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SRI LANKA

New Emergency Regulations - erosion of human rights protection

Introduction

In May 2000, the President of Sri Lanka promulgated new emergency regulations[1] which confer powers of arrest to "any authorized person" in addition to the police and armed forces and considerably extend the powers to detain available to them. The regulations also provide wide powers of censorship; provisions for prohibiting public meetings and processions; and broad provisions for proscribing organizations which the President considers to be prejudicial to national security, public order or the maintenance of essential services.

The emergency regulations which were in force up to 3 May already granted powers which considerably exceeded the limits

[1] Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 2000 as promulgated in Gazette 1130/8 of 3 May 2000; and amendments promulgated to regulations concerning control of publications on 10 May 2000 and to those concerning arrest and detention on 16 May 2000. Further amendments were promulgated on 3 June to lift the ban on public meetings and processions and on 1 July to regulations concerning control of publications. The issuing of new emergency regulations should not be confused with the declaration of a state of emergency as such. A state of emergency has been in force in Sri Lanka nearly continuously since 1983. During a declared state of emergency, which has to be renewed monthly by parliament, emergency regulations come into force. They are issued by the President under the Public Security Ordinance, by-passing the normal legislative procedure.

permissible under the International Covenant on Civil and Political Rights (ICCPR), which Sri Lanka acceded to in 1980. The excessive powers available under emergency regulations and their contribution to human rights violations have been commented on by a number of international and local human rights bodies over the years. Most recently, for example, the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) recommended that the emergency regulations in force at the time of its third visit to Sri Lanka in October 1999 "should be abolished or otherwise brought into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners".[2] Far from complying with its obligations under international human rights law, however, the Sri Lankan government has instead further eroded the human rights guaranteed in international human rights treaties with the emergency regulations promulgated on 3 May 2000 and their subsequent amendments.

This report concentrates on only certain aspects of the new emergency regulations related to Amnesty International's main concerns in Sri Lanka. Key issues of concern relate to arrest and detention procedures and the regulations governing post-mortems and inquests when deaths have occurred in custody or as a result of the official action of the security forces. In particular, the report highlights the removal of several safeguards against arbitrary arrest and detention and the danger this poses for the safety of detainees.

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[2] See paragraph 63(d) of UN Document: E/CN.4/2000/64/Add.1, Report of the visit to Sri Lanka by a member of the Working Group on Enforced or Involuntary Disappearances (25-29 October 1999), 21 December 1999.

Since the introduction of the new emergency regulations, there has been an increase in the number of reports of torture. In addition, the methods of the torture reported appear to have become more severe than before and there have been at least two reports of detainees dying in custody as a result of torture. While Amnesty International cannot provide conclusive evidence linking this emerging trend to the new emergency regulations, it is concerned that the wider powers given to the security forces may be resulting in an increase in torture, "disappearances" and deaths in custody.

At the time the new emergency regulations were promulgated, the Liberation Tigers of Tamil Eelam (LTTE) – the organisation fighting for establishment of a separate Tamil state in northern and eastern Sri Lanka – was on the offensive, and moving towards its former northern stronghold of Jaffna. In the past, including in mid-1996 during periods when the military had suffered major setbacks such as the loss of a key army camp or territory to the LTTE, reports of torture and "disappearances" increased dramatically. This, for instance, was the context in which approximately 500 "disappearances" were reported in Jaffna in 1996 in the spate of a few months. Due to current major difficulties in communication

On 22 June, Thambiah Wijayakumar was reportedly taken away from the cinema in Veppankulam, Vavuniya District, where he works, by four officers of the Security Co-ordinating Unit (SCU), a police unit involved in interrogating suspected members of the LTTE. The SCU and other security forces continued to deny he was in their custody when Thambiah's relatives made enquiries. His whereabouts remained unknown until 10 July when the SCU finally admitted he was in their custody.

between the Jaffna peninsula and the rest of the country as well as abroad, it has not been possible for Amnesty International to ascertain whether there has been a deterioration in the treatment of detainees there. But the reports received from other parts of the country clearly warrant heightened concern.

The proper protection of prisoners and detainees is a matter of critical importance in Sri Lanka, which remains the country with the second largest number of non-clarified cases of "disappearances" on the WGEID's list, and where torture remains widespread.

