Report of an Amnesty International Mission to Sri Lanka

31 January - 9 February 1982

an amnesty international publication

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Report of an Amnesty International Mission to Sri Lanka

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A previous edition of this report was submitted to President Jayewardene on 7 February 1983. The Preface of this edition has been updated to include developments until 3 May 1983.

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PREFACE

This mission report was written following a mission to Sri Lanka by Amnesty International from 31 January to 9 February 1982. The mission report summarizes information collected by the mission relating to violations of human rights alleged to have been committed in the north of the country by the security forces under the provisions of the Prevention of Terrorism Act.

This mission report is based on a report which was presented to the President of Sri Lanka on 7 February 1983. Amnesty International then stated that it would appreciate receiving the government's comments and learning of the government's plans to implement its recommendations (set out in Chapter V of the report). Amnesty International informed the President that in accordance with its standard practice it would in due course publish its concerns in Sri Lanka but that it would be useful to receive the government's reaction before publication. It added that the Secretary General was prepared to discuss the report in Sri Lanka or elsewhere with the government. In a telex dated 29 March 1983 Amnesty International proposed that such a meeting take place between 18 and 23 April 1983, but the Secretary General was informed in a letter from the Sri Lanka High Commissioner dated 6 April 1983 that the President "regrets that it will not be possible for him or a representative of the government of Sri Lanka to discuss the report with you". As no comments had been received by mid-April and given the government's unwillingness to discuss the contents of the report with Amnesty International, the organization has decided to publish its contents.

The subject matter of this mission report is limited in its scope. It must be emphasized, however, that the range of Amnesty International's concerns in Sri Lanka extends beyond the specific allegations of human rights violations contained in this report. This is reflected in the introductory section following this preface, which outlines Amnesty International's concerns vis-à-vis successive Sri Lanka governments from 1971 until the 1982 mission.*

As far as possible, the information in the report has been updated to reflect developments until October 1982. This preface also describes Amnesty International's concerns with respect to events after the imposition of emergency rule in Sri Lanka following the presidential election on 20 October 1982. The Emergency Regulations, which were said by the government to have been enacted to avert post-election violence, came into force on 21 October 1982. They remained in force during the 22 December 1982 referendum which replaced general elections and extended the life of the sitting parliament for another six years, and were permitted to lapse on 20 January 1983.

Amnesty International received reports that more than 35 members or sympathizers of the opposition Sri Lanka Freedom Party (SLFP) were detained without charge under the Emergency Regulations as of late November 1982, and that several, including the Assistant Secretary of the party, were still in detention in early January 1983.

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* For a more detailed record of Amnesty International's concerns in Sri Lanka, reference may be made to the Sri Lanka entries of the annual Amnesty International Report which describe actions taken by the organization with respect to all human rights violations falling within its mandate.

Before the December 1982 referendum, members and organizers of two other opposition parties, the Janata Vimukhti Peramuna (JVP) and the Communist Party, were also reported to have been subjected to short-term detention under the Emergency Regulations. Amnesty International raised its concerns regarding the detention of opposition party members with President J.R. Jayewardene in communications dated 7 December 1982, 24 December 1982 and 6 January 1983, and sought confirmation on 24 January 1983 that all detained SLFP officials had been released when the Emergency Regulations lapsed. On 14 February 1983 Amnesty International was informed in a letter from the Sri Lanka High Commissioner that 37 people had been arrested in November and December 1982 "suspected of organizing acts of violence against the Government, and/or were in possession of unlicensed fire arms. After investigation, 28 persons were released within two weeks of arrest. Detention orders under the Emergency Regulations were made on the remaining nine persons, but they too were released after investigations were completed, four of them in November 1982 and the remaining five in January 1983". However, Amnesty International received subsequent reports that 10 of the detained SLFP officials, including the General Secretary, who had been released on bail on 16 December 1982, were charged under Section 120A of the penal code with "causing disaffection".

Arrests under the Prevention of Terrorism Act - which are a major subject of this report - also continued after completion of the report. Amnesty International received information that at least 27 people were arrested in the north of the country between 13 November 1982 and 7 February 1983 under provisions of the Act, and that arrests continued afterwards. By the end of April 1983 at least 65 people were being held under the provisions of the Prevention of Terrorism Act.

On 20 December 1982 Amnesty International expressed its concern to President Jayewardene at the continued detention without charge of three clergymen reportedly held under the Prevention of Terrorism Act since mid-November 1982, and at the related arrests of several others. On 21 December 1982 Amnesty International received a communication from the Secretary to the President confirming the detention of the three clergymen, and stating that "charges were being investigated against them" regarding "concealing information relating to the whereabouts of persons, who murdered police officials, and/or harbouring such persons and/or making speeches exciting communal hostility". Amnesty International was informed that the clergymen would be either prosecuted in a court of law, or released, when the investigations were completed.

On 24 December 1982 Amnesty International reiterated its concern that the clergymen had been held for more than five weeks under the Prevention of Terrorism Act and reportedly had not been given access to their lawyers during this period. Amnesty International was also concerned about reports that they had been subjected to assault and ill-treatment. It received a subsequent report that two of the clergymen had been allowed to meet lawyers as of 31 December 1982, but only after a habeas corpus petition had been brought by their lawyers. At least three other detainees held with them were reportedly still being denied access to their legal representatives and other visitors at the end of the year. One was allowed to meet her lawyer only after the Court of Appeal had given an order to that effect on 10 January after a habeas corpus petition had been brought on her behalf. The three clergymen and the others arrested with them under the Prevention of Terrorism Act were formally charged on 18 January 1983.

In response to Amnesty International's requests of 24 January 1983, the government replied on 14 February 1983 that two of the clergymen had been charged with "having information regarding the persons who robbed the Neervely Bank (in the Jaffna district) in March 1981 and failing to give this information to the police". Other charges against the clergymen were that they had "information regarding the persons who attacked the Chavakachcheri Police Station (in the Jaffna district) in October 1982 and failing to give this information to the Police" and harbouring persons who attacked the Chavakachcheri Police Station". These two charges had also been brought against the three other persons arrested with the clergymen. The government informed Amnesty International that, after having been charged, the detainees had been remanded in fiscal custody. In April 1983 they were reportedly held in a Colombo prison, their trial under the special provisions of the Prevention of Terrorism Act having been scheduled for 6 June 1983. Amnesty International took up their six cases for investigation.

Attacks on political figures and on members of the security forces continued to be reported during the first months of 1983 and on 29 April three members of the ruling United National Party were shot in the Jaffna district, the police holding Tamil groups responsible. Amnesty International was concerned that arrests under the Prevention of Terrorism Act of people not connected with these incidents continued to be reported in March and April 1983. Among them were several young men and women arrested in Vavuniya and Trincomalee and the Secretary and President of a voluntary organization involved in the resettlement of Tamils in the north. Some have been released, but Amnesty International continues to receive reports that several detainees held in army camps were beaten and ill-treated, that relatives were initially refused information about the whereabouts of arrested individuals and that lawyers faced repeated difficulties in meeting the detainees.

During the preparation of this Preface, Amnesty International received a disturbing report that a young farmer from Trincomalee had died in army custody. K. Navaratnarajah reportedly was arrested without charge under the provisions of the Prevention of Terrorism Act on 27 March, apparently in order to be interrogated about the whereabouts of persons wanted by the security forces. He died on 10 April in Gurunagar army camp. The magistrate's verdict regarding the cause of his death had not yet been given at the time of writing this Preface. The army has said that death was due to bronchial asthma, but a medical report submitted at the inquest proceedings reportedly indicated that 25 external and 10 internal injuries had been found on his body during the post-mortem examination.

Amnesty International believes that developments subsequent to the visit of its delegates to Sri Lanka underline the concerns expressed in this mission report and that effective remedies should be speedily taken.

3 May 1983

REPORT OF AN AMNESTY INTERNATIONAL
MISSION TO SRI LANKA - 31 JANUARY-9 FEBRUARY 1982

I INTRODUCTION

Background to Amnesty International Mission to Sri Lanka

This report records the findings of a mission by Amnesty International to Sri Lanka that took place from 31 January until 9 February 1982. Amnesty International sent a delegation to Sri Lanka after receiving further reports during 1981 of human rights violations - in particular, arbitrary arrest and detention and torture - being carried out by government security forces in the north of the country, where most members of the Tamil ethnic minority live.

In April 1981 Amnesty International began to receive reports that approximately 30 members of the Tamil ethnic minority had been arrested in northern Sri Lanka and were being held incommunicado as "suspects" under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 ("Prevention of Terrorism Act"). According to these reports the families of these individuals were not able to discover their whereabouts, the police and army denied knowledge of their arrest and lawyers were unable to gain access to the prisoners who were apparently being held without charge or trial. Fears were expressed to Amnesty International that those arrested were being tortured.

The government itself, in a public statement dated 25 June 1981 issued by the Ministry of Foreign Affairs*, confirmed that 27 individuals had been arrested and were being held under the Prevention of Terrorism Act. While noting that these detainees had certain rights under the act and under the Sri Lanka constitution, the government labelled those arrested "a group of terrorists who had been able to commit the acts of violence with impunity as investigations could not be completed under the normal laws" and stated that "it is important that these detenus should not have access to their lawyers and relations for a certain minimum period". Contrary to the reports that Amnesty International was receiving, the government statement maintained that "the family of the detenu is informed of the fact of the arrest and detention so that they would know that the person is in custody and would not be in a state of anxiety through lack of knowledge of his whereabouts".

Given the conditions of incommunicado detention under which those arrested were held, it was especially difficult for Amnesty International to confirm or deny the reports of human rights violations which it continued to receive throughout 1981 and in January 1982, so the organization decided to send a mission to Sri Lanka.

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* "Investigations into Acts of Terrorism", published by the Ministry of Foreign Affairs, 25 June 1981.

The reported human rights violations, described above, which were the subject of the mission's investigation are of concern to Amnesty International inasmuch as Articles 1(b) and 1(c) of its Statute state that it is among the objects of the organization to oppose:

- the detention of Prisoners of Conscience or any political prisoners without trial within a reasonable time or any trial procedures relating to such prisoners that do not conform to internationally recognized norms;

and to oppose:

- torture or other cruel, inhuman or degrading treatment or punishment of prisoners or other detained or restricted individuals whether or not they have used or advocated violence.

Amnesty International works furthermore for the unconditional release of prisoners of conscience, as defined in Article 1(a) of its Statute*, but at the time of its mission the organization had not been able to establish whether any of those held under the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 were prisoners of conscience as defined in its Statute. It also unconditionally opposes the death penalty.

Amnesty International understood the context in which these allegations of human rights abuses were being made. In particular it was aware of the persistent demands for a separate state by members of the Tamil minority in the north of the country - demands which were sometimes accompanied by acts of violence in the late 1970s and early 1980s. As of 3 February 1982, the Sri Lanka press has reported that so far 23 police and army officers had been killed during this period. Several bank robberies and other violent incidents were also reported during the period. The government has attributed these acts to extremist Tamil groups.

Amnesty International recognizes the right of the government to bring to trial those responsible for these attacks on the security forces and other acts of violence. It believes that the torture or killing of individuals detained by such groups is never acceptable and it does not adopt as prisoners of conscience or work for the release of individuals imprisoned for having used or advocated violence.

However, Amnesty International considers it incumbent on governments to respect the human rights of their citizens under all circumstances. It addresses itself to governments on the basis of the specific pledges they have given in international law to promote respect for and to recognize fundamental rights. It believes that they should safeguard human rights at all times - even when faced with serious problems of national security, and indeed, especially under such

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* "Prisoners of Conscience" are defined in Article 1(a) of Amnesty International's Statute as individuals "imprisoned, detained or otherwise physically restricted by reason of their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour or language, provided that they have not used or advocated violence".

circumstances. This principle is reflected also in Article 4 of the International Covenant on Civil and Political Rights*, which the Government of Sri Lanka has ratified. Its importance was recently emphasized by the Human Rights Committee in its report to the 36th Session of the UN General Assembly where it concluded:

> "The Committee holds the view that measures taken under Article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and that in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made."**

Amnesty International's Human Rights Concerns in Sri Lanka under Previous Governments

Successive governments in Sri Lanka have emphasized their commitment to uphold the rule of law in the country through an independent judiciary and to respect and guarantee human rights. On a number of occasions, however, Amnesty International has thought it necessary to express concern about actions by these governments which the organization considered to be human rights violations coming within its mandate. These violations related in most instances to actions taken by the government at a time of a declared state of emergency or under de facto emergency legislation.

In September 1971, for example, Amnesty International sent a delegate to Sri Lanka to inquire into the detention without trial of some 14,000 young men and women then being held under emergency provisions in connection with the insurrection staged six months earlier by the Marxist-Leninist Janata Vimukhti Peramuna (JVP), People's Liberation Front.***

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* Article 4 provides that a number of specified human rights, listed in Articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of the Covenant, may never be suspended. They include the right to life, freedom from torture and the right not to be subjected to retroactive legislation and punishment - rights which states have an absolute obligation to respect under all circumstances, even when they are faced with an emergency which "threatens the life of the nation".

** Report of the Human Rights Committee to the 36th Session of the General Assembly, November 1981, A36/40 (General Covenant 5/13 sub(3)). The Human Rights Committee was established under the International Covenant on Civil and Political Rights, ratified by Sri Lanka.

*** The findings of that mission are described in the Amnesty International Report on a Visit to Ceylon by Lord Avebury, Amnesty International, March 1972.

Subsequently, in January 1975, an Amnesty International delegation visited Sri Lanka to discuss the continued detention of 2,000 of these prisoners who were still being held, and the trial of some of them (including the leaders) before the specially constituted Criminal Justice Commission.

The prolonged continuation for nearly six years (March 1971 until February 1977) of the state of emergency under the previous government - a coalition government headed by the Sri Lankan Freedom Party - and the special measures the government took while in office (including the 1972 establishment of the Criminal Justice Commission as a special court to try 1971 insurgency suspects) permitted important departures from the prevailing standards of criminal justice and civil liberties in Sri Lanka. Amnesty International described these in its report on its 1975 mission.* Commenting on the establishment of the Criminal Justice Commission, it said the judicial process had been "diluted to serve political purposes", and that there "should never be a compromise of the standards of justice such as was undergone in the Criminal Justice Commission" - "the effect of doing so is very seriously to put in jeopardy the public regard for the independence of the judiciary and to inflict a kind of second-class system of justice for political offenders". In its 1975 report Amnesty International argued that political prisoners, like other prisoners, should be tried before the fully independent courts according to customary procecures with a right of appeal to an independent body, and should have the same penal treatment as other prisoners.

Amnesty International's Human Rights Concerns in Sri Lanka under the Present Government

The present United National Party (UNP) government, which assumed office in July 1977, promulgated a new constitution, which contains a substantial and more comprehensive chapter on fundamental rights and prescribes measures to enforce respect for these rights, the importantce of which has been emphasized by the President.** The constitution includes provisions concerning the rights of minorities; in particular it recognizes both Tamil and Sinhala as national languages, although Sinhala is still the country's official language. Notably it specifically forbids (for the first time as a constitutional provision) the use of torture (previously prohibited by ordinary law). It also, however, provides for restrictions on many fundamental rights, which may be

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* Report of an Amnesty International Mission to Sri Lanka, 9-15 January 1975, Amnesty International Publications, May 1976.

** Inaugurating the 6th Lawasia Conference in Colombo, on 27 August 1979, President Jayewardene stated:

> "An expeditious remedy for violation of fundamental rights is constitutionally guaranteed for the first time. That remedy can be sought from the highest court, whose independence and jurisdiction are entrenched in the Constitution."

imposed in the interests of "national security".*

Underlining its intention to adhere to internationally recognized human rights standards, the Sri Lanka Government acceded to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights on 11 June 1980, and made a declaration under Article 41 of the latter recognizing the competence of the Human Rights Committee to hear inter-state complaints about violations of it. The government has not so far ratified the Optional Protocol to the International Covenant on Civil and Political Rights, which permits individual complaints about such violations after all domestic remedies have been exhausted. In 1982 the government acceded to two further United Nations Conventions.**

Shortly after coming to power in 1977 the UNP government released all political prisoners then being held in Sri Lanka. Most were members of the JVP serving prison sentences passed by the Criminal Justice Commission in connection with charges of involvement with the 1971 insurrection. The government also repealed the Criminal Justice Commission Act. Although the death penalty is still prescribed for a number of crimes under existing legislation - and was extended in 1981 to cover particular offences under emergency legislation - no executions have taken place in Sri Lanka since the UNP government assumed office, and the government has reprieved a substantial number of prisoners sentenced to death. Amnesty International publicly welcomed these developments.

While repeatedly affirming its commitment, both internationally and nationally, to respect and guarantee universally proclaimed human rights, the Sri Lanka Government has in recent years suspended important legal safeguards protecting human rights in response to increased demands for a separate state by the Tamil minority, accompanied by acts of violence occurring in the north of the island. The government, like previous administrations, has adopted far-reaching measures that curtail fundamental rights under official states of emergency or under de facto emergency legislation.

During 1978 and 1979 special and emergency legislation was introduced which permitted wide powers of arrest and prolonged detention in police custody without charge or trial. These legal provisions suspended the normal rule that arrested individuals should be brought before a magistrate within 24 hours of arrest and that detainees should have regular access to

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* Article 15 of the constitution specifies that "in the interests of national security", such a restriction may be imposed on, for example, the presumption of innocence, the principle of non-retroactivity, freedom of speech and expression, freedom of assembly and association, freedom of movement, the right to equality before the law and freedom from arbitrary arrest and detention.

