Amnesty International urges that a safeguard be introduced to ensure that courts may not prescribe or apply any form of punishment that may amount to torture or cruel, inhuman or degrading treatment.

Amnesty International also notes with concern that Article 3 of the Convention against Torture which provides that "[n]o State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture" has not been put into effect in Sri Lanka. This means that under current legislation, people who could be subjected to torture or cruel, inhuman or degrading treatment or punishment in a third country cannot invoke this provision to contest their return to that country.

[18] Article 2 (3) reads: "The subjection of any person on the order of a competent court to any form of punishment recognized by written law shall be deemed not to constitute an offence under subsection (1).

Amnesty International has urged the government to take further effective legislative, administrative and other measures to prevent the infliction of torture and ill-treatment by its security forces and to ensure that the UN Convention against Torture is fully implemented. A thorough review of several provisions of the ERs and PTA, as described above, are among the most urgent measures needed to eradicate the practice of torture.

Amnesty International has also drawn the government's attention to Article 16 of the Convention against Torture which specifies that "[E]ach State Party shall undertake to prevent ... other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." In particular, this article of the Convention instructs that the obligations contained in Article 10 (education of law enforcement personnel and others), 11 (systematic review of interrogation rules and practices), 12 (prompt and impartial investigations) and 13 (right to complain to competent authority) apply not only to torture but also to cruel, inhuman and degrading treatment or punishment.

4The remedy of *habeas corpus*

According to current legislation, petitions seeking *habeas corpus* can be filed to challenge the legality of a prisoner's detention. The court can issue a writ of *habeas corpus* directing that the prisoner be produced, and can order an inquiry into the imprisonment. However, in practice the procedure has not proved effective for establishing the whereabouts of the "disappeared", nor has it curbed abuses such as arbitrary arrest and detention and "disappearance".

As *habeas corpus* proceedings are often subject to lengthy delay in Sri Lanka, this remedy has also failed to protect the welfare of most prisoners. Numerous cases have been pending before the Court of Appeal in Colombo or before the magistrate's courts to which they were forwarded by the Court of Appeal for investigation following an initial denial by the security forces that the particular person was in detention.

Throughout most of 1989, access to the remedy of *habeas corpus* - which is guaranteed under the Constitution - was severely limited because lawyers involved were threatened with death not to take such legal action and several of them were killed. Many witnesses were too afraid to come forward to file legal action.

Before November 1987, the Court of Appeal in Colombo had sole jurisdiction in *habeas corpus* cases. Relatives of "disappeared" people in the northeast of the country often found it difficult to obtain the services of a competent lawyer to represent them before the

Court of Appeal. Under the 13th Amendment of the Constitution of 14 November 1987, High Courts in each province were given the power to hear *habeas corpus* cases. However, few people have filed cases at the provincial level; it would appear that this was mainly because of a lack of lawyers prepared to take on such cases and the slower pace of procedures in the High Courts in comparison to the Court of Appeal in Colombo.

In December 1994, the Court of Appeal granted the mothers of three "disappeared" people who had been arrested in December 1988, 100,000 Rupees as exemplary costs. This sum was to be paid by the officer-in-charge of Dikwella police station who had denied the detention of the three "disappeared" young men. The court disbelieved the denial. The court also directed the Inspector General of Police and the Attorney General to take necessary steps to conduct investigations and to take steps, according to the law, against the police officer concerned. Since this judgment, several other relatives have also been granted compensation. Amnesty International welcomes these recent developments.

Amnesty International has repeatedly recommended that a thorough review of the *habeas corpus* procedure should take place to ensure these petitions are dealt with as speedily as possible and that judges have the authority to obtain unrestricted access to places of detention to investigate the legal situation and physical condition of detainees. If access is refused, or if the detention is denied in spite of evidence of the involvement of members of the security forces in the arrest, judges should have full authority to order that the detainee be brought before them. Failure to present a detainee before the judge should be made an offence.