While a very large number of the approximately 12,000 non-clarified "disappearances" on the WGEID's list took place under the previous government, the practice of "disappearance" by no means ceased when the People's Alliance came to power in 1994 under President Chandrika Bandaranaike Kumaratunga. Amnesty International has received reports of at least 540 cases of "disappearance" since the change of government in 1994. The broad powers available to the security forces have long been identified as a facilitating factor. One of the most basic safeguards against torture and "disappearance" is to ensure that no prisoners are held for long periods in the custody of those responsible for their interrogation and that they have access to their relatives, lawyer and a doctor. Yet the new regulations considerably extend the period in which detainees can be held by their interrogators and weaken the few safeguards that had been in place before.

In July 1997 President Kumaratunga acknowledged the need

for considerably greater protection of detainees when she issued a number of Presidential Directives to the heads of the armed forces and the police containing specific procedures to enhance their protection. Among the provisions were requirements to issue "arrest receipts" and to report all arrests and detention to the Human Rights Commission of Sri Lanka within 48 hours. However, these Directives – while welcome in themselves – did not have the force of law and were anyway not consistently implemented. Now that the emergency regulations have themselves been broadened in scope, the continued applicability of the Directives is unclear. Amnesty International very much regrets that the Sri Lankan authorities decided to reduce the already limited safeguards against the abuse of prisoners contained in the previous emergency regulations, rather than to incorporate the additional safeguards set out in the 1997 Directives into the new regulations to enhance prisoner protection.

Background

As stated above, at the time the new emergency regulations were promulgated in early May 2000, the LTTE was on the offensive in the Jaffna peninsula. The LTTE had held Jaffna from mid-1990 to late 1995, when government forces took back control of the area. In the face of the LTTE military campaign, in late April 2000 government troops had been withdrawn from the camp which controlled Elephant Pass, the main causeway linking the Jaffna peninsula to the mainland. Access to those areas in the Thenmarachchi Division of the peninsula where the fighting continued on a smaller scale, including for the

media and international humanitarian agencies, was subject to approval by the Ministry of Defence and had not been granted up to the time of writing. In addition, contact with the peninsula by telephone, fax or other telecommunication means was impossible after the telecommunication tower based inside the army camp at Elephant Pass was damaged during the LTTE attack on the camp.

The promulgation of the new emergency regulations was presented by the government as part of a package of measures to put the country on a "war footing". Other measures included the suspension of all non-essential development activities for three months and the acquisition of arms from abroad. However, while national security concerns in the north were evidently of critical importance for the government, no reason was given for the imposition of sweeping powers island-wide.[3] In southern areas, particularly in the capital Colombo, there had been regular suicide bomb attacks carried out by the LTTE and aimed at politicians, members of the security

[3] Between 1993 and August 1998, the state of emergency was intermittently in force in geographically specified areas, normally including the north and east, the capital Colombo and areas bordering the north and east. From time to time, other areas were added to this list. There were other times when the state of emergency was in force island-wide but powers to arrest and detain were different in different parts of the country. For instance, between June 1996 and May 2000, the maximum period of detention in the south was 21 days; and 60 days in the north and east. Under the new emergency regulations, the only distinction left is with regard to who can issue a detention order. In the south, it has to be a senior police officer; in the north and east, it can be done by senior officers of army, navy and air force as well as the police.

forces, military and economic targets in which hundreds of civilians were killed. In late 1999, there was an increase in such attacks. On 18 December, there was a suicide bomb attack on a political rally organized by the People's Alliance at the close of campaigning for presidential elections in which at least 14 civilians were killed and numerous others were injured, including President Chandrika Bandaranaike Kumaratunga. In another attack on the same day, a bomb was thrown at a rally organized by the United National Party in which at least 11 civilians were killed. On 10 March 2000, at least 12 civilians were killed when members of the LTTE armed with rocket-propelled grenades shot indiscriminately through busy traffic near the parliament. The LTTE members were fleeing after a failed attack thought to have been aimed at a member of parliament or government returning from attending a parliament session. However, despite these attacks, the government did not amend the emergency regulations then in force in the south at that time. It only amended the regulations relating to arrest and detention, withdrawing the geographical distinction between the north east and the south, after major military setbacks in the north in April and early May 2000. And as stated above, no reasons were given for the imposition of the same emergency powers island-wide.