** On 18 February 1982 the Sri Lanka Government acceded to the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid.

lawyers and relatives - rules designed to protect those in detention. In Amnesty International's experience such legal safeguards are an extremely important means of preventing detainees from being tortured and ill-treated. Their suspension by the UNP government, under the Emergency (Miscellaneous Provisions and Powers) Regulations No. 1 of 1979 and the Proscription of Liberation Tigers of Tamil Eelam and Other Similar Organizations Law of May 1978 (both no longer in force), and now under the Prevention of Terrorism Act (which, following a recent amendment, has become part of the permanent law of the land), was accompanied by reports in 1978 and 1979 of arbitrary arrests, detention and torture of detainees held under their provisions. The government said that those detained were suspected of involvement in criminal activities in the north, which it attributed to extremist Tamil minority political groups.

Following the imposition of emergency rule on 11 July 1979, Amnesty International received reports that a number of people had been arrested, apparently under the provisions of special or emergency legislation, and were being held incommunicado and tortured. The seriousness of these allegations was illustrated by the fate of six of these young men, all reported arrested on 14 July 1979, who subsequently died, Amnesty International believes, following torture by the security forces. The mutilated bodies of two of them, Kanagaratnam Visvajothiratnam (alias Inpam) and Saravanamuthu Selvaratnam, were found under a bridge in Jaffna on the morning of their arrest. Within 48 hours after his arrest by the Chavakachcheri police, Aiyadurai Indrarajah was admitted to Jaffna prison hospital with multiple injuries. He died there on 21 July. The bodies of the other three, Ramalingam Balendran, Sellathurai Rajeswaran and Sellathurai Parameswaran, have never been found. They have "disappeared". The government indicated they were never arrested although their families maintain there are witnesses to their arrest. The government made these allegations the subject of an inquiry by a Parliamentary Select Committee in 1979, but its findings are still not known more than three years after the establishment of the committee.

An Amnesty International delegate who went to Sri Lanka in 1979 discussed these reports with government officials and interviewed released prisoners. On the basis of their discussions, the evidence presented to the Amnesty International delegate and documentary evidence in the form of sworn affidavits subsequently received, Amnesty International concluded that human rights had been seriously violated in the period immediately following the declaration of emergency rule on 11 July 1979, and that there was evidence of systematic torture by the police and army of suspects held in incommunicado detention. These conclusions were reflected in a memorandum presented to President Jayewardene on 23 May 1980. It included 10 detailed recommendations to the government on the restoration of human rights and legal safeguards which, Amnesty International believed, if carried out, would have given considerable protection to Sri Lankan citizens from such abuses, especially from violations of the right to freedom from torture and arbitrary arrest and detention, such protection being guaranteed by international human rights law and the Sri Lanka consitution. The text of the memorandum is attached to this report as Appendix B.

Amnesty International's delegate and the Secretary General of the organization met the Acting High Commissioner of Sri Lanka in London and discussed these recommendations in November 1980. Although the government at that time promised to respond in writing to the memorandum, no reply was received. Nor do any measures appear to have been taken to carry out the recommendations, apart from the last one calling for ratification of the International Covenants on human rights (which has been partially carried out, the government, however, not having ratified the Optional Protocol to the International Covenant on Civil and Political Rights).

The 1982 Amnesty International Mission

In the second half of 1981 Amnesty International decided to send a delegation to Sri Lanka. The purposes of the visit were to be: the collection of first-hand information, from the government and from independent sources, about the current human rights position as it concerned the organization; discussion with government officials about the implementation of the recommendations made to President Jayewardene in the organization's May 1980 memorandum; and seeking the government's support for future human rights initiatives, both at international and national level.

The delegation consisted of Orville Schell (a senior New York lawyer, former President of the Association of the Bar of the City of New York and American Bar Association observer at the United Nations) and Yvonne Terlingen (a Dutch lawyer from Amnesty International's International Secretariat who had been on the 1975 mission to Sri Lanka when the previous government was in office).

The organization informed the Government of Sri Lanka that it intended to send a delegation to the country late in 1981 in a letter to President Jayewardene dated 27 October 1981. The letter asked for the delegation to be permitted to meet the President, the Prime Minister and various other officials in Colombo and said that the delegation planned to go to Jaffna in the north where it would like to meet the military commander for the Jaffna District. The organization also informed the President of the Sri Lanka Bar Association and individual lawyers known to be working on human rights of the impending mission.

As no response had been received from the government by late November 1981, Amnesty International cabled President Jayewardene on 24 November to let him know that the mission had been rescheduled for early 1982. Later, in letters dated 9 December 1981 and 11 January 1982, the organization informed the President that the delegation would be arriving on 31 January 1982. On 12 January the Secretary General wrote separately to all ministers and officials whom the delegation hoped to meet.

On 21 January the High Commissioner of Sri Lanka in London confirmed in writing that he had received word from Colombo that the delegation could arrive in Colombo on 31 January as proposed. (The letter superseded an earlier one from the High Commissioner, dated 16 December 1981, informing Amnesty International that "a visit to Sri Lanka by an Amnesty delegation would not be necessary at this stage".) The High Commissioner

noted in his letter that the President already had a heavy schedule of urgent official engagements during the period when the delegates would be in Sri Lanka, but Amnesty International was assured that:

> "Our authorities in Colombo will, however, arrange for the delegation to meet the officials of the government concerned and also seek appointments with the Ministers whom the delegation would wish to meet".

(The full text of this letter is attached as Appendix C.)

The delegation took the High Commissioner's advice and contacted the Director of the Foreign Ministry when it arrived on 31 January. Next day, however, it was unexpectedly informed by W. T. Jayesinghe, the Secretary of the Ministry of Foreign Affairs, that it would not be able to meet any government officials. The Secretary General of Amnesty International cabled President Jayewardene on 3 February expressing distress at this unexpected refusal despite the assurances given, and asking him to intercede and see that the meetings were arranged. The delegation in Colombo was instructed to do all it could to meet with officials and, during the next few days, it contacted the private secretary of each of the ministers and officials it had asked to see, but all these attempts proved fruitless.

Although the delegation was unable to meet government officials during its three-day stay in Colombo, it did have discussions with Supreme Court judges, members of the Sri Lanka Bar Association, members of parliament, the leader of the opposition, members of the previous administration, representatives of several civil liberties groups and lawyers directly concerned with the protection of fundamental rights. It also had a meeting with H. W. Jayewardene, QC, Chairman of the government-sponsored Sri Lanka Foundation which administers a human rights education program via the Foundation's Human Rights Centre. At that meeting the delegates discussed the possibility of Sri Lanka ratifying the Optional Protocol to the International Covenant on Civil and Political Rights, suggested the translation of the UN Code of Conduct for Law Enforcement Officials into Sinhala and Tamil and urged that Sri Lanka respond to the UN Secretary General's Questionnaire on the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.*

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* UN General Assembly, A/34/44, Questionnaire from the Secretary General in response to resolution 32/63 of December 1977. After writing this report, Amnesty International learned that the government had, on 2 September 1982, announced to the Secretary General of the United nations, its intention

> "(a) To comply with the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) of 9 December 1982; (sic - 9 December 1975);
>
> (b) To continue to implement by all appropriate means, the principles set forth in the Declaration ...".

From 4 until 6 February the delegation was in Jaffna where it interviewed 26 individuals who gave first-hand testimony as victims of or witnesses to human rights violations in the northern region. These interviews were all conducted in Tamil with the assistance of a professional court interpreter. The delegates met lawyers, members of civil liberties organizations, the Government Agent of Jaffna and a judicial official.

Evidence was given by:

1) two young men, who testified that they had been shot by the security forces and narrowly escaped death after having been arrested in June 1981, and one witness to their arrest; 2) six relatives present at the arrest in April and May 1981 of people now being held under the Prevention of Terrorism Act; 3) 10 individuals detained by the army or police in 1981 and 1982 and later released who complained of torture or ill-treatment during detention; 4) the relative of an individual reportedly tortured while in detention who later committed suicide; 5) a doctor who had examined torture victims; 6) the relative of an alleged victim of army brutality during detention who later died; 7) four relatives of or witnesses to the arrest of three people believed killed by security forces in early June 1981.

As far as Amnesty International has been able to establish none of the former detainees interviewed had police records (one was brought to trial but acquitted). The majority of the torture victims interviewed appear to have been interrogated by the security forces about actions not connected with the killing of officials or armed robberies - the offences officially cited as the reason for the promulgation and continuation of the Prevention of Terrorism Act. Three individuals who testified about being tortured said that they had been told by officials when they were released that they had been arrested on "suspicion" but had been found innocent. One of them was told, when released from six months' detention, that "during the course of investigation some mistakes may occur".

These testimonies form the basis of the mission findings set forth in this report. Since many of those interviewed by the delegates expressed anxiety about possible reprisals by the security forces the delegates promised not to identify them by name. Personal data in Amnesty International's records are therefore deleted from this report except where permission to publish has been obtained.

Although the delegates were unable to learn at first-hand what were the government's views on the allegations of human rights violations it had received, this report takes into consideration, whenever possible, the officially stated position on human rights that concern Amnesty International. The organization has therefore drawn on available official material, in particular the Foreign Ministry's 25 June 1981 statement, "Investigations into the Acts of Terrorism", as well as using semi-official sources.

Summary of Findings of the 1982 Amnesty International Mission

As noted above, during 1981 and until its 1982 mission, Amnesty International was not in a position to confirm or deny the reports it received of human rights violations - particularly of arbitrary arrest and detention and torture - being perpetrated by government security forces in the north of Sri Lanka.

On the basis of the interviews its 1982 mission delegates were able to have with victims alleging such violations and with their relatives, legal representatives and various other witnesses, Amnesty International sets out below its findings with respect to the more than 20 cases that the delegation investigated. The organization recognizes the difficulty of verifying conclusively allegations made in every single case. It has, however, carefully assessed the credibility of each testimony, the consistency between the testimonies and other independent reports and past human rights violation patterns previously investigated by Amnesty International and reported to the government.

Amnesty International found that:

- In every case investigated by the delegates the arrests of "suspects" were made by large contingents of army and police officials who did not identify themselves, did not produce an arrest warrant and did not inform relatives who were present of the grounds for arrest. In every case officials subsequently refused to give relatives information about the whereabouts of the arrested person and reason for continued detention.

- Access to lawyers and relatives by detainees held under the Prevention of Terrorism Act was refused as a matter of official policy. In every case examined by the delegates, those arrested had been held incommunicado for long periods, access to lawyers being refused for at least four months and, in most of the cases considered, for nine months from the date of arrest. Where access had been granted lawyers reported that they had subsequently been hindered by the detaining authorities from meeting their clients and that, in several cases, meetings had not been allowed to be held in privacy, as was normally the case. Relatives had usually been denied access to those arrested, in some cases for more than a year. Five of those whose cases were examined by the delegates had been kept in solitary confinement for more than eight months after arrest.

- Despite specific legal and constitutional safeguards, torture was reported to have been inflicted on individuals arrested under the Prevention of Terrorism Act both in army camps and by the police, in most cases, reportedly by the army. Alleged methods included prolonged beatings on many parts of the body, including the soles of the feet; suspension upside down accompanied by beating, insertion of needles under toes and fingernails and in the arms, and inserting chili powder into sensitive parts of the body. Forced drinking of salt or chili-infused water after prolonged denial of food and water and burning or assaults on the sexual organs and other parts of the body have also been reported. Statements or "confessions" were reported to have frequently been extracted under actual or threatened torture or ill-treatment, and, in several cases, were taken down in a language the

detainee did not understand. Detainees were forced to sign statements the contents of which were not read back to them. Torture of detainees was reported still to be occurring in army camps in the north, but a recent allegation also mentioned torture being inflicted in police stations, including a police station in Colombo (known as the "Fourth Floor"). Those released have, in several instances, been threatened with reprisals if they disclosed details about torture or ill-treatment. Some of those released are still being harassed and intimidated by the security forces, who in some cases, arbitrarily restrict their movement.

- In the wake of political violence and the shooting of two police officers at an election rally in May 1981, several Tamils - apparently chosen at random - were stopped and later killed by security forces during the night of 3/4 June 1981. Amnesty International's mission collected evidence about four Tamils who were shot by security forces that night (two of them surviving although left for dead) and about another Tamil who was beaten to death by the police.

- Constitutional and legal remedies designed to protect people from torture have not provided effective protection. Because of the great difficulties of the victims to contact lawyers, and because of threats of repercussions, legal restrictions and other practical constraints, it is extremely rare for complaints of torture to be made in court. As of October 1982 Amnesty International was not aware of any torture victim having managed to get redress from the Sri Lanka courts. No independent investigations into allegations of torture have been made by the government nor are prosecutions against officials known to have been initiated and completed under existing legal provisions prohibiting torture.

- The procedure for handling complaints about and conducting investigations into the human rights violations itemized above is gravely deficient. Despite verdicts of homicide being returned by the magistrate of Jaffna in at least four cases of killing by the security forces, as of December 1982 no independent or official investigations have been made by the government (although there have been some police inquiries), nor have there been any criminal prosecutions. No compensation has been granted to any of the Tamil families concerned, several of whom have lost their breadwinner.

- Detainees in army custody reported bad conditions. Several claimed to have been kept chained to the wall lying on the ground for as long as several months, in unhygienic conditions and without getting any exercise. Reading and writing materials were reported to have nearly always been denied. Some individuals complained of seriously restricted food and water rations, of physical assaults by the detaining authorities and of difficulty in getting medical treatment.

- In several cases, detainees had been prevented from approaching the Advisory Board established under the Prevention of Terrorism Act, although the right to appear before the board is granted under the act itself and clearly established by the government. Detainees were prevented from making representations to the board by officials who professed ignorance of its existence, or refused to let detainees have pens or paper to forward letters they had written.

II LEGAL BACKGROUND

All the political prisoners whose cases were investigated by the Amnesty International mission are or were being held under the Prevention of Terrorism Act. This act suspends important legal safeguards guaranteed in the 1978 Consitution* and recognized in international human rights instruments such as the International Covenant on Civil and Political Rights, to which Sri Lanka is a party. As a result of a recent amendment adopted by parliament under special expedited procedures on 11 March 1982 (the Prevention of Terrorism (Temporary Provisions) Amendment Act No. 10 of 1982), the act, due to expire on 20 July 1982, became part of permanent law.** The Sri Lanka parliament thus deprived itself of the chance periodically to assess the need to prolong the existence of the act and to consider how far the restrictions it imposes on fundamental rights are proportionate to the exigencies of the prevailing security situation.***

The Prevention of Terrorism Act constitutes de facto emergency legislation and remains in force despite the government's decision to allow the official period of emergency rule to lapse on 16 January 1982.****

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* Fundamental Rights are proclaimed in Chapter III of the Sri Lanka constitution. Article 15, however, allows many of them to be restricted in the interests of, among other things, "national security", "public order", "racial and religious harmony" and "national economy".

** Section 4 of the Prevention of Terrorism (Temporary Provisions) Amendment Act No. 10 of 1982 repeals Section 29 of the Prevention of Terrorism Act, which had limited the duration of the act to three years from date of commencement (20 July 1979).

*** Article 4 of the International Covenant on Civil and Political Rights embodies the principle that emergency measures must be in proportion to actual requirements: they may only be taken and maintained "to the extent strictly required by the exigencies of the situation". It also specifies that there must be an emergency which is "officially proclaimed" and that no derogation may ever be made under any circumstances from a number of fundamental rights, including the right to life, freedom from torture and the right not to be punished by retroactive legislation, even when a state of emergency exists.

**** After this report was written an emergency was again declared on 21 October 1982, at the time of the presidential election.

This latest official period of emergency rule followed several others imposed under both the present and previous administrations.* It was declared on 17 August 1981 after widespread communal violence, and was later prolonged, according to the government, in order to allow lengthy investigations into "terrorist activity", particularly in the northern and eastern provinces. The lapse of the emergency was accompanied by a Presidential Proclamation the same day - enforcing Part 3 of the Public Security Ordinance - which extended police powers of search, arrest and detention to the armed forces. Both the army and the police therefore still, as before, exercise extraordinary powers, which in Amnesty International's opinion permit arbitrary arrest and detention, in contravention of Articles 9 and 14 of the International Covenant on Civil and Political Rights.

Legal experts in international human rights law have pointed out that a number of the provisions in the act are broadly similar to those in the widely criticized Terrorism Act of South Africa and the United Kingdom's Prevention of Terrorism Act, which has also been criticized, although the degree to which infringements of human rights are permitted

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* Emergency Regulations, suspending important legal safeguards, including some of those now repealed under the Prevention of Terrorism Act, were in force following periods of emergency rule prevailing in Sri Lanka during most of the past decade. Under the previous government, led by Mrs Sirimavo Bandaranaike, a state of emergency was proclaimed after the 1971 insurrection and was maintained throughout nearly all the period of the SLFP-dominated administration until it was allowed to lapse on 16 February 1977. Under the present UNP government, emergency rule was again imposed on 11 July 1979, and Emergency Regulations - valid for one month and subsequently renewed monthly - were in force until 27 December 1979 in the Jaffna district in the north, where most members of the Tamil minority live. A period of emergency rule was briefly imposed for several days on 16 July 1980 when the government banned strikes in "essential services". In 1981, the government reimposed a period of emergency rule on 2 June following the violence in Jaffna accompanying the district council elections; it was extended throughout the country on 4 June 1981, and lifted on 9 June 1981. Emergency rule prevailed throughout the country from 17 August 1981 until 16 January 1982.