5 The remedy of fundamental rights petitions

For years, torture has been among the most widespread of the human rights violations reported in Sri Lanka. It has often resulted in the death or "disappearance" of the prisoner. For those victims of torture who survived, the filing of fundamental rights cases has been one of few legal remedies available in Sri Lanka. The use of this procedure, however, has been limited. The 1978 Constitution of Sri Lanka recognizes an individual's rights not to be tortured and not to be subjected to arbitrary arrest, detention and punishment, among others, and provides for recourse to the Supreme Court when these rights are violated.

Under current legislation, a person can bring a petition before the Supreme Court alleging that his or her fundamental rights have been violated. The Supreme Court has "the power to grant such relief or make such directions as it may deem just and equitable". Recently, the court has used these powers to:

- order the release of the petitioner if he or she is unlawfully detained; and/or
- order compensation to be paid; and/or

- order an inquiry against those held responsible for the violation of fundamental rights and that action (disciplinary or other) be taken against them, if they are found guilty during this inquiry.

The total number of fundamental rights petitions filed against security forces personnel in the period between 1989 and 1993 was 920[19]. However, this number represents only a small fraction of the total number of people who suffered arbitrary arrest and detention and torture at the hands of the security forces. For instance, few fundamental rights petitions have been filed by people arrested and tortured in detention in the northeast of the country despite the widespread reports of the use of torture by the security forces deployed in those areas. This is partly due to the time limit imposed by Article 126 of the Constitution requiring that a fundamental rights petition must be filed within one month of the alleged infringement. In the past, this has prevented many victims from utilizing this legal remedy. Since 1990, however, the Supreme Court has interpreted this provision liberally and has allowed cases to be heard which fell outside the specified one month period.

The Supreme Court has, in recent years, taken several other initiatives which have resulted in a larger number of victims receiving redress through the court. For instance, in 1990 the court introduced new procedures in relation to letters received from detainees claiming they were illegally detained. Whereas under normal procedures, the Supreme Court only acts on the basis of sworn statements, under the new procedure letters received directly from detainees are forwarded to the Bar Association, which follows them up by interviewing the individual detainees and filing petitions on their behalf. It is estimated that more than 5,500 detainees have sought relief in this manner since 1990.[20] But many people who were victims of torture prior to 1990 have been effectively barred from legal redress.

In its Annual Report of 10 August 1994, the then Chairman of the Human Rights Task Force made a number of recommendations for the prevention of torture. These recommendations included the extension of the time limit for filing petitions to six months; empowering provincial High Courts to hear fundamental rights cases; and permitting access to the courts not only to the victim but also to a duly authorized member of the family. Amnesty International understands that the government's proposals for strengthening the constitutional protection of human rights currently before the Parliamentary Select Committee on Constitutional Reform incorporate several of these recommendations.

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19 Registrar of the Supreme Court as quoted in Sri Lanka Situation Report of 30 June 1994. The number of petitions against police officers in 1989 was 13, in 1990 15, in 1991 61, in 1992 605. In 1993, 226 petitions were filed against police officers.

20 Law & Society Trust, Sri Lanka - State of Human Rights 1993, Colombo, 1994.

6Repeal of indemnity legislation

On several occasions, Amnesty International has appealed for the repeal of all legislation which has the effect of hampering the full and impartial investigation of human rights violations and bringing the perpetrators to justice.

The Indemnity (Amendment) Act gives immunity from prosecution to all members of the security forces, members of the government and government servants involved in enforcing law and order between 1 August 1977 and 16 December 1988, provided that their actions were carried out "in good faith" and in the public interest. Even though this law has not been applied to date[21], as long as it is on the statute book, defendants will be able to invoke it in court in attempts to protect them from prosecution in cases relating to events that took place in this period.

Section 26 of the PTA provides for immunity from prosecution to "any officer or person for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any order made or direction given under this Act".