States of emergency and derogation of human rights

Some human rights, such as the right to life and the right not to be tortured, are absolute and may never, in any circumstances, be derogated from (suspended or restricted). However, states may

suspend certain rights in times of emergencies under the terms of several international human rights treaties, including Article 4 of the ICCPR, but only to the extent strictly required by the situation. Among the rights that may be suspended are some fair trial guarantees. Article 4 allows a government to suspend certain human rights as long as:

a) the exigencies of the situation strictly require such a suspension;

b) the suspension does not conflict with the nation's other international obligations;

c) the state of emergency is officially proclaimed and the government immediately informs the UN Secretary-General about what rights have been suspended and why.[4]

Amnesty International believes that the right to liberty and security of the person (Article 9 of the ICCPR) and the right to a fair trial (Article 14 of the ICCPR) are vital to the protection of human rights during states of emergency, and that therefore they should never be suspended. It is also all the more important during a state of emergency that the judiciary remain independent and enjoy unhindered authority to act according to national and international law.

The Human Rights Committee (the international body of

4. Sri Lanka informed the UN Secretary General of its new emergency regulations on 30 May 2000. It also informed the Secretary General about derogations from articles 9(2), 9(3), 12(1), 12(2), 14(3), 17(1), 19(2), 21 and 22 of the ICCPR but did not provide any reasons.

independent experts monitoring the implementation of the ICCPR) expressed particular concern that Sri Lanka did not fully comply with its treaty obligations. When it examined Sri Lanka's third periodic report under the ICCPR in July 1995, it stated: "The Committee considers that the domestic legal system of Sri Lanka contains neither all the rights set forth in the Covenant nor all the necessary safeguards to prevent their restrictions beyond the limits established by the Covenant."[5] In addition, with specific reference to articles 9 and 10 of the ICCPR (the right to liberty and security of person and the right to be treated with humanity when deprived of one's liberty respectively), the Committee recommended that "as a matter of priority all legal provisions or executive orders be reviewed to ensure their compatibility with the provisions of the Covenant and their effective implementation in practice."[6]

Since then, any changes to emergency regulations have been largely confined to the geographical application of the emergency regulations (see also footnote 3). They have not addressed the fundamental aspects of their provisions for arrest and detention, which were identified as falling short of international standards by the Human Rights Committee, the Committee against Torture and the WGEID, among others.

The changes made to emergency regulations in May 2000, far from ensuring the regulations' compliance with Sri Lanka's obligations

5 See CCPR/C/79/Add.56, para 10.

6 See CCPR/C/79/Add.56, para 33.

under international human rights law, instead further erode the protections they contain against human rights violations. They facilitate torture and "disappearances", violations of non-derogable rights such as the right to life and the right not to be tortured.

Arrest and detention procedures

The regulations allow for several different kinds of detention, each of which has its own procedures:

- preventive detention
- detention for purposes of investigation
- detention for rehabilitation
- detention of persons who surrender

Any individual detainee, however, might be held in different kinds of detention at different times during a continuous period of imprisonment, so from the prisoner's perspective these different forms of detention under the emergency regulations might not be distinct. In addition, detainees can be held under the Prevention of Terrorism Act

Five labourers arrested on 4 June in Trincomalee district, in the [illegible] cemetery. His relatives were not present at the time of the burial.

(PTA) under three-monthly renewable detention orders for a maximum period of 18 months. Some detainees who are initially held under the emergency regulations at a later stage have detention orders under the PTA issued against them. This combination of detention under emergency regulations and PTA continues to be quite

common.

Preventive detention

Preventive detention orders under the new emergency regulations can be used to prevent a person from "acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services," or from committing certain specified acts. Such an order can be issued if the Secretary to the Ministry of Defence (hereafter, Defence Secretary) "is of opinion that … it is necessary so to do". The preventive detention orders must be issued by the Defence Secretary.

Two different kinds of preventive detention are envisaged in the regulations – detention within one's home under emergency regulation 16 (ER16), and detention in custody under emergency regulation 17 (ER17).

