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@PROPOSED AMENDMENTS TO THE CONSTITUTION AFFECTING FUNDAMENTAL RIGHTS

January 1991

SUMMARY

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The Government of Sri Lanka has published proposed amendments to the fundamental rights chapter of the Constitution. The amendments are yet to be debated and voted on by parliament.¹

The changes envisaged in the proposed constitutional amendments are summarized in this paper in a table, together with details on the grounds for which specific rights could be restricted, whether they could be restricted by emergency regulations, and other comments. This paper also considers the proposed amendments to fundamental rights protection in relation to the specific human rights concerns which Amnesty International has raised in Sri Lanka, including the right to life, the right to freedom from torture, and the right to freedom from arbitrary arrest, detention and punishment. It also considers the implications of the proposed amendments for prisoners detained without charge or trial, and for the prompt and fair trial of political prisoners.

Amnesty International hopes that this commentary will contribute to the further enhancement of fundamental rights protection in Sri Lanka.

The Government of Sri Lanka acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1980 and is responsible to the other states parties to the covenant for upholding its provisions. Several of the provisions of the present Constitution, and of the proposed amendments, are indeed based upon the ICCPR. However, some rights are found in more limited form in the present Constitution and the proposed amendments than in the ICCPR, and overall the proposed amendments envisage an even greater range of possible restrictions of rights than are envisaged in the ICCPR. In some instances, the restrictions could lead to derogation from rights which, under the ICCPR, are not derogable under any circumstances. Such restrictions could be made under emergency regulations, issued by the Executive rather than through an Act of Parliament, as well as under other laws.

The 1978 Constitution of Sri Lanka already guarantees a number of fundamental rights and provides for recourse to the Supreme Court when these rights are violated. The Supreme Court is empowered to award compensation to victims of human rights violations, although there is no provision for bringing individuals responsible for human rights violations to justice under this procedure. These constitutional protections, however, have not prevented gross and widespread

human rights violations being committed with impunity in a context of violent opposition to the government. Constitutional changes, while certainly important, are thus unlikely in themselves adequately to ensure that such violations do not continue: the government will also have to demonstrate its determination to halt continuing violations by ensuring that all safeguards against abuse are rigorously enforced; by accounting for and acknowledging responsibility for violations which have been committed so far; by adequately compensating victims or their relatives; and by ensuring that those responsible for human rights violations are brought to justice.

At first sight, the proposed amendments would strengthen and extend the scope of fundamental rights protection in Sri Lanka, which would be a most welcome development. However they also provide for the restriction of many rights. Of particular concern is the fact that restrictions to several important fundamental rights will continue to be possible under emergency regulations. Secondly, under Article 16(1), all existing law will continue in force, regardless of whether it contravenes the fundamental rights provisions of the Constitution, although the government has said that all such laws would be reviewed within a year by the Law Commission. In general, as shown in the table contained in this report, restrictions to many rights will be permitted by law (including, in many instances, by emergency regulations) on very broadly formulated grounds.

¹ As this document was about to be printed, Amnesty International learnt that the debate is taking place on 30 and 31 January 1991.

January 1991. Anyone wanting further details or to take action on this issue should consult the full document.

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**SRI LANKA:
PROPOSED AMENDMENTS TO THE CONSTITUTION AFFECTING
FUNDAMENTAL RIGHTS**

1. Introduction

The Government of Sri Lanka has published proposed amendments to the fundamental rights chapter of the Constitution. The amendments are yet to be debated and voted on by parliament¹. The changes envisaged in the proposed constitutional amendments are summarized in the table below (p.9), together with details on the grounds for which specific rights could be restricted, whether they could be restricted by emergency regulations, and other comments. This paper also considers the proposed amendments to fundamental rights protection in relation to the specific human rights concerns which Amnesty International has raised in Sri Lanka. Amnesty International hopes that these preliminary comments will contribute to the further enhancement of fundamental rights protection in Sri Lanka.