However, even during those periods when official emergency rule was allowed to lapse under the UNP government, special legislation existed for most of the time which suspended normal legal safeguards. One of the most important of these laws, the Proscription of Liberation Tigers of Tamil Eelam and Similar Organizations Law of May 1978, limiting important legal safeguards similar to those now curtailed under the Prevention of Terrorism Act, was allowed to lapse in May 1980. The Prevention of Terrorism Act, however, as stated above, has become part of the permanent law of the land.

differ in each case.* Amnesty International has reported violations of human rights in each of these three countries, believing them to have been directly linked to the suspension of legal safeguards under the countries' respective "anti-terrorist" legislation. The suspension of such safeguards creates the classic conditions in which serious

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* Curtailment of human rights under the Sri Lanka Prevention of Terrorism Act has recently been compared to South Africa's Terrorism Act and the Prevention of Terrorism Act in the United Kingdom: Ethnic Conflict and Violence in Sri Lanka, report by the International Commission of Jurists (ICJ), 14 December 1981, pages 43-50. Both the Terrorism Act in South Africa (repealed in 1982 and replaced by the Internal Security Act No. 74 of 1982, Section 29 of which also provides for indefinite incommunicado detention without trial) and the Sri Lanka Act are retroactive and permit prolonged incommunicado detention without access to counsel and relatives on suspicion of broadly defined offences which the ICJ criticizes as "unduly vague". In both countries, detainees can be held under the Act in places and under conditions entirely at the discretion of the authorities. Amnesty International, in its reporting on the consistent pattern of gross violations of human rights in South Africa, has repeatedly pointed out that Section 6 of the Terrorism Act No. 83 of 1967, allowing indefinite incommunicado detention without trial, appears to invite and even incite security police to ill-treat detainees and appears to be connected with the numerous deaths in custody in South Africa. The ICJ points out that the Sri Lanka Act contains a much broader definition of "unlawful activity" than the UK Prevention of Terrorism Act, which permits a maximum of only seven days' detention in police custody without charge. The Sri Lanka Prevention of Terrorism Act allows detainees to be held incommunicado without charge or trial for 18 months.

human rights violations can easily occur.* This was one of the main conclusions of Amnesty International's delegate visiting Sri Lanka in 1979 and was reflected in the organization's 1980 memorandum (Appendix B to this report). Its importance was underlined by the findings of the 1982 mission.

Under the rules normally applicable in Sri Lanka and laid down in the Criminal Procedure Code, people who are arrested must be told why they have been arrested and be brought before a magistrate within 24 hours of arrest. The magistrate either orders the release of the person concerned or his or her remand in fiscal (judicial) custody pending trial. If remanded, he or she is sent to prison where a set of legal rules and safeguards apply to every prisoner (such as, for example, medical examination on admission and before removal; regular communication with, and visits by, lawyer, relatives and friends; access to reading and writing material; regulations about food, clothing and hygiene; and daily exercise).**

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* The importance of rules to safeguard detainees in custody was emphasized by President Jayewardene himself when his government, shortly after it assumed office, introduced legislation in 1977 repealing special legislation passed by the previous government, according to which political prisoners could be held under similar conditions. President Jayewardene then said:

> "That is why I am bringing this Bill to repeal this Act. When you have these powers hidden away somewhere, in some wardrobe or closet, one feels like using them. I do not want that temptation in our Government. When these are repealed, all the laws that will be operative in Sri Lanka will be normal laws. No man can be locked up by the police for more than 24 hours. He must be brought to court....This is the only piece of legislation that now exists in our statute book under which the police can keep a man indefinitely without any recourse to advisory boards or to any body except the Criminal Justice Commission, which never goes against the advice of the police. For days and months they can be kept, they can be harassed. When you are arrested by the police under the normal law you are not taken to this place and that place....There are legitimate and recognized police stations, there are legitimate and recognized prisons and jails. Under this law the Minister can declare any place to be jail....All such powers will be done away with once this Bill is passed." (Hansard, 21 October 1977, column 1925.)

** These rules are laid down in Prisons Ordinance 1978 and the Rules made pursuant to it.

However, under the Prevention of Terrorism Act no such legal safeguards apply. Contrary to what is proclaimed in Article 13 of the Sri Lanka constitution,* there is no obligation to inform the arrested person of the reason for arrest, and detainees may be held incommunicado for long periods, without being brought before a judge or magistrate. Section 7 of the Prevention of Terrorism Act allows detainees to be held in police custody for up to 72 hours. Within 72 hours those arrested must either be brought before a magistrate - who orders their remand, the magistrate having no power to release under the act - or else may be detained by ministerial order under Section 9 of the act. This section allows people suspected of "unlawful activity" to be detained without charge or trial by order of the Minister of Internal Security for up to 18 months (the detention order to be renewed every three months), and to be denied any contact with the outside world. They can, furthermore, be held "in such place and subject to such conditions as may be determined by the Minister". Those detained under Section 9 (including, apparently, all the Tamil detainees held at the time of writing) are held without any form of judicial or other independent control, and no rules whatsoever apply that might protect them from ill-treatment and torture. They can be denied any access to lawyers and relatives and be kept incommunicado. (Even if remanded by a magistrate, detainees can be removed by the police at any time for investigation and held without judicial control.)

Under the Prevention of Terrorism Act introduced by the government in 1978 and its subsequent March 1982 amendment, the government is authorized to hold people detained under the act in any place and under any conditions it pleases, even while the trial is in progress, whereas previously everyone detained during trial was kept in prison. After the amendment was passed, the government was even permitted to keep such detainees in army custody during trial, and they can be removed from judicial custody if need be. The amendment was passed by parliament on 11 March 1982 by a two-thirds majority after the Supreme Court had, a few days before, ruled that the bill to amend the Prevention of Terrorism Act was inconsistent with the consititution.**

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* Article 13(1) reads: "No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest."

Article 13(2) reads: "Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedure established by law and shall not be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge made in accordance with procedure established by law."

** Supreme Court, in the matter of reference under Article 122(1)(b) of the constitution (S.O. No. 1 of 1982, P/Parl./13). The court held that the amending section to the Prevention of Terrorism Act (Section 15A(1) is "inconsistent with the provisions of Article 4(c) read with Article 3 of the Consititution", and suggested the bill be amended which was done. The new Section 15A of the Act gives the Secretary to the Ministry in Charge of Defence the power to order a person charged with having committed an offence under the Act to "be kept in custody of any authority, in such place and subject to such conditions as may be determined by him...."

(The Supreme Court had confirmed the normal rule that once someone had been or was to be brought to trial - there being evidence against him or her that he or she had committed an offence - this person should be kept in the custody of the court, not of the army.) The amendment followed the Supreme Court's first order to transfer a detainee, S. Murugaiah, held under the Prevention of Terrorism Act, to New Magazine Prison, Colombo, on 20 February 1982. The Supreme Court had ruled that his detention without trial in army custody was illegal and he should be kept in prison pending trial. The prisoner was returned to army custody as a result of the amendment ot the act.

Amnesty International believes that the amendment may facilitate the ill-treatment and even torture of detainees, who may face retaliation from the detaining authorities if they make statements during trials that are not what their interrogators want them to say or if they retract earlier statements extracted under duress or torture. This is all the more likely inasmuch as the Prevention of Terrorism Act permits important departures from the normal rules of evidence. In Sri Lanka, confessions made to the police are not normally admissible as evidence (Section 25-26 of the Evidence Ordinance). However, according to Sections 16 and 17 of the Prevention of Terrorism Act these normal rules do not apply to people tried under the Act. Section 16(1) provides that

> "any statement made....at any time, whether it amounts to a confession or not, made orally or reduced to writing, such a person was or was not in custody or presence of a police officer.... is admissible in evidence."

Furthermore, Section 16(2) of the act shifts the burden of proof that a confession has been made by illegal means - including torture - to the accused.

Another feature of the Prevention of Terrorism Act of particular concern to Amnesty International is the retroactive nature of some of its provisions. Section 2 of the act specifies as offences punishable under it activities not previously considered crimes. In Section 31(1) it interprets "unlawful activity" as acts or activities "whether.... committed before or after the date of coming into operation of all or any of the provisions of this Act....". Retroactive penal legislation is, however, prohibited in the Sri Lanka consitution and in international human rights law. Article 13(6) of the Sri Lanka constitution reads:

> "No person shall be held guilty of an offence on account of any act or ommission which did not, at the time of such act or omission, constitute such an offence and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed."

Like the right to life and the prohibition of torture, the principle that nobody should be subjected to retroactive penal measures is considered so important in international human rights law that it has been included among the few human rights from which a state may not

derogate in any instance or under any pretext, even in time of "public emergency which threatens the life of the nation" (Article 4 of the International Covenant on Civil and Political Rights).

Amnesty International considers the Prevention of Terrorism Act in its present form consititutes a major factor in the continuing violation of human rights in Sri Lanka. In this report it calls on the Government of Sri Lanka to rescind those provisions of the act that permit arbitrary and incommunicado detention, departures from the normal rules of evidence and the retroactive effectiveness of provisions defining new offences.

III ARREST AND DETENTION PRACTICES UNDER THE PREVENTION OF TERRORISM ACT

Amnesty International's delegates were able to collect first-hand information about the arrest and detention practices followed by the government under the Prevention of Terrorism Act.

One group about whom the organization is concerned consists of 27 young Tamils arrested in April and May 1981 following an increase in civil disturbances and political violence in the north of the country. On 25 March 1981 a bank was robbed in the northern town of Neerveli; two police officers were shot during the incident. The robbery was officially attributed to Tamil extremists, and 27 Tamils were subsequently arrested, apparently on suspicion of involvement in the incident. All were still being detained under the Prevention of Terrorism Act at the time of the Amnesty International 1982 mission to Sri Lanka.* They had been neither charged nor tried and the cases of 22 were taken up by the organization for investigation. (Since the mission, two have been tried under the provisions of the Prevention of Terrorism Act on earlier criminal charges and were sentenced to death on 13 August 1982.** On 28 February 1983 one of the two and five others were sentenced to life imprisonment for murdering two police officers and participation in the Neerveli bank robbery case. Amnesty International unconditionally opposes the imposition of the death penalty. In these particular cases the organization was concerned also because their trial was conducted under provisions of the Prevention of Terrorism Act which permit deviations from the rules of evidence and procedure normally applicable in Sri Lanka. The men were tried before a single High Court judge and not by jury, and they were kept in army custody, not in prison, even during the trial. All alleged that self-incriminating statements had been extracted from them under torture, but since, according to the changed rules of evidence, the burden of proving such allegations has been shifted to the accused, the statements were admitted in evidence.)

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* Of the 22 cases Amnesty International took up, 11 are known to have later been released. Nine were freed on 8 June 1982, one on 29 September 1982, and one in October 1982. In February 1983 at least six remained detained for nearly two years - without charge or trial.

** Amnesty International cabled the President on 11 February 1983, welcoming reports of an amnesty of 4 February for all those sentenced to death and inquiring whether the two men, on whose behalf it had appealed on 6 January 1983, were among them. The organization received a reply from the government dated 29 March 1983 confirming that all death sentences imposed on or before 4 February 1983 were commuted to life imprisonment by an amnesty of that date and that the two men sentenced to death on 13 August 1982 following trial under the provisions of the Prevention of Terrorism Act had been included in the category of persons whose sentences had been commuted.

At the time of the mission, a minimum of 70 people were being detained under the Prevention of Terrorism Act without charge or trial, and arrests under the act have continued to be reported since. It is difficult to give an exact figure for the number held at the time of writing as the government only occasionally publishes details of arrests and releases made under the act and the families are not informed about relatives' arrest, whereabouts or release.

Arrest

Section 6(1) of the Prevention of Terrorism Act empowers police officers to enter and search the premises of, seize property of and arrest without warrant individuals "reasonably suspected" of "unlawful activity". The Foreign Ministry, in its official statement of 25 June 1981, maintained that:

> "An attempt has been made to make out that some of these arrests have been made in secret. This is not so. The family of the detenu is informed of the fact of the arrest and detention, so that they would know that the person is in custody and would not be in a state of anxiety through lack of knowledge of his whereabouts."

The Amnesty International delegation interviewed the relatives of five men arrested in April and May 1981, and now held in Panagoda Army Camp, under the act. Their testimonies reveal that

- In all the cases arrests were made by numerous armed people in plain clothes, usually at night or in the early morning. The arresting officials invariably did not identify themselves or produce arrest warrants. In several cases the arrested men, and sometimes their relatives too, were beaten at the time of arrest.

- The relatives were invariably not told the whereabouts of those arrested, even when they made direct inquiries at police stations or via members of parliament. The first information about a detainee and his place of detention was not received until three or four months after arrest, and when it did, it came in a letter from the detainee himself.

- In one case relatives were warned that they themselves would be arrested if the wanted person were not found at home. In another case a relative complained of subsequent continued harassment by the army at night after the arrest of her husband, which forced her to leave home and live elsewhere. In most cases those arrested were the families' sole breadwinners, which meant the families suffered great financial hardship as a result of the continued detention of the arrested men.

Below is a quotation from a typical account by a witness to an arrest made in April 1981, as recorded by the Amnesty International mission:

> "On....April 1981 the army came to the house. They told us to kneel down and raise our hands above our heads. My eldest son was there and they took him first. Then they took X....They left our eldest boy but took our second son and badly assaulted him also behind the house....We were not told of the reason for his arrest. There was no warrant for his arrest shown and no information about his arrest or his whereabouts was given to us. We then went to the MP. He phoned the DIG [Deputy Inspector General of Police]. The police said no person of that name had been arrested ....Nobody who came to arrest my son identified himself. We were not allowed to visit him. Once in two months we now receive a letter. The first letter came three months after his arrest. I wrote on....(date)....to the President asking him to see my son, but I have not received a reply."
>
> (Details which might identify the witnesses concerned have been deleted.)

Detention

Amnesty International's mission was not instructed to investigate the conditions of those now in army custody, and was not given the chance to discuss conditions with responsible officials (for reasons stated in the Introduction). Nor have conditions been assessed by any other appropriate international human rights organization. There is, however, cause for concern, especially given the absence of any known rules setting standards for the detention conditions of those held under the Prevention of Terrorism Act, including rules about such basic need as food, exercise, medical care, hygiene, access to relatives and lawyers, hours of interrogation, sleep, clothing and exercise. The authorities may therefore be in a position to impose detention conditions arbitrarily regardless of any of the minimum requirements to which other prisoners in Sri Lanka are entitled or to the minimum standards set in international human rights law. Given the powers the detaining authorities have under the Prevention of Terrorism Act, and in the absence of any form of independent control over or supervision of detention conditions, the authorities can, and apparently have, denied detainees rights they would otherwise have had under the Sri Lanka Prisons Ordinance and Subsidiary Legislation - a number of which are guaranteed also in the Standard Minimum Rules for the Treatment of Prisoners, adopted by the United Nations.

(i) Access to lawyers and relatives

The men arrested in April and May 1981 under the Prevention of Terrorism Act were kept for a long while in incommunicado detention. At the time of the Amnesty International mission, more than eight months after their arrest, the men had been consistently refused any visits from their relatives.* The government did not allow them access to their lawyers either for many months: four were allowed their first meeting with a lawyer - but only by order of the Court of Appeal - after more than three months had elapsed, one after five months and two after eight. The majority were not allowed to meet their lawyers for the first time until nine months after arrest. The list of detention conditions issued by the minister in charge of detainees under the act specifies that:

> "The suspect will not be permitted to have any visitors." (For the full text of the Schedule see Appendix D.)

The 25 June 1981 Foreign Ministry statement gives the reasons why lawyers are denied access to those held under the act - which is apparently official policy:

> "If the Police are to conduct and complete their investigations successfully, it is important that these detenus should not have access to their lawyers and relatives for a certain minimum period, during which time it is expected that the Police will be able to complete their investigations and obtain the necessary information to file cases in court. If the detenus are able to reach their lawyers and relatives during this period, they could interfere with the witnesses and evidence and thus prejudice the investigations."

This statement is in clear breach of Article 14 of the International Covenant on Civil and Political Rights - guaranteeing detainees adequate facilities for defence, including the right to communicate with a lawyer.

Even though an initial meeting with a lawyer is permitted subsequent meetings are apparently sometimes denied. The first four of the men detained under the Prevention of Terrorism Act in April and May 1981 who were permitted to see their lawyers did so on 27 July 1981, but only after the Court of Appeal had given specific orders to that effect. Since then, however, the lawyers have not been able to meet their clients regularly. For example, these four men did not see their lawyers again until October 1981. Lawyers complained in a recent case that permission to visit a client had been refused three times. This happened in the case of Nadarajah Illango, where lawyers submitted requests on

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* Amnesty International has since received reports that two detainees have been allowed visits by relatives once, in May and June 1982 respectively, more than a year after arrest.

2 December 1981 (refused on 5 December), on 18 January 1982 (refused on 22 January 1982) and on 28 January 1982 (refused again).

Denial of access to lawyers has featured in the detention practices in other countries in relation to people suspected of involvement in "terrorist activities". It is a dangerous measure which Amnesty International considers conducive to ill-treatment and torture.

Lawyers have stated, furthermore, that when they do get to meet their clients in Panagoda Army Camp, a military official is always within hearing distance. One lawyer said that when he protested to the officer in charge the latter "very courteously pleaded orders by his superiors, that he had been ordered to place the soldiers in very close proximity to the lawyers". Such practices are a breach of the minimum requirements for confidential meetings between detainees and their lawyers laid down in Rule 93 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

Lawyers in another case complained that, despite orders from the court, they were not allowed to see their detained clients on a particular date in order to get them to sign affidavits to be sworn before a Justice of the Peace. This reportedly happened on 31 March 1982 in the case of seven detainees when army officers refused to bring the men to court to enable them to sign the affidavits, and in addition refused to let their lawyers meet them for this purpose. One of the lawyers wrote on 15 April 1982 to the Army Commander that: "The Officer-in-Charge informed the lawyers that they had strict order from higher authorities....not to allow the lawyers to converse with detainees".