Detention at home under ER16

Under ER16, the Defence Secretary may order various restrictions on a person's activities as a preventive measure – these include restrictions on their employment or business, on their association or communication with others and on their movement. They also include what is in effect a form of house arrest: a person can be prohibited from leaving their residence without the permission of the authority or person specified in the order, and other persons can also be prohibited from entering or leaving the residence except under

specified circumstances.[7] The regulation sets no time limit for the period that such an order can remain in effect, which implies that it can last indefinitely. Thus, people can be detained in their homes for as long as the regulation under which the order was made remains in force. The regulation also provides no form of judicial or administrative scrutiny of an order under ER16, so no remedy is available at all for persons who find themselves the subject of such an order apart from petitioning the Supreme Court for violation of fundamental rights, which has to be done within one month of the alleged infringement.

The grounds on which orders can be issued under ER16 are broadly formulated, and extend beyond legitimate security concerns. For example, if the Defence Secretary "is of opinion that … it is necessary so to do," he can issue an order to prevent a person acting "in any manner prejudicial to … the maintenance of essential services"; this broadly phrased ground could include within its scope trade-union activity within sectors defined as "essential services". There is no provision for consultation with a court or any other independent body.

Preventive detention under ER17

Powers of preventive detention under ER17 have been considerably extended. Of particular concern are the extended powers to detain granted to the Defence Secretary, the lack of judicial review of

6. Such form of detention at home is also provided for under the Prevention of Terrorism Act.

detention orders, and the attempt in ER17(10) to deny detainees access to the Supreme Court to challenge the legality of their detention.

In recent years, the Supreme Court has ruled that the procedures used to detain certain prisoners have not followed the procedures required by law (in these cases, the procedures required under the Constitution and the emergency regulations), and have thus been illegal and violated the prisoner's constitutional rights. Some of the changes made to ER17 appear intended to pre-empt such future challenges to the legality of preventive detention orders.

Of very great concern is the new provision in paragraph 17(10), which states that an order made under ER17(1) (that is, a preventive detention order) "shall not be called in question in any court on any ground whatsoever". This appears to be an attempt to remove the right of detainees to challenge the legality of the detention orders imposed on them in the Supreme Court. If so, this would deny detainees their constitutional right to petition the Supreme Court regarding violations of their fundamental right not to be arbitrarily arrested and detained. If the right to petition the Supreme Court is removed from detainees, there is nothing at all to prevent people being detained on wholly arbitrary grounds, and no means of redress for people whose constitutional rights have been violated. There would be no effective check at all on the basis of the Defence Secretary's decisions to issue preventive detention orders, or on abuses of procedure.

The implications of ER17(10) are not yet clear. In the past, the Supreme Court has ruled that fundamental rights can be subject to restrictions set out in law (which includes emergency regulations), but that they cannot be restricted to a point of denial of the right. They must be confined to reasons set out in Article 15(7) of the Constitution. Article 15(7) of the Constitution of Sri Lanka list the grounds on which the exercise and operation of all the fundamental rights enshrined by Articles 12 (right to equality), 13 (freedom from arbitrary arrest and detention) and 14 (freedom of speech, assembly, association, occupation and movement) can be subject to "restrictions as may be prescribed by law". These grounds include "the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society". Article 15(7) does not permit derogation of the right set out in Article 17(2) of the Constitution guaranteeing the right to a remedy for the infringement of fundamental rights by executive action. It may well be, then, that this attempt to deny detainees the right to petition the Supreme Court regarding violations of their constitutional rights would itself be deemed unconstitutional.

ER 17 provides for preventive detention on the order of the Defence Secretary for a period of up to a year.[8] Of particular concern is the rewording of the basis on which the Defence Secretary can issue

[8] Previously preventive detention could be extended indefinitely, at the discretion of a magistrate.

a preventive detention order. In the past, ER17 required that the Defence Secretary had to be "***satisfied*** upon the material presented to him, or upon such further additional material as may be called for by him", that it was necessary to detain a person to prevent them from committing certain kinds of acts. The Supreme Court in August 1997 had ruled that this meant the Defence Secretary must have made a reasonable, objective and independent decision on the basis of the material relating to the case; without this, he could not be said to be "satisfied" about the necessity of the order.[9] The new ER17 has been re-worded significantly in this respect: instead of a requirement that the Defence Secretary is "***satisfied***" on the basis of material evidence, he now needs only to be "***of opinion***" that it is necessary to issue a preventive detention order, and there is no requirement at all that he should be able to justify his opinion with reference to any actual evidence. This new wording will enable detention orders to be made in an even more arbitrary and capricious manner than was previously the case.