The Government of Sri Lanka acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1980 and is responsible to the other states parties to the Covenant for upholding its provisions. Several of the provisions of the present Constitution, and of the proposed amendments, are indeed based upon the ICCPR. However, some rights are found in

¹ As this paper was about to be printed, Amnesty International learnt that the debate is taking place on 30 and 31 January 1991.

more limited form in the present Constitution and the proposed amendments than in the ICCPR, and overall the proposed amendments envisage an even greater range of possible restrictions of rights than are envisaged in the ICCPR. In some instances, these restrictions could lead to derogation from rights which, under the ICCPR, are not derogable under any circumstances.²

The 1978 Constitution of Sri Lanka already guarantees a number of fundamental rights and provides for recourse to the Supreme Court when these rights are violated. The Supreme Court is empowered to award compensation to victims of human rights violations, although there is no provision for bringing individuals responsible for human rights violations to justice under this procedure. These constitutional protections, however, have not prevented gross and widespread human rights violations being committed with impunity in a context of violent opposition to the government.³ Tens of thousands of people are believed to have been extrajudicially executed or made to "disappear" in recent years, and severe torture has been widespread. Thousands of political prisoners remain detained without charge or trial. Constitutional changes, while certainly important, are thus unlikely in themselves adequately to ensure that such violations do not continue: the government will also have to demonstrate its determination to halt continuing violations by ensuring that all safeguards against abuse are rigorously enforced; by accounting for and acknowledging responsibility for violations which have been committed so far; by adequately compensating victims or their relatives; and by ensuring that those responsible for human rights violations are brought to justice.

At first sight, the proposed amendments would strengthen and extend the scope of fundamental rights protection in Sri Lanka, which would be a most welcome development. However they also provide for the restriction of many rights. Of particular concern is the fact that restrictions to several important fundamental rights will continue to be possible under emergency regulations, which are issued as an act of the Executive. Secondly, under Article 16(1), all existing law will continue in force, regardless of whether it contravenes the fundamental rights provisions of the Constitution.⁴

In general, as the table below shows (p.9), restrictions to many rights will be permitted by law (including, in many instances, by emergency regulations) on very broadly formulated grounds; indeed, the newly-introduced right to liberty and security of the person could apparently be restricted by law on any grounds whatsoever, as no grounds are specified.

2. The Right to Life

2.1. The Right to Life and the Death Penalty

The right to life is contained in Article 6(1) of the ICCPR, which reads: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

² See below, section 5.

³ See, for example, *Sri Lanka: 'Disappearances'* (AI Index: ASA 37/08/86, September 1986) and *Sri Lanka: Extrajudicial Executions, 'Disappearances' and Torture, 1987 - 1990* (AI Index: ASA 37/21/90, September 1990).

⁴ According to a statement issued by the government, the Cabinet has decided that all such laws should be reviewed by the Law Commission, and that a report of this review should be tabled in Parliament within one year.

The right to life was not expressly included in the 1978 Constitution; its proposed inclusion under the Article 13(4)(a) of the proposed amendments is welcome. However, under the 1978 Constitution, a level of protection with regard to the award of the death penalty was provided: Article 13(4) specified that no person should be punished with death except on the order of a competent court. This safeguard would be removed under the proposed amendments, leaving open the possibility that sentence of death could be passed by an body or individual other than a competent court. Article 6 of the ICCPR - an article from which there can be no derogations under any circumstances - provides several safeguards on the award of the death penalty, including the requirement that it "can only be carried out pursuant to a final judgement rendered by a competent court" (Article 6(2)) (see below, p.6).

Amnesty International campaigns for the abolition of the death penalty, believing it to be the ultimate cruel, inhuman and degrading punishment. Nowhere has it been shown that the death penalty has any special power to reduce violence or crime. The organization hopes that, as the death penalty has not been inflicted in Sri Lanka since 1976, the government will take this opportunity in amending the Constitution to abolish this punishment altogether. If this is not done, Amnesty International believes that it is most important for all the safeguards required under Article 6 of the ICCPR to be incorporated into the Constitution.⁵

2.2. The Right to Life and Members of the Security Forces

Under the ICCPR (Article 4), no derogations at all are permitted from the right to life, including "in time of public emergency which threatens the life of the nation". Under Article 15(11) of the proposed amendments, however, the right to life could be restricted in relation to members of the security forces "in the interests of the proper discharge of their duties and the maintenance of discipline among them". Such restrictions could be made under emergency regulations or under other laws. Amnesty International is concerned that such restrictions could lead to derogations from the right to life in its application to members of the security forces. Members of the security forces, like all other people, are entitled to protection against violation of this most fundamental right (see also p. 6).

2.3. The Right to Life and Extrajudicial Executions

The Human Rights Committee⁶ has described the protection against arbitrary deprivation of life in Article 6 as being "of paramount importance"⁷. The Committee also stresses the need for governments to "take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces".