Amnesty International has repeatedly called upon the new government to repeal the Indemnity (Amendment) Act and Section 26 of the PTA. The repeal of these provisions would be a sign of its commitment to bring those responsible for human rights violations - regardless of when they were committed - to justice.

7The establishment of a national human rights commission

During his address to the UN Human Rights Commission in February 1995, the Minister of Foreign Affairs stated that the government was intending to establish a national human rights commission and that legislation to that effect "was awaiting passage in Parliament". Approval, in principle, on its establishment had reportedly been reached by the cabinet on 3 September 1994. However, as of early June 1995, to Amnesty International's knowledge, no legislation had been tabled in Parliament.

In 1991, the representative of the then government informed the UN Commission on Human Rights that it would establish a national human rights commission. However, by the time of the dissolution of parliament in July 1994, no draft legislation had been introduced.

[21] The Act was relied on in 1989 by the Attorney General representing the state in civil cases for damages brought by relatives of prisoners who were killed in Welikade prison, Colombo in 1983. In April 1994, the cases were settled resulting in the granting of certain *ex gratia* payments to the relatives without admitting liability. The applicability of the immunity legislation has therefore to date not been tested in court.

As recommended to the previous government, Amnesty International has urged the new government to ensure that the mandate, composition and methodology of the human rights commission will be in accordance with internationally recommended minimum principles and standards.

Amnesty International also recommends that the creation of a human rights commission in Sri Lanka should be accompanied by a thorough review of existing institutions in order to make these more effective instruments of human rights protection.

Appendix A: List of members of the Human Rights Committee

Sr Francisco José Aguilar Urbina	Costa Rica
Mr Nisuke Ando	Japan
Mme Christine Chanet	France
Mr Prafullachandra Natwarlal Baghwati	India
Mr Omran El-Shafei	Egypt
Mr Tamás Bán	Hungary
Professor Rosalyn Higgins	United Kingdom
Mr Rajsoomer Lallah	Mauritius
Mr Andreas V Mavrommatis	Cyprus
Mr Fausto Pocar	Italy
Sr Julio Prado Vallejo	Ecuador
Sr Marco Tulio Bruni Celli	Venezeula
Mr Thomas Buergenthal	USA
Mrs Elizabeth Evatt	Australia
Mr Laurel Francis	Jamaica
Mr Eckart Klein	Germany
Mr David Kretzmer	Israel
Sra Cecilia Medina Quiroga	Chile

Appendix B: List of selected Amnesty International documents issued since 1991

- *Sri Lanka - The Northeast: Human rights violations in a context of armed conflict* (ASA 37/14/91) of September 1991
- *Sri Lanka: Summary of human rights concerns during 1991* (ASA 37/01/92) of January 1992
- *Sri Lanka: Deliberate killings of Muslim and Tamil villagers in Polonnaruwa* (ASA 37/10/92) of June 1992
- *Sri Lanka: An assessment of the human rights situation* (ASA 37/01/93) of February 1993
- *Sri Lanka: The "disappearances" from eastern university refugee camp of 5 September 1990* (ASA 3719/93) of October 1993
- *Sri Lanka: New emergency regulations* (ASA 37/04/94) of January 1994
- *Sri Lanka: Summary of human rights concerns* (ASA 37/09/94) of February 1994
- *Sri Lanka: Balancing human rights and security: abuse of arrest and detention powers in Colombo* (ASA 37/10/94) of February 1994
- *Sri Lanka: Secret detention in Colombo. The case of Arulapu Jude Arulrajah* (ASA 37/13/94) of February 1994
- *Sri Lanka: When will justice be done?* (ASA 37/15/94) of July 1994
- *Sri Lanka: Time for truth and justice* (ASA 37/04/95) of April 1995
- Urgent Action 103/95 *Sri Lanka: fear of torture/"dis"* (ASA 37/07/95) of 28 April 1995
- Urgent Action 103/95 further information *Sri Lanka: fear of torture/"dis"* (ASA 37/08/95) of 2 May 1995