Under ER17, persons held in preventive detention should be informed that they can make representations to the President in writing about their detention, and that they also have the right to make objections about their detention to an Advisory Committee,

[9] *Sunil Kumar Rodrigo (on behalf of B. Sirisena Cooray) vs. Secretary, Ministry of Defence, Inspector General of Police and Attorney General* (SC (FR) Application No 478/97 as decided on 19 August 1997), and discussed in Chapters III and IV of Law and Society Trust, *Sri Lanka: State of Human Rights 1998*).

appointed by the President for this purpose. They do not have recourse to any judicial scrutiny of their detention, however; they may only appeal through these administrative procedures. Even then, paragraph 17(9) removes these rights from all detainees whom the Defence Secretary suspects to be, "or to have been", a member of a proscribed organisation. Thus, once the Defence Secretary has certified his suspicions in writing, there is no means of appeal or redress at all for persons who believe themselves to have been wrongfully detained.

For those who are permitted to lodge objections with the Advisory Committee, it is the duty of the chairman of the Advisory Committee to inform the detainee of the grounds on which s/he has been detained and to provide him or her with the information which, "in the opinion of the chairman", are sufficient for him to make his case. There is no requirement, then, for full details on the detention to be provided to the detainee. Nor is there any requirement for information on the grounds of detention to be given to a detainee who has *not* made representations to the Advisory Committee, or who has been prohibited from so doing because they are deemed to be members of proscribed organisations. However, Article 13(1) of the Constitution requires that "Any person arrested shall be informed of the reason for his arrest", and in the past the Supreme Court has rejected the Defence Secretary's argument that the procedure established under emergency regulations does not require communication of the grounds at the time of arrest.[10] Under ER17, the report of the Advisory Committee is submitted to the Defence

10 Ibidem.

Secretary, who may or may not act on its recommendations. The detention order can be revoked at this stage, at the discretion of the Defence Secretary. There is no requirement for the detainee to be informed of the Committee's findings. Apart from the very limited administrative procedure provided under ER17, which is anyway not available to detainees suspected of being members of proscribed organizations, no means of redress at all is provided in the emergency regulations for persons held in preventive detention.

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

The changes made to arrest and detention procedures under ER18 and ER19 have the overall effect of eroding safeguards to protect the rights of people deprived of their liberty. In particular, the maximum period of time that prisoners can be held for investigation has been extended. The portion of that time that they can remain in police custody has also been considerably extended. Previously, prisoners arrested under ER18 could be held for investigation for up to 60 days in the north and east, and up to 21 days in the rest of the country. They could be held in any place authorized by the Defence Secretary. Now, prisoners island-wide can be held for up to 90 days for investigation, but this period can be extended for a further six months by a court on the basis of a police application which the judge has no discretion to refuse. Those arrested under ER18 must be produced before a

magistrate within 30 days of their arrest to record their detention.

For the detention to be extended beyond 90 days, regulation 19(2) requires the prisoner to be produced before a "court of competent jurisdiction". Although the judge has no discretion over the continuation of the detention, there is a requirement that the court "shall order" the prisoner to be transferred to a prison. In other words, it is now possible for a person to be held without charge for up to 90 days in police custody, and for a further six months in prison on the basis of police or security forces orders and police applications to the court.

An arrest may be made under ER18 by any police officer or any member of the armed forces (army, navy, air force), or "any other person authorized by the President to act under this regulation" (ER18(1)). This is a worrying extension of powers. There is no way of knowing who has been granted such powers, and whether a person attempting to make an arrest is doing so legitimately or not. In principle, then, the possibility arises of untrained, unidentifiable people making arrests under Presidential order, and acting outside the normal chains of command and accountability.