Although the right to life was not expressly included in the 1978 Constitution, murder is, of course, a crime. Nevertheless, despite widespread and consistent reports of deliberate and arbitrary killings by the security forces, including the killing of prisoners, very few members of the security forces have had murder charges brought against them and none have so far been convicted to Amnesty International's knowledge.

⁵ These include the provisions that the death penalty may only be imposed for the most serious crimes and following a final judgement given by a competent court and that any person sentenced to death should have the right to seek pardon or commutation of the sentence, which may be granted in all cases.

⁶ The Human Rights Committee is the body established under the ICCPR to monitor implementation of the Covenant's provisions.

⁷ General Comment 6(16) of the Human Rights Committee on Article 6 of the ICCPR.

3. The Right to Freedom from Torture

The right to freedom from torture is guaranteed without any possible restrictions under Article 11 of the 1978 Constitution, and no alteration is made under the proposed amendments. The constitutional provision regarding torture thus fulfils the requirement of Articles 4 and 7 of the ICCPR, in that there can be no derogations from this right at any time, including during a public emergency. Nevertheless, there have been widespread and severe violations of this right in Sri Lanka, and many deaths in custody are believed to have occurred as a result of torture. The fate of the many thousands of individuals who have "disappeared" is by definition not known, but many are believed to have been tortured and killed in custody. Despite the fact that torture has clearly continued, there is no attempt to strengthen the constitutional protections against torture under the proposed amendments. For example, the constitution could specify strict limits on *incommunicado* detention⁸, and specify that perpetrators of torture will be punished.

4. Freedom from Arbitrary Arrest, Detention and Punishment

Although the 1978 Constitution does guarantee protection against arbitrary arrest, detention and punishment, the proposed amendments contain some new, specific provisions:

- under Article 13(1) it is proposed that an arrested person "shall at the time of his arrest be informed in a language which he appears to understand (a) of the reasons for his arrest, (b) of his right to remain silent, (c) of his right to retain an attorney-at-law, and (d) that any statement made by him in the presence of such attorney-at-law will be admissible in court";
- under Article 13(3) it is proposed that people charged with an offence should be charged "within a reasonable period of time" and given a fair trial "without unreasonable delay";
- the right to liberty and security of the person is newly introduced under the proposed amendment to Article 13(4)(b).

Some of these provisions would represent a clear improvement on existing provisions; others, however, fall short of the standards contained in the ICCPR, especially in not providing adequate protection for people detained without charge, and provide cause for concern on other grounds also, as explained below.

4.1. Detention without Trial of Political Prisoners

Amnesty International campaigns for the prompt and fair trial of political prisoners, and the unconditional release of prisoners of conscience. At the end of 1990 approximately 9,000 political prisoners remained in detention under emergency regulations in southern Sri Lanka, according to a government statement, and about 3,000 had been released during the year. Most

⁸ At present, prisoners can be held *incommunicado* for long periods under either emergency regulations or the Prevention of Terrorism Act. *Incommunicado* detention is often dangerous for prisoners, providing a ready context for torture, "disappearances" and deaths in custody to be committed with impunity.

of the prisoners had been detained in connection with the violent movement against the government orchestrated by the *Janatha Vimukthi Peramuna* (JVP, People's Liberation Front) between late 1987 and early 1990.⁹ Of these detainees, many may have been detained arbitrarily: by mid-December 1990 over 1,000 detainees held in nine detention centres, most of whom were detained at the Boosa camp, had complained to the Supreme Court that they had been arbitrarily arrested and detained. Their cases had not been heard by the end of the year.

The proposed amendments do not offer protection against long-term detention without charge or trial, and do not fulfil all the requirements of Article 9(4) of the ICCPR that all prisoners should be entitled to have a court decide "without delay" on the lawfulness of their detention, and order their release if the detention is not lawful. As is the case under the 1978 Constitution, all detainees will have to be brought before a competent court according to the procedure established by law (Article 13(2)); but as the law provides for long-term detention without charge and without adequate judicial review, detainees are not likely to gain much benefit from the proposed amendments.

The proposal that an arrested person should be informed of their rights at the time of their arrest is welcome, but the statement that he should be informed in a language "which he appears to understand" falls short of the protections provided under the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Principle 14 specifies that prisoners should be informed of their rights in a language which they do, in fact, understand. The proposed amendment to Article 13(1) of the Constitution would leave to the discretion of individual security forces personnel the issue of whether or not a person apparently understands the language being used, and so does not provide an adequate safeguard for the prisoner.