Current practice appears to be in breach of the minimum guarantees specified in Article 14 of the International Covenant on Civil and Political Rights, to which Sri Lanka is a party - especially Section 3(a), (b) and (c) of Article 14, which reads:

> "(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
>
> (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
>
> (c) To be tried without undue delay."

(ii) Solitary Confinement

Several detainees are reported to have been kept in solitary confinement for long periods. Amnesty International's mission learned that five detainees - Amirthalingam Philip Kumarakulasingham, Sellarasa Rajaratnam Yogachandiran, Nadarajah Thangavel, Ganeshanathan Jeganathan and Sellathurai Subramaniam - were still in solitary confinement more than eight months after their arrest and were being kept handcuffed at night. One detainee, Muthukumaru Srikumar, was kept like this for five months, but is now allowed to associate with others.

(iii) Advisory Board

Section 13 of the Prevention of Terrorism Act provides for the establishment of a three-member Advisory Board, appointed by the President, to which individuals detained under the act may "make representations" concerning the grounds for their detention - of which the act states the detainee must be informed. There is no obligation under the act to inform a detainee of the existence of the board or of his right to make himself or through "any other person on his behalf" a representation before the board. The board's function is advisory and the Minister is under no obligation to carry out its recommendations.

According to information obtained by the 1982 mission, an Advisory Board was set up in August 1981 under the act and several detainees have appeared before it. It is chaired by the Permanent Secretary of the Ministry of Foreign Affairs; the other two members are lawyers. The Advisory Board sits in Panagoda Army Camp where detainees are held, although it does not appear to have made any on-the-spot inquiries into the detention conditions of those brought before it nor to have spoken to any of the other detainees held there. As far as Amnesty International is aware, no representations before an Advisory Board had led to the release of any detainee as of the time of the mission.

The delegates interviewed several men, now released, who had attempted to make representations to the board during 1981. They had learned of its existence and their right to appear before it via a stencilled document from the Ministry of Defence, which they were given several weeks, or in some cases months, after arrest at the time a detention order under the Prevention of Terrorism Act was served on them. Several detainees have made complaints in habeas corpus petitions that they had not received a detention order until six months after arrest.

Former detainees interviewed by the delegates who had been held in Elephant Pass Army Camp stated that their efforts to approach the Advisory Board had consistently been frustrated. Officials either professed ignorance of the board's existence or else made it virtually impossible for detainees to contact it. For example, one ex-detainee said that after signing the receipt of his detention order,

> "I asked to be represented before the Advisory Board, but I could not make a petition as I was not given a piece of paper or pen to write. I tried two or three times to get a pen and paper, but the reply was: 'The CID (secret police) have given orders you are not to have anything'....After three months my detention order was renewed, but I never heard anything about my wish to appear before the Advisory Board."

Another former detainee the delegates interviewed complained that his letter to his brother, dated 1 September 1981, asking him to contact his lawyer urgently in order to approach the Advisory Board, was never sent. When this detainee approached the camp commander he was told: "I do not know about the rules of the Advisory Board but I will inquire". The detainee never managed to contact the board.

(iv) Detention Conditions

Although the delegation was not instructed to examine physical conditions of detention, it did receive testimony about this from several men released during the second half of 1981 who described how they had been kept for as long as six months chained to an iron grill fitted to the wall at Elephant Pass Army Camp. Two of them complained that they had had to lie on the floor, chained, in cramped conditions, throughout the entire period, only rarely being allowed exercise.

One detainee described how:

> "At Elephant Pass I stayed in a room like a kitchen. I was handcuffed along the wall. I had to lie down while I was handcuffed....We had to eat on the floor. I remained in this handcuffed position on the floor for five months. I remember only being allowed exercise for three days out of these five months. Exercise was no longer than three or four minutes.... There were no mats on the floor and the 'room' measured 10 feet. No reading was allowed. Nobody was allowed to visit me. I was refused permission to see anybody."

Another former detainee reported that he had been held in such restricted conditions that he could not lie down at night:

> "I was kept in a room on my own and I was not allowed to speak to any other prisoner. There was one window. It was only a very small room, like a bathroom, so small that I could not lie down at night. It measured 5 feet by 2 1/2 feet. I was kept there chained for three months and could not lie down and stretch my body at night. During that period I only got very little food, and I had a burning feeling in my stomach."

Another ex-detainee described how he had been kept in extremely unhygienic conditions:

> "At Elephant Pass Camp I was chained to a wall for 24 hours and I had to lie on the floor. There was no mat. I had to lie in a tiny room where there was an open drain and a stinking smell. The roof leaked. I got a little bread and very little rice only for about two months, then the food improved."

Other detainees, whom the delegation could not interview as they were still in detention, have complained in habeas corpus petitions about the small food rations, that they were kept thirsty, that excessive salt was put in the food and that sanitary conditions were inadequate.

At Panagoda Army Camp, near Colombo, where a number of detainees are being held under the Prevention of Terrorism Act, physical conditions are reportedly somewhat better, although many detainees have made similar complaints about food and hygiene. Several have complained that they were physically attacked and that, whenever complaints were made, the person suspected of having made the complaint was "singled out and dealt with", and "food rations are reduced for all". They said they were allowed exercise for 10 minutes a day.

The Schedule of the Ministry of Internal Security, prescribing conditions for detainees held under the Prevention of Terrorism Act,* specifies that "the suspect will not be supplied any newspapers but may be supplied with other reading matter at the discretion of the Inspector General of Police". Detainees have stated that for the first few months, they were denied all reading material, although later they could receive periodicals sent by relatives, but that after 11 February 1982 all reading matter was again removed. They were not at first permitted to correspond with relatives and now letters are delayed. Relatives have told Amnesty International they now get letters from detainees once a month or every two months.

According to statements made by detainees in habeas corpus petitions, it is difficult to get adequate medical treatment, and they claim to have had to wait for visits by lawyers in order to get it. However, when lawyers do obtain orders from the Court of Appeal for medical examination of detainees by the Judicial Medical Officer they have in some instances apparently not been complied with unless specific orders have been issued by the Army Commander himself.

(v) International standards relating to detention

Chapter V of this report includes specific recommendations about the treatment of detainees held under the Prevention of Terrorism Act. The importance of obeying the United Nations Standard Minimum Rules for the Treatment of Prisoners is stressed. From the information obtained by the 1982 Amnesty International mission, evidently a number of these rules have not been obeyed by the Sri Lanka Government - in particular the following:

Rule 24

> "The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures...."

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* See Appendix D.

Rule 25(1)

"The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness and any prisoner to whom attention is specially directed."

Rule 33

"Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains and irons shall not be used as restraints...."

Rule 37

"Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."

Rule 44(3)

"Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution."

Rule 90

"An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution."

Rule 93

"For the purpose of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official."

IV TORTURE AND KILLINGS BY THE SECURITY FORCES

This chapter summarizes evidence collected by the 1982 Amnesty International mission about the torture and killing of detained individuals by the Sri Lanka security forces. It reviews existing legal and constitutional remedies for such abuses and examines the reasons why such remedies have not been effective to stop them. It concludes that serious abuses have taken place and that ultimate responsibility for them rests with the Government of Sri Lanka. The organization calls upon the government to take appropriate action to investigate and put an end to the abuses.

Torture

The Sri Lanka constitution, enacted in 1978, prohibits torture in Article 11, which reads:

> "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Torture had, however, been abolished by law much earlier in the country's history. A proclamation of 1799 forbade torture as a means of extracting information or as punishment. Current legislation forbidding torture includes the penal code and the Police Ordinance.

Despite existing constitutional and legal provisions forbidding the practice, Amnesty International has for a number of years been concerned at continuing reports of torture and ill-treatment in Sri Lanka by the security forces. In its memorandum presented to the Sri Lanka Government in May 1980 (see Appendix B), the organization noted that the occurrence of torture and police brutality in Sri Lanka has been a matter of concern to it since 1971 (when the JVP insurrection took place). The memorandum also reviewed the accounts of torture given in Sri Lanka's parliament since the present government assumed office, and presented detailed evidence for its conclusion that a pattern of torture existed in the north in the period immediately following the 11 July 1979 emergency declaration.

During 1980 and in early 1981 Amnesty International did not receive substantial reports of torture. The situation changed, however, following the 25 March 1981 bank robbery at Neerveli which led to the arrest of 27 Tamils (see Chapter III above). Following this incident, the organization once again began to receive serious reports of torture of detainees in the north of the country by the security forces, and these allegations were investigated by the 1982 Amnesty International mission to Sri Lanka.

On the basis of mission delegates' interviews with released detainees, consultations with medical experts about torture allegations before and during the mission and the examination of affidavits received by the organization in 1981 and 1982, Amnesty International has concluded that torture was used systematically by security forces in the north at least until the time of the 1982 Amnesty International mission. It was used to extract information or "confessions" from a particular category of people suspected of knowing about the activities of Tamil extremist groups, and was inflicted especially by the army in various army camps and by the police.

(i) Those arrested following the Neerveli incident

Of the 27 men arrested in April and May 1981 following the Neerveli bank robbery, 22 were still in detention at the time of the mission, all apparently under provisions of the Prevention of Terrorism Act. All 22 were reported to have been tortured, mostly at Elephant Pass Army Camp and in certain police stations in the north. In July 1981 lawyers filed habeas corpus petitions on behalf of four of the detainees, alleging they had been tortured. The Amnesty International mission was told by the detainees' lawyers that affidavits containing allegations of torture were being prepared on behalf of the remaining 18 detainees, the delay over preparing these affidavits having been because the detainees had been denied access to lawyers for many months after arrest (see Chapter III). (At least eight such affidavits have been filed in the Court of Appeal since then.)

In the habeas corpus petitions submitted to the Court of Appeal as of the time of the mission, several of the detainees alleged that they were hung upside down for long periods while being beaten, that chili powder was inserted into sensitive parts of their bodies and that iron rods were forced into their anuses. Others claimed they were stripped naked and struck with hands, legs and heavy iron rods, kept chained to the wall in such a position that they could not sit or stand and denied food for several days.

Since all these detainees are still being detained at Panagoda Army Camp and kept in virtually incommunicado detention, Amnesty International has not been able to verify the reports it received before and during the mission that all 22 men had been tortured, varying in degrees of severity, in order to extract statements or "confessions" (which the detainees said they were never allowed to read). It notes, however, that Colombo's Judicial Medical Officer's reports have confirmed that in several cases there was consistency between injuries sustained and the torture alleged.* It is significant that, for the first time, the Sri Lanka Court of Appeal, in considering the cases of several of these detainees, at least partially confirmed allegations of torture and ill-treatment and specifically rejected denials of responsibility by the detainees' custodians. On 10 September 1981 the Court of Appeal ruled on four habeas corpus petitions, brought under Article 141 of the Consititution (habeas corpus petitions 10/81, 11/81, 12/81 and 13/81). All four prisoners had submitted affidavits in these petitions that they

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* Amnesty International received copies of the Colombo Judicial Medical Officer's reports, dated June and July 1981, on three detainees, Appulingam Vimalarajah, Thomas Perera Amirthalingam and Nadarajah Thangavelu. The reports noted reduced hearing in one case; depression and "pain and tenderness of a mild degree in the lumbar region of the back of the abdomen, which is consistent with a contusienal injury that he would have sustained according to the history given by him" in another; and in the third, wounds on the shoulder and leg and scars on the chest, abdomen and around the ankles. These injuries were stated to be "about 4-6 weeks old", and "within 6 months of age".

were tortured during interrogation at Elephant Pass Army Camp in April and May 1981. They alleged severe beatings on various parts of the body, including the soles of the feet, with a thick wooden stick. One detainee claimed a string was tied around his testicles and pulled. Another stated he was handcuffed by both wrists to high railings and forced to stand erect with arms outstretched for long periods in reprisal for not saying what his interrogators wanted him to say to the magistrate. One alleged (in a subsequent affidavit) that he was threatened by army officers, with assault and reprisals against his family for having disclosed details of torture the day he was brought before the Court of Appeal.

The three-member court had ordered the army to bring the detainees to court and allow them to consult lawyers. This was their first opportunity to consult their lawyers after three months' incommunicado detention. An observer from the International Commission of Jurists (ICJ) attended the hearings and a detailed account is given in the recent ICJ report on Sri Lanka.*

While rejecting some of the allegations as not proved, the court nonetheless maintained that two detainees had been tortured. In the case of S. Arunagirinathan the court ruled: "the corpus had two non-grievous contusions on his buttocks and there is no doubt that these indicated that he had been beaten by a blunt weapon". Considering the petition brought by Chelliah Kulasegararajasingham the court ruled: "There is no doubt, however, that violence had been used on him at the Elephant Pass Camp and we reject the denials of the custodians that he was not assaulted". In the case of a third detainee, B. Sivaselvam, the court ruled that the "claim that the corpus was severely assaulted appears to us to be exaggerated", but went on to observe: "However, the use of violence of whatever degree on a prisoner is illegal and is not only an offence under the Penal Code, it contravenes Article 11 of the Constitution".

(ii) Former detainees interviewed by the 1982 Amnesty International mission

The two Amnesty International lawyers were able to have lengthy interviews with 10 released detainees, who made detailed statements about torture or ill-treatment by the army and police between June 1981 and January 1982. Because several of the victims were threatened with reprisals if they disclosed details about their treatment Amnesty International undertook not to identify these witnesses. Those interviewed included two elderly men, one of whom testified that he had been seriously beaten by the police at Gurunagar Army Camp in July 1981 and had later been left chained to the wall and forced to lie on the floor at Elephant Pass Army Camp for 156 days (part of the time on reduced food rations).

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* Ethnic Conflict and Violence in Sri Lanka, report by the International Commission of Jurists (ICJ), 14 December 1981, pages 50-55.

Those interviewed by the delegates listed the following army camps as ones where they had been tortured and ill-treated: Elephant Pass Army Camp, Gurunagar Army Camp (where the police are said frequently to conduct investigations in a special office), Palaly Army Camp and Vavuniya Army Camp - all in the northern districts - and Panagoda Army Camp, near Colombo (where Amnesty International believes most of those held under the Prevention of Terrorism Act are at present being detained).

At Elephant Pass Army Camp, a former government rest house where much of the torture is alleged to have taken place, several detainees have reported the use of special equipment. They stated that fans were removed from the ceilings and prisoners suspended upside down from the fan hooks. They reported also that special steel fittings were fixed to the walls to which detainees could be handcuffed at various heights to prevent them from standing up, sitting down or sleeping. Some detainees reported being kept chained to these while lying on the floor for many months.

Some individuals claimed they had been beaten in police stations (for example in the Chunnakan and K.K.S. police stations) and one former detainee gave a detailed account of torture in early 1982 by the police on the so-called Fourth Floor of the police station in Colombo.

The testimonies recorded by the Amnesty International mission indicate that people arrested under the Prevention of Terrorism Act were tortured in the following ways during the period under consideration, (June 1981-January 1982):

- by being hung upside down and beaten;
- by prolonged and repeated beatings with heavy sticks, pipes and fists, especially on the soles of the feet, around the head and shoulders, on the stomach and back, so badly that in some cases bones were broken;
- by being stripped naked and beaten on the genitals;
- by having needles inserted under the nails of fingers and toes or in the arms;
- by having chili inserted into sensitive parts of the body and being forced to drink heavily salted and chili-infused water until they vomited;
- by being burned with cigarettes and (in one case) having the pubic hair burned;
- by being forced to lie on the floor for as long as six months while being chained to the wall.

The reports of torture are consistent and largely similar to allegations received in previous years and described in, for example, the 1980 Amnesty International memorandum (Appendix B).

Details about some of the individual cases examined by the Amnesty International delegation are included in Appendix A.

(iii) Failure of constitutional and other legal remedies to protect torture victims

Article 126 of the Sri Lanka constitution empowers the Supreme Court to hear petitions concerning the infringement of fundamental rights set out in the constitution, including the right proclaimed in Article 11 not to "be subjected to torture or to cruel, inhuman or degrading treatment or punishment". These constitutional provisions, designed to protect Sri Lanka citizens from torture, are only rarely invoked however. Private complaints are seldom lodged and Amnesty International is not aware of any prosecutions by the government with respect to torture allegations.

When the Amnesty International delegation interviewed 10 individuals claiming to have been tortured while detained under the Prevention of Terrorism Act, it asked what they or their representatives had done to get redress for such treatment. In only one case had the victim's relatives made an official complaint. In that case army officers had later made inquiries at the hospital where the victim was being treated, but the family never heard of any further investigation being made or that those involved had been punished.

The delegates asked witnesses why no complaints were being filed, either as civil actions for compensation or as legal actions in the criminal courts for the prosecution of the people responsible. Those interviewed either stated that they did not realise such a possibility was open to them or else expressed fears of reprisals should they adopt any such course. Several reported having been threatened with rearrest or retaliation against relatives if the facts about their torture were disclosed. Two felt intimidated because they had to report regularly to the police or army officers. One of them, who had to report regularly to the police, was told not to leave his village, and on three occasions the police came and told him not to leave home. In the other case the man was told to report weekly to the nearest army camp and army officers came on several occasions to his house, removed him and ordered him to point out the houses of other "suspects". He said he was threatened with rearrest and torture if he refused to do so.