Unlike detainees held in preventive detention, prisoners arrested under ER18 must be produced before a magistrate 'within a reasonable time', and not later than thirty days after their arrest. Even then, however, a prisoner can be held in detention for up to 90

days from their arrest on the basis of an order issued by an officer of at least the rank of Deputy Inspector General of Police (DIG) in the south, or in the north and east on the basis of an order issued by a DIG, or a Brigadier, Commodore or Wing Commander of the armed forces. After 90 days, the prisoner must be released unless they are detained under ER17 (preventive detention – see above) or unless they are produced before a court. However, ER19(2A) specifies that the court "shall … extend the detention of that person" for up to six more months, on the basis of an application by a police officer of at least the rank of Superintendent of Police. In other words, provided that such application is made, the court appears to have no discretion at all. In effect, this means that suspects can be detained for a period of nine months without charge on the basis of police or armed forces orders and police applications to the courts. Of this period, the prisoner could spend up to three months in police custody before being transferred to a prison.

Detention for rehabilitation

The provisions for the rehabilitation of prisoners (ER20) appear to permit a person to be detained indefinitely for the purpose of rehabilitation, on the basis of a Rehabilitation Order issued by the Defence Secretary. ER20A(1) provides that prisoners held in preventive detention or for investigation under the emergency regulations, or who are detained under Section 9 of the Prevention of Terrorism Act (PTA), can be the subject of such orders, which are issued "in the interest of the welfare of such person". While the Rehabilitation Order must contain a time period, the regulation under

which it is issued (ER20A) contains no time limit. It appears possible, then, for people who were originally detained for preventive or investigative reasons to find themselves subject to lengthy Rehabilitation Orders. When a Rehabilitation Order is issued, the detention orders under ER17 or ER19, or under the PTA, is considered to have been revoked.

People who surrender to the police or armed forces in connection with a range of offences should be handed over within 10 days of the surrender to the care of the Commissioner General of Rehabilitation. They should be assigned to a "Protective Accommodation and Rehabilitation Centre" and given appropriate training. They can be held for rehabilitation for up to two years. A peculiar provision has been retained which requires that people who "surrender" because they fear they will be attacked by terrorists, be detained for rehabilitation themselves.

Article 9(2) of the ICCPR requires 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". ER20 is clearly in violation of both standards.

Places and conditions of detention

Another issue of great concern is that it is no longer a requirement for a list of authorized places of detention to be published, which increases the risk of secret detention and its associated abuses. It is no longer an offence to hold persons in places which have not been gazetted as authorized places of detention.

Under the previous emergency regulations there was a legal requirement that places of detention had to be designated and gazetted as such. This is no longer the case. Although on 14 June 2000 the Inspector General of Police published by gazette notification a list of 346 places of detention for people held in preventive detention or for the purposes of investigation (ER17 and ER19), this publication does not follow a legal obligation.

People detained under an order made under ER17 can be detained by any member of the police or armed forces, and "shall be deemed to be in lawful custody". They can be held "in such place as may be authorized by the Inspector General of Police", but as the requirement for publication of the list of authorized places has been removed, it will be impossible for the whereabouts and welfare of all prisoners to be checked. The possibility of prisoners being held in secret detention under this regulation is thus high, increasing the risk of torture. It is also noteworthy that responsibility for authorizing places of detention has been changed from the Defence Secretary, who was responsible for this task under the previous emergency regulations, to the Inspector General of Police.

Linked to the issue of secret detention is the fact that there is

no requirement for detentions made on orders issued under ER17 to be reported to any authority, and no requirement for any document acknowledging the fact of the detention to be issued to a close relative. With no reporting requirements in place, and with secret detention a real possibility, the risk of torture and "disappearance" of detainees increases markedly. Although the Human Rights Commission of Sri Lanka Act No 21 of 1996 (Section 28) requires that the Human Rights Commission (HRC) should be informed of all detentions forthwith, and in any case not later than 48 hours after the event, this requirement has not been incorporated into ER17. If detentions are not reported to the HRC, it will not be able to fulfil its mandate to ensure the welfare of prisoners. Amnesty International is concerned that the removal of these limited safeguards from the emergency regulations is an attempt to undermine the effectiveness of the work of the HRC.

The regulations contain no requirement for the separation of responsibility for the custody of a detainee and responsibility for investigating the activities of the detainee. Such separation of responsibilities is a fundamental safeguard against ill-treatment and torture, and human rights organizations have long called upon the Sri Lankan authorities to introduce a strict separation of responsibilities. Prisoners held in the custody of their interrogators are most at risk of torture. Under the new regulations, prisoners held in preventive detention can be held in "such place as may be authorized by the Inspector-General of Police", which could include prisons, military custody, police stations or any other place.