4.2. The Prompt and Fair Trial of Political Prisoners

The proposed constitutional amendments do not include all the guarantees for fair trial that are contained in Article 14 of the ICCPR. One important omission in this respect is protection against prisoners being forced to testify against themselves or to confess guilt. Article 14(3)(g) of the ICCPR does provide this protection.

The introduction of a time limit within which a person should be charged for an offence and tried is welcome. However, more precise guidelines could be given to avoid dispute about what constitutes "a reasonable period of time" and "unreasonable delay". In general, the limitations on time in the proposed amendment to Article 13(3) fall short of the limitations on time specified in Article 9(3) of the ICCPR. Thus, where the ICCPR says that a person arrested or detained on a criminal charge shall be "promptly" brought before a judge, and shall be entitled to trial "within a reasonable time", the proposed amendments state that such person shall be charged "within a reasonable period of time" and tried "without unreasonable delay".

Regarding the issue of fair trial and punishment, the proposal that any statement made in the presence of a lawyer will be admissible as evidence in court raises particular concern. This provision will not prevent confessions being extracted under duress, as pressure could be placed on a prisoner to make an involuntary statement before the lawyer is called. Under Article 14(3)(g) of the ICCPR, a person charged with an offence must not "be compelled to testify

⁹ The government divided the detainees into different categories according to their apparent level of involvement with the JVP. It said criminal charges would be brought where there was evidence of serious involvement; those marginally involved would be released on probation; those believed to have been involved but against whom there was no evidence would remain in detention for "rehabilitation", though the legal basis for detention for the purpose of rehabilitation is unclear.

against himself or to confess guilt", and indeed in several cases the courts in Sri Lanka have not accepted as evidence statements which they believed were extracted under duress. Under the proposed amendment to Article 13(1), however, it appears that any statement made in the presence of a lawyer, whether involuntary or not, would have to be admissible in court, and that there would not be any grounds on which the accused could challenge the admissibility of such a statement. This provision may deter prisoners from exercising their right to have a lawyer present.

Further provisions of the Constitution may also jeopardize a defendant's right to a fair trial by international human rights standards. For example, the presumption of innocence can be restricted by law on grounds of national security or public order, as can the prohibition of retroactive penal legislation (Article 13(6)). Both these provisions can be restricted under emergency regulations as well as under other laws, so the fair trial of political prisoners according to international human rights standards would not in fact be guaranteed.¹⁰

5. Restrictions on Non-Derogable Rights

Many of the rights granted by the Constitution could be subject to restriction on broadly defined grounds, as summarized in the table below (p.9). In many cases, the proposed amendments would continue to permit fundamental rights to be restricted under emergency regulations as well as under other laws. Emergency regulations differ from other laws in that they are issued by the Executive, rather than through an Act of Parliament: the President issues emergency regulations under the provisions of the Public Security Ordinance.¹¹ The rights which could be restricted include some which, under Article 4 of the ICCPR, are non-derogable in any circumstances. This includes the prohibition on retroactive penal legislation, which under Article 15(1) of the proposed amendments could be restricted in the interests of national security or of public order.

Given that the judicial safeguards on the award of the death penalty would be removed under the proposed amendments, and that members of the security forces are granted very few rights without possible restriction, serious implications could follow from these provisions. For example, it could become possible for a member of the security forces to be sentenced to death by the executive or by a military or other non-judicial tribunal, under retroactive penal legislation issued under emergency procedures. Such an eventuality would clearly contravene international norms of justice, even during a time of national emergency. Amnesty International believes that the Constitution should incorporate safeguards against such a possibility, consistent with the requirements of Article 4 of the ICCPR.

The provisions for restrictions to fundamental rights contained in the proposed amendments might also lead to derogations from other rights which, under the ICCPR, are non-derogable. First, the right to protection against arbitrary deprivation of life - a non-derogable right - could be restricted in its application to members of the security forces (see above, section 2.2). Second,

¹⁰ Certain Emergency Regulations (ER) do shift the burden of proof onto the accused. For example, under ER 44(A) the possession of any document containing anything which might reasonably be construed as threatening death will be considered *prima facie* proof of an attempt to commit the offence. This regulation would also enable statements made under duress to be used as evidence in court, unless the accused can prove that the statement should not be admitted.

¹¹ Parliament is required to vote monthly on the continuation of a state of emergency. Apart from the five months from January to June 1989, when President Ranasinghe Premadasa lifted the state of emergency, Sri Lanka has been under a continuous state of emergency since 1983.

the right to freedom of religious expression could be restricted on a broader range of grounds, including for reasons of national security, than are permitted under Article 18(3) of the ICCPR.