Another former detainee recounted in an affidavit how, after being tortured by the police in 1979, he had submitted a complaint to the Assistant Superintendent of the Police and was later intimidated into withdrawing it:

> "Sometime thereafter Inspector....(the inspector named in the statement as responsible for torture) came to my house and threatened me saying that if I fail to withdraw the statement made to the Assistant Superintendent of Police he will implicate me in some offence. Under this threat I accompanied the said Inspector to the Jaffna Police Station in his jeep and withdrew my complaint against Inspector...."

All these reported torture victims interviewed by the delegation live in rural areas. Many of them are poor and cannot afford to take legal action. Nor have they easy access to civil liberties groups or other representatives who might protect them from continuing harassment by the army and police. All this helps to explain why complaints about torture and ill-treatment are rarely made in the Sri Lanka courts and why constitutional remedies with respect to torture are seldom in practice enforceable.

In addition to these practical constraints the constitution itself imposes legal restrictions on the making of complaints about torture. Article 126 gives the Supreme Court exclusive power to hear complaints about human rights violations; furthermore it specifies that the complaint has to be made within one month of the infringement.* It is not clear from the wording of Article 126 whether the one-month period is meant to start from the date when torture took place or from the date when a complaint about torture could in practice be filed - which would mean detainees could simply be prevented from filing complaints by being kept in incommunicado detention after torture, as in fact often apparently happens. The delegates asked one Supreme Court judge they interviewed about this. In his opinion the one-month period started from the date the petition could actually be presented - that is, the date of release - but he added this was his personal interpretation. The matter has not yet come before the Supreme Court for decision.

Even if this liberal interpretation were adopted by the Supreme Court, Amnesty International considers the one-month limitation unnecessarily restrictive, as torture victims, shortly after release, are often not in the right mental state or financial position to bring such a legal action. Kanagaratnam Gunapalasingham's case, described in some detail in Appendix A, is a case in point. In his affidavit of 2 August 1981 to the court he stated: "I was not in a position physically and mentally to seek legal advice or to present this petition before 5 July 1981" (more than six weeks after the torture took place). His application to the Supreme Court** was heard on 14 August 1981 and refused without a reason being given - presumably on the grounds it was out of time.

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* Article 126(2) reads:

"Where any person alleges that any such fundamental rights or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf, within one month thereof, in accordance with such rules of court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement."

** Supreme Court Application No. 61/81.

Another great difficulty victims face when pursuing judicial redress with respect to allegations of torture and ill-treatment is that in many instances it is hard to prove such allegations to the satisfaction of the court. This problem was illustrated by the one complaint of torture and ill-treatment filed under Article 126 of the Sri Lanka constitution before the Supreme Court in 1981.* This case was brought by an official, A. K. Velmurugu, a member of the District Development Council for Amparai and a prominent member of the Tamil United Liberation Front. He was arrested on 9 August 1981 while trying to investigate reports of the burning of houses and certain assaults. In his petition he maintained that he was not told the reason for his arrest or any charge against him. He further maintained that he was assaulted by the army and police after arrest by being kicked all over the body and trampled on, and by having his hair and beard pulled and burned. He was released on the evening of 9 August 1981. A medical report based on an examination of him done on 11 August 1981 stated that:

> "Probably due to assault, he has
>
> - contusions and abrasions on the back of the chest;
> - painful swelling of left wrist;
> - abrasions on legs and left ear-lobe;
> - swelling of both ankle-joints;
> - tender and painful left jaw-joint on movement;
> - tender and swollen left mastoid process where fracture cannot be excluded." (A fracture affecting the left side of the mandible was subsequently diagnosed.)

This medical report was not disputed by the court. Nonetheless, it decided by three votes to two that the petitioner had not adequately proved that these injuries evident on 11 August had been inflicted while he was in custody on 9 August, although it did not suggest how the injuries might have been inflicted. As one of the three judges who considered the evidence insufficient stated: "In the circumstances it appears to me that at the most the contention of the petitioner and of the....(officer accused of authorizing the ill-treatment) is word against word". The petitioner's statement was rejected. But one of the dissenting judges commented:

> "The case discloses a shocking and revolting episode in law enforcement. If fundamental rights assured by our Constitution are to be meaningful, trampling underfoot the fundamental freedoms of subjects by law enforcement officers should not be tolerated....He is entitled to the declaration that his freedom from torture and cruel, inhuman and degrading treatment guaranteed to him by Article 11 of the Constitution has been violated...."

As this Supreme Court case illustrates, even when practical restrictions do not apply and torture victims can present petitions within the constitutionally required one-month period, major difficulties

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* Supreme Court Application No. 74/81.

remain regarding sufficient proof of torture to satisfy the court. There are, furthermore, indications that measures are occasionally adopted by the security forces to prevent or minimize any physical torture marks. Several detainees, for example, have described how their ankles or thumbs were wrapped in cotton before they were suspended.

The Sri Lanka experience underlines the difficulties faced by torture victims in other parts of the world in similar situations. These are aptly described by the European Commission of Human Rights in the "Greek case", as quoted in the Sri Lanka Supreme Court judgment cited above.* These factors cast serious doubt on the government's assertion that existing constitutional and legal safeguards are a sufficient and effective means of preventing torture in Sri Lanka.

Killings and Attempted Killings by the Security Forces

On 11 June 1981 the Secretary General of Amnesty International cabled President Jayewardene expressing the organization's grave concern over reports that five Tamils had been shot dead by the army on the night of 3/4 June. Amnesty International urged "the government to immediately conduct independent investigation into killings of the five men and to publish outcome of its findings in their entirety".

Subsequent reports indicated that four Tamils had in fact been shot or beaten to death on the night of 3/4 June - one of them allegedly killed by the army; the others it was said, by the police. In addition

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* "There are certain inherent difficulties in the proof of allegations of torture or ill-treatment. First, a victim or a witness able to corroborate his story might hesitate to describe or reveal all that has happened to him for fear of reprisals upon himself or his family. Secondly, acts of torture or ill-treatment by agents of the Police or Armed Services would be carried out as far as possible without witnesses and perhaps without the knowledge of higher authority. Thirdly, where allegations of torture or ill-treatment are made, the authorities, whether the Police or Armed Services or the Ministries concerned, must inevitably feel that they have a collective reputation to defend, a feeling which would be all the stronger in those authorities that had no knowledge of the activities of the agents against whom the allegations are made. In consequence there may be reluctance of higher authority to admit or allow inquiries to be made into facts which might show that the allegations are true. Lastly, traces of torture or ill-treatment may with lapse of time become unrecognizable, even by medical experts, particularly where the form of torture itself leaves....few external marks." - Vide Journal of Universal Human Rights, Vol. 1, No. 4, Oct-Dec. 1979, at p. 42.

two Tamils were reportedly shot by the police and left for dead but survived. In all these cases the victims had apparently either been apprehended or were being held in some other way by the security forces. Those killed were alleged to have been for the most part randomly selected members of the Tamil minority, the killings being in retaliation for the shooting of two police officers (by as yet unidentified individuals) at an election rally at Nacchimar Kovilady on 31 May and for various incidents in which army vehicles were fired at in early June. (One of those interviewed by the Amnesty International delegates said that a police inspector, before firing at him, had said: "You people are shooting Sinhalese so we are shooting Tamils".)

The government has never responded to Amnesty International's request for an independent investigation into these incidents nor has it replied to repeated similar calls by civil liberties bodies in Sri Lanka.

While in the country the Amnesty International delegates were themselves able to investigate these incidents and to obtain evidence which seemed to confirm that there was deliberate shooting in cold blood of Tamils by the police on the night of 3/4 June. Below are the testimonies of two young men, interviewed by the delegates, who were apprehended on the night of 3 June, shot by the police but not killed. The delegates in addition interviewed one witness who testified that he saw police - in uniform - put both these men in a police van, between eight and nine pm on 3 June.

Information was given also about killings which occurred the same evening, witnesses to which the delegates were able to interview - although they were not, evidently, actual eye-witnesses.

* * *

The following detailed testimony from the two survivors of police shootings was taken down by the Amnesty International delegates in February 1982. Both victims have also made statements in sworn affidavits.

Survivor No. 1

> "In the evening of 3 June 1981, when I was standing at the gate of house of my driver at _____, a police van stopped ....The policeman ordered me to go into the jeep. They were in police uniform....The policeman who asked me was armed with a rifle....There were two Sub-Inspectors.... seven Constables....[Survivor No. 2], whom I had sent inside the house to bring the key of my minibus, came out of the house at that time. He too was ordered into the jeep. [Survivor No. 2] is a friend of mine and the driver of the minibus....I was assaulted and made to sit on the floor of the police van. They assaulted me with their

hands, on my back and on my neck. Then one of the PCs removed the Rs 1,000 which I had in my pocket. After that, one of the police Inspectors who was in the front of the van ordered the PCs to load their rifles....I was frightened and I told the Inspector in Sinhala that I knew Sinhalese and that I know Sinhalese people. The jeep was proceeding to Jaffna Town.

That day there was a curfew in Jaffna....from 9.00 pm to 6.00 am and applies only to Jaffna municipality. _____ is not under the curfew....Within half an hour we had reached the municipal boundary. We stopped near the Jaffna town limit board close to the burial ground....

The police Inspector told the constables 'Let the man who knows Sinhalese remain in the jeep and let the other person get down'....As [Survivor No. 2] came out at the back, one of the constables told him 'Sir wants you to come in front'. When [Survivor No. 2] came near the Inspector, the Inspector fired at [him]...I saw it from the rear side of the jeep. He fired with a pistol only one shot. [He] shouted 'Ayoo' and fell down. Then the jeep left. I thought that [he] was dead, and the jeep was proceeding to Jaffna....they took me around Jaffna to various places searching for a dark spot, but when they found one, vehicles and people were there. After about one and a half hours the jeep went to _____....where there is a lane....The jeep went throught the lane and stopped near a paddy field, which is still in Jaffna. (That area does not come under the curfew, but is covered by the police station of _____, of which Police Inpector _____ is in charge.) The jeep stopped. I was afraid. I worshipped the Inspector while I was on my knees and I begged him not to harm me. A police constable told the Inspector 'We will leave this man, he is a poor fellow'. The Police Inspector got out of the jeep and ordered me in Sinhalese to get down from the jeep. He told me 'I would allow you to go away, but I am unable to do that because I have already shot the other man. If I leave you now you will tell about the other'....All police constables saw this from inside the jeep....The Police Inspector....kept a revolver to my right ear, but as I worshipped to God, raising my arms, I struck his revolver and a shot went off. It touched me right over the ear....I was bleeding profusely. The PC's uniform was soaked in blood. (I stood very close to him when he fired, and I fell down and my blood went over his uniform.) I was semi-conscious....the Inspector lifted me and asked me to go away, but I fell back again on the ground. After five minutes, I opened my eyes to see the jeep had gone. I walked for some two feet, and then fell down again.

When I regained consciousness, it was about 2.00 am. (I guess this.) I thought I was at _____, close to my friend's house. I walked....I knocked at the gate and called for people at the home. They said 'Who is it?'. I said _____.

People came out and identified me as the person who had unloaded cow dung to them....I told them I had been shot, and I said I was thirsty and wanted water....'We will give you milk'. They milked a cow and gave milk.... They took me to a small temple, a little distance from their house, and allowed me to sleep in the temple.... At about 6.00 am I woke up. There was a big crowd. (I could identify many of them). I asked them to take me to the hospital. I was unable to sit up and walk. I was still bleeding....I was taken to Jaffna Hospital and immediately saw a doctor there. I was examined and operated upon. The bullet had....struck part of my head and my brain was....affected. I stayed in Jaffna Hospital for 28 days. The police came to record my statement....ASP (Assistant Superintendent of Police) _____ asked me 'Who shot you?'. I asked for an identification parade, but this was not granted....Then the DIG (Deputy Inspector General), _____, saw me....

Only after my discharge did I come to know of the name of the man who shot me. I did not know his name at the time of the shooting....the same morning of the shooting, that person came to the spot of the shooting and asked whether the person shot was dead....I can identify the Inspector even now. He is now at _____ and was transferred there within one month. In Jaffna, he was a Sub-Inspector; there, he is an Officer-in-Charge.... I asked the police to investigate this and I also asked the magistrate that this should be investigated. But no magisterial inquiry has been held."

Survivor No. 2

"When the police took me to the jeep, they asked me whether I knew of the Nacchimar Kovilady incident....I said I knew where Nacchimar Kovilady was but I did not know anything about what happened there....When we reached the municipal boundary of Jaffna, an Inspector told the PC 'Put down that person who spoke Tamil'. Immdediately afterwards, I was taken to a paddy field. I can identify the paddy field. It was close to the burial grounds....

A police constable guarded me. He was armed with a rifle. The PC told me 'Go in front'. I thought the police constable was going to shoot me. I walked back towards the front of the jeep. Then something struck me....It was of the Inspector who was seated in the front of the jeep. The shot pierced my cheek....The second shot was fired at me by the same Sub-Inspector from the jeep. It was aimed at my chest. I covered my chest with my left hand. It pierced my left hand....I then jumped over the parapet wall. As I jumped over the wall,

> another shot was fired at me which struck my right hand. I do not know who fired that shot. I fell down over the wall. I fell unconscious. They did not come after me. After 10 minutes I was able to walk. The following morning at 5.00 am I was taken by neighbours to the Jaffna hospital, where I stayed for two weeks."

The victim had marks from the shooting on his face and left hand, and is unable to carry on with his work as a mechanic.

Although the Deputy Inspector General of Police spoke to him after the shooting he has not heard from any officials since about further investigations.

There are medical reports from Jaffna General Hospital in both cases. The medical report on Survivor No. 2 shows he was admitted to hospital on 4 June 1981 with a gun-shot injury and that a bullet was removed after an incision in the palmar side of the hand.

The medical report on Survivor No. 1 shows he was admitted on 4 June 1981 with a "gun-shot injury". The X-ray revealed that the "temporal bone was affected". When performing the operation, doctors found the bullet had made two holes in the skull and that the brain tissue in between was dead. A piece of bone was removed during the operation and specialist treatment recommended. The report noted the wound had caused semi-paralysis of the patient.

The Amnesty International delegates spoke to the doctor who had examined Survivor No. 1 in hospital. He explained that a routine X-ray, taken on admission, had revealed fracture of the bones of the skull. According to the doctor, the patient, on admission, had not been able to recall the actual shooting as he was suffering from retrograde amnesia (temporary loss of memory) due to shock. The doctor explained that memory in such cases gradually returned. Survivor No. 1's injuries have resulted in permanent weakness in the left side of the body.

* * *

Amnesty International's delegates also interviewed three witnesses who gave first-hand evidence on an unprovoked police assault causing the death of another Tamil, Vinasithamby Navaratnam, the same night, 3 June 1981. Their testimony is summarized below.

Vinasithamby Navaratnam, aged 60. A shopkeeper.

At about 8.30 pm on 3 June 1981 he was talking to a colleague outside his shop. According to an eye-witness interviewed by Amnesty International, a police van stopped and six police officers jumped out and started to attack Vinasithamby Navaratnam with rifles and batons. The witness was beaten too, but escaped. After several minutes the witness returned to the place of assault and saw Vinasithamby Navaratnam lying on the ground, bleeding and unconscious. The witness informed his family, who live

near where the attack occurred. The witness saw a police van arrive at the place where the incident took place then go away again. Vinasithamby Navaratnam was taken to hospital immediately by his relatives. He was admitted to the General Hospital, Jaffna, where he died 10 minutes after admission in the presence of his son. An inquest was held at the hospital, the magistrate reportedly returning a verdict of homicide. Vinasithamby Navaratnam's son and the witness to the assault were summoned to attend an investigation held in the town council office in Chunnakam by a special police team where they made a statement concerning the victim's death. Amnesty International has received a report that the witness was warned not to disclose information about this incident. No information about the outcome of the police investigation, reportedly chaired by the Deputy Inspector General, is known, nor have the family been told its outcome, or been offered any compensation for the death of their relative.

* * *

Below are accounts of the deaths of the three other Tamils the same night, allegedly caused by the security forces:

Kanapathipillai Shanmugam Nadesu, a laundry worker.

On the evening of 3 June 1981 he was found shot in the head on the Manipay road leading to Kopay North. Those interviewed by Amnesty International believe he was shot by the police, but there were no witnesses to the shooting. He had no known involvement in politics but was widely believed to have been shot by the police in retaliation for the killing of police officers at the Nacchimar Kovilady election rally. The magistrate has returned a verdict of homicide but there has been no official inquiry into the circumstances of his death. His family now live in extremely poor circumstances and are not receiving any compensation.

S. Parameswaran, of Kopay, aged 20, a cultivation officer, and known supporter of TULF.

He left home on the evening of 3 June to go shopping. While he was talking at the local library a jeep - reportedly with the number plate 31 SRI 3868 - stopped and, according to bystanders' reports, his name was called out. He was then forced into the jeep. His body was found the next morning with six bullets in it on the road to Neerveli, a mile from his house. In January 1978 when he was still active in TULF politics he is reported to have been warned by the police that he would be "shot like a dog and thrown on the road". Although Amnesty International was not in a position to interview them, there were two witnesses who saw him being forced into the jeep. The magistrate has returned a verdict of homicide, but there has been no official inquiry into the circumstances of his death. Three sisters and one brother were dependent on him.

Velupillai Balajothy, a TULF worker active in the District Development Council elections.