Other salutory safeguards which have been done away with relate to the role of magistrates in supervising detention. The previous regulations contained provisions for the Defence Secretary to notify the existence and addresses of places of detention to the magistrate of the area and for officers-in-charge of any place of detention to furnish to the local magistrate once in fourteen days a list of all persons detained at such place, and for the magistrate to display that list on the court's notice board. It also contained a provision for magistrates to visit places of detention at least once a month and for every detainee to be produced before the magistrate. The new emergency regulations no longer contain these provisions.

The reporting requirements under ER18 are inadequate to protect prisoners. A person arrested under ER18 in connection with a specific offence under the regulations must be handed to the nearest police station within 24 hours of their arrest, and within 24 hours, the arresting officer (if a police officer) must report the arrest to the Superintendent of Police of the Division within which the arrest was made; if the arresting officer is a member of the armed forces, they must report the arrest to the Commanding Officer of the area. These reporting requirements are deficient in many respects. Firstly, there is no requirement for a central register of prisoners to be compiled, even at the divisional level. Furthermore, while the fact of the arrest must be reported, there is no requirement for the whereabouts of the prisoner to be reported. The compilation of a central register of prisoners has long been an important recommendation made by the WGEID and Amnesty International and other human rights

organizations.

The requirement that arrest receipts should be issued to relatives by the arresting officer has been retained. If a receipt cannot be issued, the reasons why should be recorded at the police station. Failure to issue an arrest certificate or to record the reasons why no certificate was issued remain offences, punishable by two years imprisonment and a fine. The retention of this provision is welcome, as if implemented it provides proof of arrest in the event that a person cannot be traced. However, in the absence of a central register of detainees, it may prove an inadequate means of safeguarding prisoners' welfare. Furthermore, since such reporting requirements were first introduced under the previous government in 1993, they have not been consistently implemented.[11]

An earlier requirement that arrest receipts should contain certain information such as name and rank of the arresting officer, the time and date of arrest and the place at which the person will be detained as set out in the Presidential directives of 1997 has not been retained in the emergency regulations. ER18(9) solely states that this document has to be "in such form as is specified by the Secretary". Amnesty International is concerned that the possible loss of such vital information could contribute to a re-emergence of more widespread

[11] For those arrests under ER18 carried out by "any other person authorized by the President to act under this regulation" (see above), there is no provision set out with regard to how and where the failure and the reasons therefore have to be recorded.

"disappearances" in Sri Lanka.

No minimum standards have been set to govern conditions of detention for prisoners held under the emergency regulations. The regulations specify that the Defence Secretary can suspend provisions of the Prisons Ordinance and Prison Rules for detainees held in prisons, and set no standards at all for those held in police stations, army camps or any other places. There is thus no guarantee that detainees will have access to even the most basic facilities.

Post-mortem and inquest procedures

On 6 May, three days after the new emergency regulations were promulgated, the government announced that ER55FF had been rescinded with immediate effect. According to this statement, the regulations of 3 May 2000 had been amended by gazette notification to remove this provision, which permitted police officers of the rank of at least Assistant Superintendent to dispose of bodies without post-mortem examination or inquest, thus enabling them to dispose of evidence of torture and extrajudicial killing.

This notorious provision was last brought into force under the previous government in 1989, during a period when tens of thousands of extrajudicial executions and "disappearances" were committed, and was removed from the regulations in February 1990. When such powers were introduced to the emergency regulations in the 1980s, there was an immediate increase in reports of extrajudicial killings. And indeed, after the revised emergency regulations were issued on 3 May 2000, there were again worrying

reports of the appearance of bodies of people who appeared to have been victims of extrajudicial execution.

On the evening of 3 May, the day the new emergency regulations were issued, 45-year-old Thangiah Sivapooranam from Wattala, Colombo was taken away by three people in civil dress who identified themselves as officers of the Criminal Investigation Department of the police. The next day, his body was found at Kadawatha, together with three further bodies, whose identities remain unknown. There were five gunshot injuries on Thangiah Sivapooranam's body, including one to his forehead, suggesting he may have been summarily executed.