6. Remedies

The present Constitution already provides for applications to be made to the Supreme Court by people whose fundamental rights have been violated, provided that the application is made within one month of the occurrence of the alleged violation. The Supreme Court can grant compensation to the victim.

The proposed amendments would make several changes to these provisions:

- they redefine the kind of violation which can be brought before the Supreme Court. At present, any infringement of fundamental rights by "executive or administrative action" can be brought before the Supreme Court. Article 17(1) of the proposed amendments would change this to "infringement of fundamental rights by state action", a wording which is less precise than the present formulation, and which is likely to create interpretational problems;
- under Article 126(2) of the proposed amendments, the time limit within which a petition can be filed alleging that fundamental rights have been violated would be extended to four months. This is a welcome extension which should enable more people to benefit from this remedy. However, despite representing an improvement, the four month limit may still be found insufficient in certain situations, such as when a person is held in unlawful custody and is unable to activate the jurisdiction of the Supreme Court. In such circumstances, there should be some provision for people to apply to the Supreme Court to entertain their applications outside the time limit in the interests of justice;
- Article 17(2) of the proposed amendments would enable an application to the Supreme Court regarding the violation of fundamental rights to be made by "a body of persons" on behalf of a victim who is unable to make the application themselves. Such a body must be "Sri Lankan in character", and could make such application provided that it is "in the public interest" and the aggrieved person does not object. This would extend the fundamental rights protection provided so far.

A further new right would also be granted under the proposed amendments in relation to fundamental rights protection under Article 12(1)(b). This specifies that no person shall be denied access to the institutions for administration of justice for the protection, vindication and enforcement of their rights. At present, inequalities of access to the courts for the protection of fundamental rights appear to result primarily from two main factors, neither of which are specifically addressed under the proposed amendments:¹²

- fundamental rights applications must be made to the Supreme Court, which only normally sits in Colombo. This can create difficulties for people living further away, resulting in unequal access to the Supreme Court;
- the intimidation, and in some cases murder, of lawyers, victims and witnesses to human rights violations has prevented many cases from being pursued through the courts.

¹² The same points apply to *habeas corpus* applications, which must be filed in the Court of Appeal in Colombo.

There has been a marked drop in the filing of *habeas corpus* petitions since 1989, when several lawyers who appeared in many of these cases were killed. Petitioners who have alleged violation of their fundamental rights - including illegal arrest, detention and torture - are also known to have been threatened and intimidated.

TABLE SUMMARIZING PROPOSED AMENDMENTS TO THE CONSTITUTION AFFECTING FUNDAMENTAL RIGHTS

Key to "Restrictions" column:

A These rights can be restricted by law "in the interests of national security or of public order"

BIn their application to members of the armed forces, police and other forces responsible for maintaining public order, these rights can be restricted by law "in the interests of the proper discharge of their duties and the maintenance of discipline among them"

CThese rights can be restricted by law "in the interests of ethnic and religious harmony"

D These rights can be restricted by law "for the purposes of securing due recognition and respect for the rights and freedoms of others"

EThese rights can be restricted by law "in the interests of national economy"

ER The rights can be restricted by emergency regulations on the grounds specified as well as by other laws

Article	Right	Proposed Change	Restrictions	Comment
10	Freedom of thought, conscience and religion	None	None	
11	Freedom from torture	None	None	
12	Right to equality	12(1)(a) on equality before the law unchanged	A, B, ER	
	12(1)(b): no person shall be denied access to the institutions for administration of justice for the protection, vindication and enforcement of their rights.	New	B	
	12(2): No discrimination on grounds of ethnic group, religion, language, caste, sex, political opinion, place of birth	12(2) & 12(3): protection against discrimination on grounds of "race" is changed to "ethnic group"; other groups remain the same. 12(2): Additional provision on language requirement for employment introduced.	12(2): A, ER ; also in relation to language requirements for public, judicial or local government employment or office	ICCPR provides for protection grounds of "race" but not "ethnic group". While "ethnic group" could be added, "race" should also be retained in accordance with the ICCPR and as a recognized concept in international law.
	12(3): No restriction on access to shops, places of worship of own religion and other public places on grounds of ethnic group, religion, language, caste, sex	"Race" changed to "ethnic group" (see 12(2))	A ; can also be restricted "for the protection of women and children"	See above, 12(2)
	12(4): special legislation or executive action can be made for advancement of women, children, youth or disabled persons	"Youth" is added to the categories of people for whom special legislation or executive action is permissible		