He was reportedly shot by the army between two and three in the morning on 4 June 1981 at the house of the member of parliament for Nallur, Mr Sivasithamparam, which was being used as the TULF office during the elections. At the inquest, held on 10 June (Inquest No. 6383), two witnesses stated that they had seen three or four army officers in uniform and armed, jump over the wall of the house. Velupillai Balajothy, who was asleep on the verandah, is said to have fled and been shot dead. The army claim they shot "in self defence", but the post mortem examination revealed that the one gun-shot which caused his death "was fired from behind when the deceased was running. The shot was probably fired at a distance of two feet".

The Amnesty International delegates did not get the chance to interview witnesses about this particular incident, but they heard that the magistrate returned a verdict of homicide. They were further informed that the army officer named in the inquest as the suspect in the shooting incident was shortly afterwards taken into custody, although within a few hours he had been bailed out by a high-ranking army officer. Despite the verdict of homicide and the witnesses' accounts at the inquest no prosecution was know to have been started as of the time of the Amnesty International mission.

* * *

As far as Amnesty International was able to establish during its mission, there have been police inquiries into three of the above-described six cases. (The death of Vinasithamby Navaratnam and the shooting of the two individuals who survived.) It is not known whether these investigations have been completed, their outcome not having been published. Relatives of the victims have not been given information about the outcome of any investigations, nor have they been offered any compensation by the state. Moreover, these were inquiries by the police into alleged misconduct by their own force, hence they were not the independent inquiries by impartial bodies requested by civil liberties associations in Sri Lanka and international human rights organizations such as Amnesty International.

Amnesty International realises that the government responded to the widespread arson, looting and burning of houses and public institutions in Jaffna in late May and early June 1981 - violence which the government itself attributed to the security forces - by appointing police teams to inquire into the Jaffna violence and by establishing an official Commission of Inquiry, the Lionel Fernando Committee. However, the latter has only a limited mandate: to establish the nature of the damage done to property between 30 May and 2 June 1981 in Jaffna and to

recommend compensation for damage.* Amnesty International is concerned that the commission's mandate is so limited, thus excluding any investigation into the killings and attempted killings on the night of 3/4 June 1981 of the six men whose cases are described in this report.

Amnesty International further notes that, although its delegates were told disciplinary proceedings were pending against more than 175 police and legal action was being considered against 7 to 12 of them in connection with the Jaffna violence between 31 May and 2 June 1981, these measures do not apply to the police officers allegedly involved in the torture and killings described in this Chapter.** On the contrary, Amnesty International knows of two instances in which police officers, named as responsible for grave human rights violations, have in fact been promoted after the incidents took place.*** One case concerns a

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* The committee submitted its report in January 1982, but so far as Amnesty International knows, no compensation has been paid. However, the government is now reported to be considering payment of compensation for damage as recommended by the Lionel Fernando Committee, and the President has donated 900,000 Rs as part of the compensation for damage to Jaffna's public library.

** In November 1981 the Sri Lanka press reported that, as a result of police inquiries led by the Deputy Inspector General of Police "charge sheets will be issued on 165 policemen and legal action will be instituted against 12 police officers in connection with their alleged misconduct and involvement in offences of a criminal nature during the disturbances in Jaffna during the period May 30 to June 3 this year. According to these reports, however, the primary charge is that of 'desertion of post'. As regards police involvement in criminal offences, 'the relevant papers setting out a prima facie case has been sent to the Attorney General's department for necessary advice'. The report states "All these alleged offences are said to have been committed in the areas coming under Kankesanturai and Chunnakam police stations" (Island, 20 November 1981). They would thus appear to exclude the killings described in this Chapter.

*** Since the report was submitted to the government, Amnesty International learned that the government had promoted a Superintendent of Police whom the Supreme Court, on 8 February 1983, had held guilty of violating fundamental rights guaranteed in the Sri Lanka Constitution. (The Supreme Court had held that the police had illegally seized pamphlets by "Pavidi Handa" - an organization of Buddhist and Christian clergy opposing the proposed extension in late 1982 of the life of the present parliament - in breach of the petitioner's right of freedom of speech and expression.) The Supreme Court had ordered that the Superintendent of Police pay 10,000 Rs with costs to the Buddhist priest who was the petitioner in the case but on 2 March 1983 the government announced that the state would pay the compensation imposed by the Supreme Court as well as costs and that the Superintendent of Police would be promoted from class two to class one. The government was reported to have stated that: "it was necessary that public service officers should do their jobs and follow orders without fears of consequences from adverse court decisions" (Ceylon Daily News, 4 March 1983).

police officer named in connection with the shooting of "Survivor No. 1" (see pages 36-38); the other concerns the promotion of a police officer named in the inquest into the death of Aiyadurai Indrarajah, a detainee who died in custody, it is believed as a result of torture, in 1979.

The absence of official inquiries and subsequent appropriate measures against those responsible is the more disquieting inasmuch as verdicts of homicide have been returned by the magistrate in most of these cases and according to normal procedure inquiries should have ensued. Moreover, in several cases detailed legal evidence is available in the form of sworn affidavits by victims, and reports by civil liberties bodies in Sri Lanka and Amnesty International have for several years documented cases of political "suspects" who have died in custody or simply "disappeared" in Sri Lanka - although there have been few such cases.

Amnesty International knows of one case, in 1979, in which the government established a Parliamentary Select Committee, chaired by the Minister of Trade and Shipping, to investigate the fate of six young Tamils believed to have been killed by security forces in 1979. The bodies of two of them were found outside Jaffna; one died in prison hospital as a result of multiple injuries received while he was in custody; the bodies of three others, believed to have died following torture, were never found. (Their cases are described in the Amnesty International memorandum, attached to this report as Appendix B, on page 2.) On several occasions during 1980 and 1981, Amnesty International was informed by the Sri Lanka Government that the committee was completing its deliberations and would shortly publish its report. The Amnesty International delegation was told by reliable sources that the committee had finished its report and was about to publish it. To date, however, the report has not been published, and the Amnesty International delegation was refused permission to meet the Chairman of the Committee. Amnesty International is deeply concerned that more than three years after these incidents the committee has still not published it findings.

Conclusion

The Government of Sri Lanka must take responsibility for the grave abuses described in this chapter. Except for setting up the 1979 Parliamentary Select Committee, it has been consistently reluctant to initiate independent investigations into well documented reports of torture and killings by members of the security forces (or to publish the results - if any - of such investigations). It has recently introduced legislation designed to prevent the prosecution of officials and security personnel under certain circumstances even when they have

committed murder.* It has failed to take adequate steps to investigate charges against (indeed in some cases has allowed the promotion of) certain security personnel said to have been responsible for grave violations of the right to life and not to be tortured - rights which according to international law should be safeguarded by all states under any circumstances.

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* According to the Sun, 25 February 1982, the Justice Minister has introduced a bill for the enactment of the "Indemnity Act", to "prevent legal proceedings against Ministers, Deputy Ministers, state officials or personnel of the armed services and the Police over communal incidents in August/September 1977". The bill covers a period in which, according to the Sun, "several offences including the offences of murder, rape and arson, were committed". Only two claims for compensation by victims of such offences committed by the security forces are known to have been made so far. The Indemnity Act No. 20 of 1982 was passed on 20 May 1982 and covers only a limited period. Section 2 reads:

> "No action or other legal proceedings, whether civil or criminal, shall be instituted in any court of law for....any act....done with a view to restoring law and order during the period August 1, 1977 to August 31, 1977, if done in good faith, by a Minister, Deputy Minister or a person holding office under....the Government of Sri Lanka...."

V RECOMMENDATIONS

On the basis of the findings of its mission to Sri Lanka in January and February 1982 and of additional information contained in this report, Amnesty International respectfully submits the following recommendations to the Government of Sri Lanka for its urgent consideration. These incorporate the recommendations already submitted to the government in Amnesty International's 1980 memorandum.

Arrests

Arrests of individuals under the Prevention of Terrorism Act have been made without due regard to normal legal safeguards provided in Sri Lanka law and incorporated in international human rights standards (see Chapter III). Article 9 (Sections 1 and 2) of the International Covenant on Civil and Political Rights, ratified by Sri Lanka, provides that no one shall be subjected to arbitrary arrest or detention and that those arrested shall be informed at the time of arrest of the reasons for arrest and shall be promptly told any charges against them. Article 92 of the United Nations Standard Minimum Rules for the Treatment of Prisoners states that untried prisoners shall immediately be allowed to inform their relatives of their detention.

Amnesty International recommends that:

1. Individuals arrested under the Prevention of Terrorism Act be immediately informed of the reasons for arrest and be promptly informed of any charges against them.

2. The government inform relatives immediately of the arrest and place of detention, or allow the detainee to inform his/her relatives of his/her arrest and whereabouts.

Torture

The testimonies taken by the Amnesty International mission confirm other reports received by the organization that torture was regularly inflicted in 1981 and at least up until the time of the mission (see Chapter IV). It is apparently inflicted by the army and police on a limited number of people suspected of involvement in "terrorist activities". Torture is prohibited in Article 7 of the International Covenant on Civil and Political Rights, in Article 11 of the Sri Lanka constitution and under other provisions of Sri Lanka law. Freedom from torture is one of those absolute rights which the international covenant obliges governments to respect under all circumstances, even when an officially proclaimed emergency is in force (Article 4 of the International Covenant on Civil and Political Rights).

In Sri Lanka, Amnesty International believes that torture is facilitated by the suspension of important legal safeguards allowed by the Prevention of Terrorism Act, especially those permitting prolonged police custody and prolonged incommunicado detention in unknown places without any form of independent supervision or control. Contrary to normal procedure in Sri Lanka, according to which those arrested must be brought before a magistrate within 24 hours of arrest, Section 7 of the Prevention of Terrorism Act allows detainees to be kept for 72 hours in police custody (where there are no rules or safeguards to protect them from ill-treatment and torture). And under Section 9 of the act "suspects" may be detained for up to 18 months without charge or trial in any place and under any circumstances, thus allowing for prolonged incommunicado detention.

Amnesty International recommends that immediate steps be taken to prevent the future occurrence of torture. In line with the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and on the basis of Amnesty International's own knowledge of situations in countries where similar measures have been taken that facilitate the torture and ill-treatment of individuals suspected of terrorism, the organization recommends that the government consider taking the following immediate steps which should effectively halt torture.

Amnesty International recommends that:

3. All detainees arrested under the Prevention of Terrorism Act be granted immediate and, later, regular access to their lawyers and relatives and be allowed to instruct their lawyers freely, not in the presence of - at least not within hearing of - officials.

4. The normal procedure in Sri Lanka be restored whereby all detainees are brought before a magistrate within 24 hours of arrest, the magistrate having power to order either their release or remand in prison.

5. If detainees held under the Prevention of terrorism Act cannot immediately be transferred to prisons (as proposed in recommendation 10), that specific rules for detention and interrogation be immediately introduced to prevent the occurence of torture. Such rules should ensure the following:

a) that there is a medical examination on admission and later at regular intervals (both in order to protect detainees and to prevent false reports about their treatment in detention), such medical examinations to be made by a medical practitioner chosen by the detainee, if the latter so requests;

b) that a senior official is present throughout the interrogation (as in Amnesty International's experience interrogation in private creates the conditions in which brutality and violence can easily occur);

c) that interrogation lasts no longer than the normal periods between mealtimes and never starts before 7.00 am or ends after midnight.

Constitutional and legal prohibitions on torture in the Sri Lanka constitution and penal code have failed to protect victims from torture for reasons outlined in this report (see Chapter IV), so it must be concluded that existing safeguards are inadequate and that legal remedies are virtually unavailable.

Amnesty International recommends that:

6. The government review existing legal and constitutional remedies designed to protect Sri Lanka citizens from torture with a view to making them more effective. This review should in particular consider the extension of the time limit of one month within which complaints of torture have to be lodged under Article 126 of the Sri Lanka constitution and an increase in the number of courts entitled to hear such complaints.

In line with Articles 9 and 10 of the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Amnesty International recommends that:

7. The government establish independent investigative machinery to investigate complaints of police and army brutality and torture whenever there is evidence that such abuses have taken place. The findings of such investigations should be published in all cases, and criminal and disciplinary proceedings should be instituted against alleged offenders that such investigations suggest are implicated. (Such machinery might take the form of independent machinery to investigate police action as recommended by the 1969 Basnayake Commission.)*

In line with resolution 35/170 adopted by the General Assembly at its 35th session calling on governments to use the Code of Conduct for Law Enforcement Officials within the framework of national

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* Report of the Police Commission, 1969.

legislation, practice and directives to law enforcement agencies, Amnesty International recommends that:

8. The government translate into its national languages, publish, distribute and include in the training of police and members of the armed forces - especially those in charge of interrogation - the United Nations Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly on 17 December 1979. The code specifies that "No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment".

Detention

Detainees arrested under the Prevention of Terrorism Act have been held for long periods, some for more than a year and a half and several for a long time in solitary confinement. They have been held for many months before being brought before a judge (see Chapter III). These practices contravene Article 9 (Sections 1, 3 and 4) of the International Covenant on Civil and Political Rights which state that no one shall be subjected to arbitrary arrest and detention; that those arrested on a criminal charge shall promptly be brought before a judge and shall be entitled to trial within a reasonable period or released. They also state that people who are detained are entitled to take proceedings before a court that can decide, without delay, on the lawfulness of their detention.

Amnesty International recommends that:

9. All individuals arrested under the Prevention of Terrorism Act be produced before a magistrate within 24 hours of arrest and be either released or tried within a reasonable period.

People detained under the Prevention of Terrorism Act are held without any form of judicial or other independent control in conditions entirely at the discretion of the government, that is, "in such place and subject to such conditions as may be determined by the Minister". Minimum safeguards prescribed in the Sri Lanka Prisons Ordinance and in subsidiary legislation are denied to political detainees, and detention conditions appear to fall short of the minimum guarantees laid down in the United Nations Standard Minimum Rules for the Treatment of Prisoners (in particular Rules 24, 25(1), 33, 37, 44(3), 90 and 93 - see Chapter III).

Amnesty International recommends that:

10. a) Detainees be held in prisons where there are rules to protect them while in detention, and not in police stations, army camps or any other place

of detention. All prisoners, including political prisoners, should receive similar treatment, be granted rights under the Sri Lanka Prisons Ordinance and subsidiary legislation and be informed of their rights - preferably set forth in writing - on admission. Detention conditions should at least be brought into line with the minimum provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Detainees should be allowed regular visits by relatives and means of communicating with them, have access to reading and writing material, be supplied with adequate food and drink, be kept in hygienic conditions, be allowed daily exercise and be able to receive adequate medical treatment. They should not be kept in solitary confinement or be kept chained or fettered.

b) If recommendation 10 (a) cannot immediately be implemented and detainees held under the Prevention of Terrorism Act are not transferred to prisons, that the government, at the very least, allow an international body with a mandate and expertise in the field, to visit them, wherever they may be held, regularly and without giving prior notice, and carry out the recommendations of such a body. It might also consider establishing, at an early date, an independent body of prison visitors - consisting of reputable citizens with experience in human rights, whose independence and integrity are accepted by all sections of society - with power to visit detainees unannounced.

c) Detainees held under the Prevention of Terrorism Act be immediately informed of their right to make representations to the Advisory Board and be given every facility to make such representations at the earliest opportunity. In order to improve the board's functioning the independence of all its members might be ensured and their mandate extended to include making on-the-spot inquiries about detention conditions.

Trials

Contrary to the normal rules of evidence specified in Sections 25 and 26 of the Evidence Ordinance, which exclude confessions made to the police as evidence in future trials, Sections 16 and 17 of the Prevention of Terrorism Act allow as evidence a much wider range of statements. Similar provisions existed under the previous government

in the Criminal Justice Commission Act and were then criticized by Amnesty International, which considers these provisions constitute a direct incentive to interrogating officers to obtain information or "confessions" by any means, including torture, and should therefore be repealed.

Amnesty International recommends that:

11. The government repeal or amend Sections 16 and 17 of the Prevention of Terrorism Act so as to ensure that all "statements" or "confessions" obtained from detainees arrested under the Prevention of Terrorism Act and not made in the presence of a magistrate be excluded from evidence in current and future trials. The normal rule laid down in the Evidence Ordinance should always apply.

Killings and attempted killings by the security forces

The Amnesty International mission to Sri Lanka in February 1982 obtained evidence that Tamils had been deliberately killed after being apprehended, or that attempts had been made on their lives, during the night of 3/4 June 1981 by the security forces in the north of the country, apparently as retaliation for killing their own members (see Chapter IV). Deaths in custody of political suspects at the hands of security forces were reported by Amnesty International previously, when it provided detailed evidence on six cases of Tamil "suspects" who died in police custody following torture (see the text of Amnesty International's 1980 memorandum, Appendix B).

Although there have been only a few such killings in Sri Lanka, Amnesty International is concerned about the government's continuing failure to investigate - by means of an independent and impartial inquiry or otherwise - and fully report on allegations that detainees have died in police and army custody. Despite verdicts of homicide in most of the recent cases described in this report, inquiries have apparently not been initiated or completed, nor have measures been taken against the officials responsible. In one case, in 1979, the government established a Parliamentary Select Committee to investigate and report on the death of six young Tamils in 1979, allegedly killed by the security forces (described in the 1980 Amnesty International memorandum); however, Amnesty International notes with concern that the committee has so far failed to publish the outcome of its investigations.