Despite the government's announcement, however, it is not clear that ER55FF was in fact in force between 3 May and 6 May. Amnesty International's published copy of the emergency regulations dated 3 May 2000 does not contain this provision, although it has been informed that an earlier draft did contain it. So far, Amnesty International has not seen a copy of the gazette notification of the amendment to ER55FF which the government stated had been published. Given that the regulations of 3 May 2000 as published do not contain regulation 55FF, it can only be assumed that it was removed from the original text prior to printing. What remains unclear, if this was the case, is why the government then announced that they had been rescinded.

Even without the powers of ER55FF being available, the emergency provisions on post-mortem and inquest procedures 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.

In cases where a person has died as a result of official action by a police officer or member of the armed forces, or when a person has died in police or military custody, the police must make a report on the death. If the body has been found the police must inform a magistrate (ER55C), who must order a post-mortem examination and order that the body be returned to the police once the examination is completed (ER55D(1)). The police may then either return the body to relatives or – "in the interest of national security or for the maintenance or preservation of public order" – may bury or cremate the body as they see fit.

The police may apply to the High Court in Colombo for an inquiry to be held – but there is no requirement to do so. If they do make such an application, any proceedings into the death already taking place in a magistrate's court are transferred to the High Court. The inquiry can be held anywhere in the country. The judge may record as evidence the post-mortem report, other evidence presented by the police, and the evidence of other persons who appear acquainted with the circumstances of the death. However, there is no requirement for relatives of the deceased or other concerned

individuals to be informed that any inquiry is being held. Furthermore, the proceedings are not open to the public unless the Court of Appeal so directs, and cannot be published without the authority of the Competent Authority. The record of evidence and the findings must be forwarded to the Attorney General alone (55E), who may call for further material and, if satisfied that offences have been committed, may order an inquiry by a magistrate's court or bring charges in a High Court.

This procedure can be invoked by the police on the basis of a belief that a death was caused as a result of official action by police or armed forces officers, or when a person has died in police or military custody. Once the Inspector General of Police decides to apply for a High Court inquiry into the death under the emergency procedures, no other inquiry into the cause of death can be held. Thus, this emergency, secretive procedure could be used to try to evade proper scrutiny of the circumstances of death using the procedures provided under the normal law. The proper investigation of deaths caused by the security forces can thus be prevented, as the normal procedures can be bypassed. The emergency procedure could be used to try to cover-up illegal killings.

Conclusions and recommendations

Amnesty International believes that arrest and detention provisions under the emergency regulations violate a number of international commitments made by Sri Lanka, including several provisions of the ICCPR. In so far as the suspension of legal safeguards relating to arrest and detention facilitates torture and "disappearances", Amnesty International believes that the emergency regulations *de facto* make easier abuses of human rights which are non-derogable under the ICCPR. Amnesty International believes that the emergency regulations should be repealed or, failing outright repeal, should be reviewed thoroughly with a view to bringing them into line with internationally accepted standards of personal liberty, due process of law and humane treatment of prisoners.

Amnesty International believes that all political prisoners must be charged with a recognizable criminal offence and promptly tried in a regular court of law in accordance with internationally accepted standards of fair trial. Alternatively, they should be released. Amnesty International recommends that the Government of Sri Lanka urgently reviews the necessity of maintaining preventive detention and urgently considers its repeal.

Amnesty International also recommends that pending such a review or repeal, a number of urgent measures be taken to lessen the risk of abuse for detainees held under the emergency regulations, including:

- Ensure that detainees are promptly informed of all the reasons for their arrest and detention to enable them to effectively present their case when seeking legal redress;
- Restore the right to judicial scrutiny of all preventive detention orders;
- Ensure that relatives of detainees are promptly notified of detention and all transfers of detainees;
- Ensure that prompt and regular access of detainees to lawyers, family members and medical care be made mandatory; and its implementation is ensured;
- Ensure that no one is subjected to torture and cruel, inhuman or degrading treatment or punishment while in detention;
- Maintain central and regional registers of all detainees, including date of arrest, transfer and release and provide public access to such registers;
- Remove the emergency procedure for post-mortems and inquests into deaths in custody and deaths resulting from the official actions of the police and armed force from the regulations, and return to normal inquest procedures under normal law.