Amnesty International recommends that:

12. a) The government conduct an independent investigation into the killings and attempted killings of Tamils on the night of 3/4 June 1981, described in Chapter IV of this report, and ensure that its findings are promptly published in their entirety.

b) The findings of the Parliamentary Select Committee established in 1979 to investigate the death of six Tamils, allegedly at the hands of the security forces, now be published in its entirety.

c) If prima facie evidence emerges about the responsibility of officials or security personnel for these killings and shootings, that appropriate criminal and administrative procedures be instituted in line with Articles 9 and 10 of the UN Declaration on Torture (see recommendation 7).

d) If officials or security personnel are found to have been responsible for these killings, that the families of those who died on the night of 3/4 June 1981, several of whom live in extremely poor circumstances as the result of the death of the breadwinner, receive adequate compensation from the government.

APPENDIX A

TESTIMONIES RELATING TO SOME OF THE INDIVIDUAL CASES INVOLVING TORTURE ALLEGATIONS WHICH WERE EXAMINED BY THE AMNESTY INTERNATIONAL DELEGATION TO SRI LANKA IN FEBRUARY 1982

Set out below are details of testimonies relating to some of the individual cases involving torture allegations which were examined by the Amnesty International delegation to Sri Lanka in February 1982.

* * *

The following account was given to the delegation by a former detainee under the Prevention of Terrorism Act who had been arrested on 16 November 1981 and who reported being tortured on the day of his arrest and during the following 10 days:

> "When I was being taken to Mankulam Army Camp, they put about 10 or 15 army helmets on my head. While I was carrying this heavy load, they told me to balance a 45 litre plastic barrel of water. This continued for about one hour. If I failed to keep up the can, I was assaulted....At about 11.00 pm we arrived at Gurunagar Army Camp in Jaffna....A man who told me he was a corporal brought a needle and pricked me with it. Two or three men were holding me at the time. They were all in civilian clothes. They inserted needles in the muscles of my arm and under my fingernails. They also pierced the underside of my arm. They took a thread which they put under the tendon and pulled it through backwards and forwards while asking me questions about terrorist leaders, who they were and where they were. [The witness shows two marks at the underside of his arm of this treatment]....Then they handcuffed me and tied me with my right hand and my right leg to a wooden bench. In that position I was allowed to sleep. I got food the next day. I was taken for further interrogation to an office. One army captain conducted the investigations and one other man in civilian clothes was also there....during that interrogation I was not assaulted. Then I was taken outside to the verandah, where there is a concrete platform, three or four feet high. I was told to lie down on that platform, face downwards. I lay down on the platform, from my feet to the waist, the top of my body hanging outside. An army man in civilian clothes kicked me with an S-lon pipe on the

soles of my feet. (I know it was an army man because others were calling him Sergeant.) [The S-lon pipe is one inch thick and about four feet in length.] It was heavy....stuffed with a hard substance....When they started hitting the soles of my feet, this gave me a pain in my neck. The pain was like an electric current. Some 10 other people stood around, all were in civilian dress. After that they put broken glass on the concrete floor, on which I was told to kneel down with my hands put above my head. When I was about to fall, they put me up again in the same position, beating me. This continued several times. After that, they brought chilis in powdered form which they stuffed into my nostrils....They stuffed it in my nostrils with a nail so that it entered my forehead. This happened while I was still kneeling on the glass. I was thirsty. It was now about 5.00 pm. I had not been given any drink and no food. They then gave me very salted water to drink. They had added pepper and chili powder into it and forced me to drink this mixture. I started vomiting, but when I was about to vomit, they assaulted me saying I should not vomit.

In the verandah there is a wall with several holes in it. I was ordered to put both my hands through the two holes. One person held my hands from the other side....Then they tied a rope of about one inch thickness around my abdomen, and two persons pulled the rope while others kicked me on the back. In between the wall and the lower part of my abdomen, they had put a wooden block of 4 by 4 feet. They pulled very hard on the rope around my waist while simultaneously kicking the lower part of my abdomen, so that the middle part of my body was pulled backwards and the lower part immediately underneath it kicked forwards....The next morning I was again taken for inquiry. That day they inserted needles in my body and also assaulted me....they inserted pins into my hands under my nails. The inquiry was conducted by the same army captain.

A colonel....came that day and ordered them to stop the treatment when I was forced to drink salt and peppered water....I was brought back on the bench. When I was lying on the bench at night, somebody would come along and assault me....One of the following days, one man came and said he was a CID (secret police) officer and I was taken to the CID office in the army camp....There I was assaulted with broken broomsticks, and beaten on my feet and my muscles were pricked with needles. This lasted from 10.00 am until 5.30 pm. I was also hit on the head....But I could not give any

information. I did not get any meals that day....I was given tea only. I was treated for the wounds I had received by an army doctor....Until the 22nd, the same treatment, no inquiry but soles of my feet were beaten and pricked by pins and needles, until 25th, early morning. This treatment had continued for 10 days....That morning Captain....told me 'We took you in custody on suspicion. Now we find you are innocent. So you can go'. But I was unable to walk. He said 'Please stay another four days so that you can walk'....However, during the following four days, people kept assaulting me during the night. I told the corporal there in the camp and he ordered them not to assault me. But on the 27th, army personnel beat me on my leg.

At one time, they recorded my statement and got my signature. I am unable to say whether the statement was in English or in Sinhala, but it was not in Tamil. I was not aware what I signed."

(Amnesty International has deleted the details it has of army officials identified as responsible in this and other statements.)

* * *

When released, ex-detainees often suffer from acute fear of repercussions. The following is part of a testimony of a detainee who was held in late 1981 at Vavuniya Army Camp in the north and who also reported having been tortured on previous occasions:

"In Vavuniya Army Camp I was assaulted. Between 10 and 15 army people kicked me. They then put me against a wall. One army major....put his two thumbs into my eyes and pushed them in until the blood came out. My eyesight is bad at the moment. After dark I cannot see very well. I do not dare to go to an eye specialist. I am afraid that they might tell officials that I told them how I got my injuries."

* * *

In one tragic case, an ex-detainee's suicide is believed to have been linked to his torture while in detention. The case concerns Kanagaratnam Gunapalasingham, a cigar manufacturer from Kokuvil, married with two children, who was detained in Panagoda Army Camp, near

Colombo. Amnesty International has an affidavit from the victim, dated 2 August 1981, taken down before his death, from which details and quotes are given. During its mission Amnesty International interviewed a doctor who had examined him in hospital and others, with first hand knowledge of his mental and physical conditions after he was released from detention.

According to his relatives, Mr Gunapalasingham was in financial difficulties as a result of expenses incurred for the marriage of his sister on 12 May 1981. In order to carry on his business he decided to sell his wife's "Thalikody" (traditional golden jewellery worn by married Sri Lankan women). He went to Jaffna on 16 May 1981, sold the gold of the "Thalikody" for Rs 12,600, returned Rs 3,500 to the pawner of the jewellery, and went home the same day with the balance. He was arrested by the army at 9.45 am on 16 May 1981 at a time when a number of arrests were being made following the Neerveli bank robbery. According to the affidavit, Mr Gunapalasingham was assaulted at the time of arrest and taken by some 15 men (some of them wearing army clothes, others wearing civilian clothes) to Palaly Army Camp. He was assaulted at Palaly Army Camp, and during the assault most of the money which he was carrying fell from his clothes. He explained in detail to his interrogators why he was carrying the money, but was taken half an hour later to Colombo, and reached Panagoda Army Camp at about 12.00 noon the same day.

On 17 May 1981, army personnel entered his cell, inquired about the Neerveli bank robbery and asked how Mr Gunapalasingham had obtained the money. He told them how he had sold his wife's "Thalikody" and that he had the receipt with some money in an envelope which he handed over, but which he says in his affidavit was immediately burnt by his interrogators. When he denied knowledge of the bank robbery, he was kicked all over the body and hit by an S-lon pipe on the back of the head. He was taken to identify other suspects, and according to the affidavit, was subsequently tortured in the following ways:

> "a) an Army/Security personnel drove needles into my nail folds of toes and fingers. On some occasions, the needles were kicked into the folds. Such needles were about 2 inches long;
>
> b) larger needles were driven into the heels and sometimes four or five needles were driven at the same time.
>
> c) the officials also hit me with S-lon pipes on the heels;
>
> d) the army officials also splashed some liquid from a bottle with small holes at the top, and as a result there were burns on my body."

On 19 May, during inquiry, according to the affidavit, "one of the officers who spoke good Tamil informed the others that no purpose would be served by continuing the inquiry with me" and at about 9.00 pm on 19 May 1981 Mr Gunapalasingham was pushed out of the army camp. "One Army Personnel requested the Security guard to shoot me, but the

Security Guard did not do so." Mr Gunapalasingham stated he went two days after his release to the Anaikoddai Police Station, but the police refused to take down his statement. (His statement was however recorded by the police after Mr Gunapalasingham had sought the intervention of a member of parliament.)

In his affidavit, Mr Gunapalasingham complained of an "inability to pass urine and hallucinations. I have also had injuries caused by needle pricks in the nail folds and the heels. I fear that I have been inflicted with permanent injuries". On 21 May 1981 he was taken to the general hospital, Jaffna, and received medical treatment until his discharge on 27 June 1981, but was the same day readmitted to the general hospital. He was discharged on 1 July 1981 and, after consulting a psychiatrist, was immediately admitted to Tellipallai Cooperative Hospital, complaining of hallucinations. He submitted an affidavit before the Justice of the Peace on 2 August 1981 stating "I was not in a position physically and mentally to seek legal advice or to present this petition before 5.7.81".

The Amnesty International delegates spoke to the medical expert who examined this witness after his readmittance to hospital in the first week of July 1981. At that time, he was refusing food and drink, and was unable to talk, expressing himself only by way of gesture language. He had difficulties in passing urine. The doctor told Amnesty International he had found signs of haematoma (blood clots) in both the big toe folds and on both heels consistent with the allegation made by Mr Gunapalasingham in his affidavit that needles had been driven into both his toes and heels.

The medical expert told Amnesty International the patient had hysterical attacks, continuously referring to the army assaults. The medical expert concluded that he was profoundly psychiatrically disturbed possibly as the result of torture.

Kanagaratnam Gunapalasingham committed suicide on 2 September 1981. His family and young children are destitute.

* * *

The Amnesty International delegation conducted a detailed interview with a young man who had just been released from detention in the police station in Colombo in late January 1982 and who gave the following account of torture on the station's so-called "Fourth Floor":

> "The next morning, they interrogated me and assaulted me. They had a twisted cane and they beat me with hands and kicked me with their feet. Fifteen men came in in turn to do this in the same room....I was stripped naked and handcuffed to a wall....They ordered me to go down under the table and assaulted me on my back. They raised me by the hair. They put my male organ

on a table and beat it with a cane. They did this in turn. They burnt my ankle with burning cigarettes. [This witness showed one fresh mark on the right ankle, on the inside, which appeared to be consistent with his claim.] I was handcuffed. I was also told to lie on the floor, face downwards. One man was sitting on my back, one was holding my head, and one was holding my legs. They assaulted me on the soles of my feet with an S-lon pipe. This lasted for about half an hour.... Later, my hands and legs were tied and I was hung from the hands from a hook. Then, the CID (secret police) assaulted me with an S-lon pipe. I was hanging in that position for about half an hour. I was hung in that position on two occasions.... I was told that I should not tell anybody about my treatment, otherwise 'I would be arrested again'."

APPENDIX B

AMNESTY INTERNATIONAL MEMORANDUM TO HIS EXCELLENCY PRESIDENT J.R. JAYEWARDENE, 23 MAY 1980

On assuming office in July 1977, the Sri Lanka government had placed a considerable emphasis on upholding the rule of law and protecting fundamental rights. The new Constitution, although putting important restrictions on the exercise of certain fundamental rights, includes, for the first time, a specific prohibition of torture (Section 11). In his 27 August 1979 speech inaugurating the 6th LAWASIA Conference in Colombo, President Jayewardene said:

> "An expeditious remedy for violation of fundamental rights is constitutionally guaranteed for the first time. That remedy can be sought from the highest court, whose independence and jurisdiction are entrenched in the Constitution."

However, when human rights are threatened, such Constitutional remedies have proven difficult, if not impossible to enforce in situations where normal legal safeguards are suspended. This was particularly the case from 11 July until 27 December 1979 when the Emergency (Miscellaneous Provisions and Powers) Regulations No.1 of 1979 were in force in the Jaffna District. Whereas the Emergency ceased to exist on 27 December 1979, important legal safeguards continue to be suspended under the Prevention of Terrorism (Temporary Provisions) Act No.48 of 1979 and the Proscription of Liberation Tigers of Tamil Eelam and Other Similar Organizations Law of May 1978, which have not been repealed and remain in force at the present time. Amnesty International believes that they create the conditions under which human rights violations can easily occur.

The Suspension of Legal Safeguards under Special and Emergency Legislation

The special and emergency legislation more recently introduced provides for prolonged detention in police custody without charge or trial (for 15 days under the provisions of Emergency Regulations 17 and 18, and for 72 hours under Sections 6 and 7 of the Prevention of Terrorism Act). The normal rule in Sri Lanka, that arrested persons be produced before a magistrate within 24 hours of arrest, is suspended, and the customary rules and regulations to protect persons in detention do not apply to persons arrested under the special laws (Section 7 of the Prevention of Terrorism Act, Emergency Regulations 17 and 18): such persons can be denied access to lawyers and visits by their relatives. Furthermore, persons on remand

or in detention can be taken away by the police at any time for interrogation without judicial or other independent supervision. There are also important departures from the normal rules of evidence in Sri Lanka which do not allow confessions made to the police to be admissible, unless made in the immediate presence of a magistrate (Sections 25-26 Evidence Ordinance). But this rule is reversed in Section 16 of the Prevention of Terrorism Act (and Emergency Regulation No. 59): any statement made at any time, whether "it amounts to a confession or not", "made orally or reduced in writing" or whether "such person was or was not in custody or presence of a police officer" is admissible as evidence (Section 16(a)(b)(c), Prevention of Terrorism Act). (Section 17 of the Prevention of Terrorism Act makes the normal restrictive rules relating to confessions in Sections 25-26 of the Evidence Ordinance inapplicable.)*

Another dangerous provision was in force for the five days immediately following the Emergency declaration. From 11-16 July 1979 Emergency Regulation No. 14 allowed the police to dispose of dead bodies without inquest or customary legal and other formalities. Amnesty International believes it is significant that the serious allegations it received of the arrest of six young Tamils, and of their subsequent death in police custody following torture, concern this specific period of five days. The six, Kanagaratnam Visvajothiratnam alias Inpam, Sravanamuthu Selvaratnam, Ramalingam Balendran, Sellathurai Rajeswaran, Sellathurai Parameswaran and Irathurai Indrarajah, are all believed to have been arrested in the early hours of 14 July 1979 and subsequently tortured. The mutilated bodies of Kanagaratnam Visvajothiratnam alias Inpam and Sravanamuthu Selvaratnam were found under a bridge near Jaffna, on the same morning of their arrest, 14 July 1979. Irathurai Indrarajah was admitted with 33 injuries to Jaffna prison hospital the day after his arrest where he died five days later, on 21 July 1979. The other three prisoners have simply "disappeared", their bodies not having been found. The government has made these allegations the subject of an inquiry by a Parliamentary Select Committee.

Amnesty International believes that the removal of such legal safeguards, which allow the police to keep "suspects" in incommunicado detention for several days without allowing them to consult or even contact a lawyer and their family, creates the preconditions where torture is likely to occur. This danger is enhanced when simultaneously the rules of evidence are such as to encourage the police to obtain "confessions".

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* A similar departure from the normal procedures had occurred under the provisions of the Criminal Justice Commission Act enacted under the previous government, and was then criticized in Amnesty International's 1975 mission report. "This is a striking departure from any known rule about confessions. It would allow a confession to be admitted even if it were extracted by torture..." (p.26, Report of an Amnesty International Mission to Sri Lanka, 9-15 January 1975).

The incidence of police brutality and torture in Sri Lanka has been of concern to Amnesty International for some years. Amnesty International's report of Lord Avebury's visit in September 1971 described acts of torture and police brutality which occurred in the wake of the 1971 insurgency; the Amnesty International report on its 1975 mission to Sri Lanka expressed concern about police brutality and torture in the northern region of persons detained under Emergency Regulations, in force under the previous government.

In the period after 1977, violent incidents occurred in the northern provinces, during which a number of policemen were killed. Suspects were arrested and detained in connection with these incidents, and several detailed reports of torture were brought to the attention of Sri Lanka's Parliament during 1978.*

The allegations of torture and death in police custody during the period after the 11 July 1979 Emergency declaration were also the subject of discussions during the visit to Sri Lanka of Stephanie Grant, the Director of the Washington office of Amnesty International's USA Section, in September 1979. She met government ministers and interviewed released political prisoners who alleged they had been subjected to torture while detained under the Emergency Regulations.

Amnesty International appreciates that, Emergency Regulations No. 14 notwithstanding, inquest procedures were instituted into the circumstances of death of three of the young Tamils believed to have died in police custody, Kanagaratnam Visvajothiratnam, alias Inpam, Sravanamuthu Selvaratnam, and Irathurai Indrarajah. Amnesty International however notes that the magistrate of Jaffna, on 8 January 1980, found at least in one case, evidence of police violence and returned a verdict of homicide:

> "The verdict of the Judicial Medical Officer is that death was due to cardio-respiratory failure consequent to renal tubular necrosis consequent to shock and haemorrhage resulting from multiple injuries. There is evidence of assault by the police. I return a verdict of homicide."**

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* They concern allegations of torture of Kananpathipillai Tharmaratnam (Hansard, columns 144-146, 1978), Swaminathan Joseph Anton Jayakumar (Hansard, columns 2666-2667, 1978), and of Karagasabai Paramanathan, (Hansard, column 2670, 1978).

** The magistrate of Jaffna; verdict in Inquest Case No. I.Q.5550, concerning the death of Irathurai Indrarajah.

Amnesty International has now also received evidence in the form of sworn affidavits of persons arrested in the weeks after last year's emergency declaration, who have been released from detention. This evidence suggests the existence of a pattern of gross human rights violations in the period immediately following the Emergency declaration of 11 July 1979. It makes detailed allegations that torture and cruel, inhuman and degrading treatment were consistently used both by the police and armed forces in the northern region, exercising those powers of arbitrary arrest and detention given to them by the emergency and special legislation. Allegations have been made that torture occurred with the knowledge of the Commander of the Security Forces in the Jaffna district. This he had categorically denied to the Amnesty International delegate in Jaffna in September 1979.

Arrest Procedures

Evidence presented to Amnesty International shows that:

- in spite of the safeguards laid down in Article 13 of the Constitution to protect the freedom from arbitrary arrest, detention and punishment, persons arrested by the police and army during the Emergency were not informed of the reason for their arrest, the law or regulations under which the arrest was made, or the place to which the arrested person was taken; in many instances arrests were made by officials neither wearing uniform nor using officially marked vehicles;

- in spite of the safeguard laid down in Section 13(c)(2) of the Constitution, there are instances known to Amnesty International where detainees so arrested were not produced before a magistrate until three weeks after the date of their arrest;

- persons so arrested and kept in detention in police custody or by the army at the Residency in Jaffna were denied access to a lawyer during this period, in some cases for up to two weeks;

- even after this period, when detainees were allowed to consult a lawyer, for example in connection with representations before an Advisory Board (set up under the Emergency Regulations or the Prevention of Terrorism Act), detainees were denied the opportunity to give free instructions to their lawyer, as prison officials were present within hearing distance;

- when detainees were allowed to meet relatives, they could not speak to them in private;

- detainees when transferred to prisons after the period of police and army custody, were kept in conditions of solitary confinement for periods of up to 15 days;

- such persons, on release, were warned by the police and army officials not to disclose any fact about the treatment they were given while in detention, otherwise they would "suffer the same fate as Inpam and Selvaratnam". *

Amnesty International believes that when the normal legal safeguards to protect persons in custody are removed, detainees are effectively denied any remedy to violations of such fundamental rights guaranteed to them in the Sri Lanka Constitution, as the right to freedom from torture, and to freedom from arbitrary arrest and detention, proclaimed in Articles 11 and 13 respectively. The constitutional guarantees on which the Government has laid stress therefore become little more than a theoretical protection in the face of emergency or special legislation.

Forms of Torture and Cruel, Inhuman and Degrading Treatment

The evidence which Amnesty International has received indicates torture was systematically used by the police - particularly the Criminal Investigation Department (CID) - and by the army, both in police stations (including Jaffna police station), and at the army headquarters in Jaffna: the Army-Coordinating Office, located in the Residency.

Amnesty International received testimonies alleging torture including:

- suspension by a rope attached to the neck and the genitals;

- systematic beating with fists, boots, pieces of wood sometimes with nails attached, for several hours, causing swelling of the abdomen;

- placing the victim in a bag tied to a jeep, driven along the road;

- insertion of pins into fingertips, application of broken chilis to sensitive parts of the body;

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* The two young Tamils whose mutilated bodies were found shot on 14 July 1979, see page 2 of this memorandum.

- placing biting ants and bees on the body and pressing them against it;

- threats of executions, in some cases by putting a noose around the neck of the victim.

We would quote:

> "The toes of my legs were tied up together and I was hung upside down on my toes by a rope slung over a wooden beam and was mercilessly assaulted by hand and foot and with S-lon pipe tubes for a number of hours continuously while hanging in that position with my head down. My body was pricked with pins too at the same time. I was subjected to this treatment about 8 or 9 times. On several occasions I fell down while hanging in this position as a result of the breaking of the rope that was used to hang me."

> "On about three occasions while I was hanging with my head down, an earthenware pot with smouldering embers was placed inside a gunny bag, dried chilis and salt were sprinkled on the said embers and the gunny bag with the thick irrigating fumes emanating from the pot was tied round my neck so as to suffocate me with the fumes. Meanwhile I was assaulted too as hereinbefore described and my body pricked with pins so that I may cry out and thus inhale the fumes."

Amnesty International has been given the names of army and police officials who are said to have participated in such acts or authorized them while they were being carried out.

It is disturbed about four allegations it received that an army doctor was present during the interrogations. He is said to have examined the victim and advised on whether further torture could be inflicted. It appears that the purpose was to prevent the death of the detainee. In one case, the army doctor is reported to have advised on which parts of the victim's body to assault.

While undergoing torture, statements were recorded in the following way:

> "I was assaulted on the head with an object that looked like a baton as a result of which I became concussed and dizzy. I was then interrogated and whatever I said was recorded by means of a tape recorder."

> "...at the end of the period of torture I was asked to sign the said statements without being allowed to read the same, or the statements being first read over and explained to me...the said statements were not freely or voluntarily made by me but were made while the aforesaid acts of intimidation, coercion, duress and/or torture were being committed on me...I cannot be held responsible for the said statements for the above reasons."

Conclusions and Recommendations

The use of methods of torture and forms of cruel, inhuman and degrading treatment as described in this memorandum is prohibited by international instruments such as the United Nations Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3), and in similar terms in Article 5 of the Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17 December 1979, which declare the prohibition to be absolute. Article 3 of the United Nations Torture Declaration states:

> "No State may permit or tolerate torture or other cruel inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment."

The methods described also directly violate the prohibition of torture proclaimed in Section 11 of the Sri Lanka Constitution itself.

The United Nations Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment directs each State to "take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction". Amnesty International makes below a number of recommendations for the full restoration of legal safeguards which were curbed under the Emergency Regulations No. 1 of 1979, and which continue to be curtailed under the 20 July 1979 Prevention of Terrorism Act and the May 1978 Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organizations Law, which have not been repealed. Amnesty International believes that its recommendations, if implemented by the government, would constitute an important protection to Sri Lanka citizens from future abuse of their constitutionally guaranteed rights to freedom from torture and arbitrary arrest and detention.

In making these recommendations, Amnesty International is glad to note it has not received allegations of continuing torture comparable to those as described in this memorandum. It believes that its concern to seek effective means for the prevention of human rights violations, and of the prevention of torture in particular, is shared by the President of Sri Lanka. In 1978, Mr. K.W. Devanayagam, the Minister of Justice, quoted the President as saying that

> "I must assure my Friends that the President at a Cabinet meeting gave strict instructions that no persons should be subjected to torture or harassment... If persons were arrested, they were to be arrested according to the law and that care should be taken that there would be no abuse of the law by the police or the army."

(Hansard, parliamentary debates, 1978, p.2726)

Amnesty International respectfully submits that the government consider taking steps to ensure the following guarantees:

Arrest and Detention Procedures

1. that all detainees are always informed, at the time of arrest, of the reason for arrest and the legislation under which the arrest is made and that the prisoner and his family and/or the prisoner's lawyer are informed of the place where the arrested person is being taken.

This recommendation is in accordance with the provisions of Article 9, Sections (1) and (2), of the International Covenant on Civil and Political Rights and rules 92 and 93 of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

2. that all detainees are produced before a magistrate within 24 hours of arrest.

This is the normal rule in Sri Lanka and a similar protection is also sought in Article 9, paragraph (3) of the International Covenant on Civil and Political Rights. However, it currently does not exist for persons detained under Section 7 of the Prevention of Terrorism Act, who can be held in police custody for up to 72 hours. It was also denied to persons held under Emergency Regulations 17 and 18.

3. that detainees or persons held in remand are not held in police stations, where police brutality and torture have proven to be most likely to occur, but be kept in prisons or otherwise in a place of detention where the normal prison rules apply, and where there is some form of supervision independent of the detaining authority.

(Under the provisions of Article 7 of the Prevention of Terrorism Act persons can be taken away for interrogation without any means of independent supervision, a similar provision existed under Emergency Regulation No. 59.)

4. that detainees are allowed to see their lawyer and their family immediately after arrest and that they be allowed freely to instruct their lawyer, without the presence of any officials.

Amnesty International believes that immediate access to a lawyer is one of the most effective means to prevent the occurrence of torture. It is significant this right was denied to all persons arrested under the Emergency Regulations and the Prevention of Terrorism Act, who have testified to Amnesty International that they were subjected to torture, and who were held for several days in incommunicado detention.

5. that the right to appeal to an Advisory Board and be represented by a lawyer of the detainee's own choice is clearly stated at the time a detention order is made, and that the Advisory Boards have the power to inquire into conditions of detention.

Detainees arrested under the Prevention of Terrorism Act (Section 13) - and earlier the Emergency Regulations, Rule 16 - have the right to make "representations" to an Advisory Board and the right to be informed of the grounds for the detention order, but there is no obligation in law to inform them of this right and the right to be represented by a lawyer. Amnesty International believes it would be an important additional safeguard if the Advisory Boards were given jurisdiction to inquire into conditions of detention.

Torture

6. that the government establish an independent investigation machinery to investigate complaints of police brutality and torture whenever there is evidence of torture or cruel, inhuman or degrading treatment; that the findings of the investigation be published in all cases, and that criminal and disciplinary proceedings be instituted against alleged offenders.

This recommendation is in line with Articles 9 and 10 of the UN Declaration on the Protection of all Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which state:

Article 9: "Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint."

Article 10: "If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well-founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings."

The government has established a Parliamentary Select Committee to investigate allegations that six young Tamils died in police custody, following torture (see page 2, this memorandum). However, this is an ad hoc Committee to investigate only a limited number of the most serious allegations, and its mandate covers only a few days out of a six-month period of emergency. The Committee's findings are not yet known after eight months of deliberations.

At present there is no impartial body to entertain complaints of torture or other forms of cruel, inhuman or degrading treatment or punishment. Such a body is clearly needed, not only to fulfil Sri Lanka's obligations under the international instruments cited here, but also to establish responsibility in those cases where torture has been alleged and, where appropriate, to protect law enforcement officials against unfounded allegations of torture.

> 7(a). that all existing legal instruments allowing statements made to the police to be admitted as evidence, be abolished, and that the normal rules relating to confessions, laid down in the Evidence Ordinance, be restored.

The normal rule under Sections 25 and 26 of the Evidence Ordinance in Sri Lanka is that such evidence is not admissible if not made in the presence of a magistrate. But this rule is reversed in Sections 16 and 17 of the Prevention of Terrorism Act - it also existed under Emergency Regulation No. 59 - (see page 2, this memorandum). Amnesty International believes that these provisions constitute a direct encouragement to the police to obtain a "confession" by any means.

> 7(b). Consequently, that the government ensure that all "confessions" or "statements" obtained from detainees arrested under the provision of the above acts and made to the police, not be used as evidence against any of these accused persons during a forthcoming trial, if it is established that these statements or confessions have been made under duress or torture.

Implementation of this recommendation would be in line with the directive in Article 12 of the UN Declaration on the Protection of all Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which states:

> Article 12: "Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment may not be invoked as evidence against the person concerned or against any other person in any proceedings."

> 8. that the government translate into Sinhalese and Tamil the full provisions of the United Nations Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the United Nations Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly on 17 December 1979. That the government undertake to distribute these among all law enforcement personnel, particularly those in charge of interrogation both in the police and army.

Amnesty International recommends that the government take immediate steps to withdraw those provisions in the special laws named in this memorandum which suspend important legal safeguards and which Amnesty International therefore regards to be particularly undesirable; the ultimate aim being that the government revoke both special laws, the Prevention of Terrorism Act and the Proscribing of Liberation Tigers of Tamil Eelam and Other Similar Organizations Law. Such a step should naturally follow now that the 1979 Emergency has been allowed to lapse.

Deaths in Police Custody

On page 2 of this memorandum, Amnesty International described the reports it received that six young Tamils were arrested in the early morning of 14 July 1979 and subsequently died in police custody, allegedly following torture.

Amnesty International has welcomed the establishment of a Parliamentary Select Committee to investigate these allegations. Amnesty International's delegate has presented to the Chairman of the Committee the names of three persons who are believed to have been present when death or assault of missing persons took place. Pending the outcome of the Committee's inquiries, which Amnesty International presumes will be published in their entirety, Amnesty International will not comment on the matters under investigation. It draws the government's attention however to Resolution 33/173 on "Disappeared Persons", adopted by the General Assembly of the United Nations on 20 December 1978, which calls upon governments

> "(a) In the event of reports of enforced or involuntary disappearances, to devote appropriate resources to searching for such persons and to undertake speedy and impartial investigations,
>
> (b) To ensure that law enforcement and security authorities or organizations are fully accountable, especially in law, in the discharge of their duties, such accountability to include legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights,
>
> (c) To ensure that the human rights of all persons, including those subjected to any form of detention and imprisonment, are fully respected.
>
> (d) To co-operate with other Governments, relevant United Nations organs, specialized agencies, inter-governmental organizations and humanitarian bodies in a common effort to search for, locate or account for such persons in the event of reports of enforced or involuntary disappearances."

9. Amnesty International recommends that the government take early steps for the implementation of UN General Assembly Resolution 33/173 in Sri Lanka.

The International Protection of Human Rights

The 6th LAWASIA Conference held in Colombo in August 1979, which the President of Sri Lanka inaugurated, adopted a resolution urging governments in the region to ratify the international human rights Covenants. Amnesty International believes that such a step by the Sri Lanka government would be a further important initiative for the protection of fundamental rights in Sri Lanka in line with the emphasis the government has repeatedly placed on the need to uphold the rule of law and protect fundamental rights.

10. Amnesty International recommends that the government now considers ratifying both the International Covenant on Civil and Political Rights and the International Covenant on Social, Economic and Cultural Rights, and, in particular, also the Optional Protocol to the former Covenant.

APPENDIX C

TEXT OF LETTER FROM THE HIGH COMMISSIONER OF SRI LANKA IN LONDON TO THE SECRETARY GENERAL OF AMNESTY INTERNATIONAL, DATED 21 JANUARY 1982

From the High Commissioner

High Commission of the Democratic Socialist Republic of Sri Lanka
13, Hyde Park Gardens,
London W2 2LU

Ref: SLHC/PUB/SL/1A

21 January 1982

Dear Secretary General,

I write in connection with your letter of 11 January 1982 to H.E. The President of Sri Lanka.

As I told Miss Yvonne Terlingen on the telephone this morning, I have had word from Colombo to say that Mr Orville Schell and Miss Yvonne Terlingen may arrive in Colombo, as proposed, on 31 January.

As the President has already undertaken a heavy schedule of urgent official engagements during the period when the Amnesty delegates propose to be in Sri Lanka, he will not be able to meet them.

Our authorities in Colombo will, however, arrange for the delegation to meet the officials of the Government concerned and also seek appointments with the Ministers whom the delegation would wish to meet.

Miss Terlingen confirmed in the telephone conversation with me that she and Mr Schell will arrive in Colombo by Flight SR 188 at 1000 hours on 31 January and that you have already made arrangements for their accommodation at Hotel Taprobane, Colombo. I have apprised our authorities in Colombo of this.

Yours sincerely,

A.T.Moorthy.

Mr Thomas Hammarberg,
Secretary General,
Amnesty International,
International Secretariat,
10 Southampton Street,
London WC2E 7HF.

APPENDIX D

SCHEDULE OF THE MINISTRY OF INTERNAL SECURITY REGARDING DETENTION CONDITIONS

PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT NO. 48 OF 1979

Order Under Section 9(1)

By virtue of the powers vested in me by Section 9(1) of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, I, Tikiri Banda Werapitiya, Minister of Internal Security having reason to suspect that
of is connected with or concerned in Unlawful activity to wit: the abetment and conspiracy of the robbery of property of the People's Bank at Neervely on 25th March, 1981 and doing acts preparatory to the commission of the said offence, do hereby order that the above named
be detained at Army Camp, Panagoda, from the date of this order until the 26th of July, 1981, subject to the conditions set out in the schedule hereto.

(signed)

Minister of Internal Security

Colombo, May 26, 1981

S C H E D U L E

1. The suspect will not be permitted to have any visitors.

2. The suspect may for the purpose of investigation or interrogation be taken from the place of detention by any person authorised by me to such place or places and for such periods as are approved by me.

3. The suspect will not be supplied any newspapers but may be supplied with other reading matter at the discretion of the Inspector General of Police.

4. The suspect will at the expense of the State, be supplied with all meals.

5. The suspect will be permitted to receive, through the Inspector General of Police, articles of clothing for his use.

6. The suspect will at the expense of the State, be supplied with ten cigarettes per day and with writing paper and material, toothpaste and soap.

7. The suspect will be permitted to receive and send out through the Inspector General of Police letters and other correspondence.

8. The suspect will be provided with facilities for regular bathing and exercise.

9. The suspect will at the expense of the State, be provided with regular medical facilities.

Amnesty International Publications

A selection of recent reports:

Chile: Evidence of Torture, 76 pages, 1983, £2.00.
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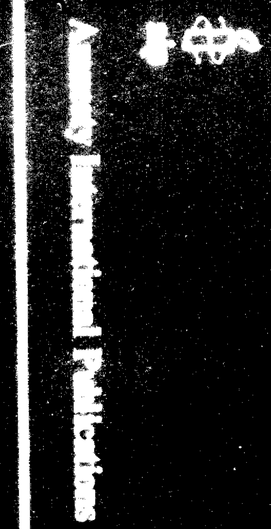
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