Article	Right	Proposed Change	Restrictions	Comment
13	Freedom from arbitrary arrest, detention and punishment and prohibition of retroactive penal legislation [The right to life is introduced within this article at 13(4)(a)]	13(1) introduces new safeguards: that an arrested person "shall at the time of his arrest be informed in a language which he appears to understand (a) of the reasons for his arrest, (b) of his right to remain silent, (c) of his right to retain an attorney-at-law, and (d) that any statement made by him in the presence of such attorney-at-law will be admissible in court."	A, B, ER Under Article 13(7), the arrest and detention of a person under a removal or deportation order issued under the Immigrants and Emigrants Act will not contravene Article 13.	The arrested person should be informed of his rights in a language which he <u>does</u> understand. 13(1)(d): this provision will not protect against statements being extracted under duress. It does not exclude the possibility of statements being made while the suspect remains in police custody. That such statement "will be admissible in court" could mean the court will have to accept as evidence statements extracted under duress. It may deter people from having a lawyer present.
	13(2): Right for all detainees to be brought before competent court according to procedure established by law	None	A, B, ER	The procedures can include emergency regulations, which currently provide for indefinite detention.
	13(3): Right for any person charged with an offence to be charged "within a reasonable period of time" and given fair trial "without unreasonable delay"	Introduces the requirements regarding time	B	The time limits need to be clearly defined to avoid the uncertainty of the present wording.
	13(4)(a): Right to life	New	B	Under the ICCPR there should be no derogations from the right to life under any circumstances. Members of the security forces should equally be guaranteed the right to life. Under the ICCPR the right to life is treated as a separate right and not incorporated into the right to freedom from arbitrary detention.
	13(4)(b): Right to liberty and security of person.	New	B & can also be restricted "on such grounds and in accordance with procedures established by law"	The grounds on which these rights can be restricted are not given, and thus appear to be unlimited.
	13(4)(c): No person to be punished with imprisonment except on order of competent court	Reference to punishment of death is omitted	B	Judicial safeguards on the award of the death penalty have been removed. Unless the death penalty is abolished by law, this could open the way for sentence of death to be passed by on members of the security forces by non-judicial bodies using retroactive legislation, in contravention of Articles 6 and 15 of the ICCPR, which are non-derogable in any circumstances.
	13(5): Presumption of innocence	None	A, B, ER	Certain emergency regulations currently shift the burden of

Article	Right	Proposed Change	Restrictions	Comment
	13(6): Prohibition of retroactive penal legislation	None	A, B, ER	proof onto the accused. Article 15 of the ICCPR, which prohibits the application of retroactive penal legislations, is non-derogable under any circumstances. The restrictions on this right could therefore be in contravention of the ICCPR.
14	Freedom for citizens of speech, assembly, association, occupation, movement, &c.	14(1)(a): addition of freedom of information; freedom of speech and publication unchanged.	14(1)(a): A, B, C, ER; can also be restricted "in relation to parliamentary privilege, contempt of court, defamation, incitement to an offence" and "prevention of obscenity". Right to information can be further restricted "in the interests of privacy, state privilege, or official secrecy".	
	14(1)(b): Freedom of peaceful assembly	None	A, B, C, ER	
	14(1)(c): Freedom of association	None	A, B, C, D, ER	
	14(1)(d): Freedom to form and join a trade union	None	A, B, ER	
	14(1)(e): Freedom of religious worship, observance, practice and teaching	None	A, B, C, D, ER	Article 18 of the ICCPR, which guarantees the right to freedom of thought, conscience and religion, is non-derogable. Article 18(3) of the ICCPR, however, does permit certain limitations to be made to the right to freedom to manifest one's religion. These do not include limitations on grounds of national security.
	14(1)(f): Freedom to enjoy and promote own culture and use own language	None	B, C, D, ER	
	14(1)(g): Freedom of occupation	None	B, E, ER; can also be restricted in relation to necessary professional or occupational qualifications and licensing or disciplinary controls; also in relation to the carrying on by the State, State agency or a public corporation of trade, business, industry, service or enterprise	

Article	Right	Proposed Change	Restrictions	Comment
	14(1)(h): Freedom of movement and residence	None	A, B, E, ER & in the interests of public health.	
	14(1)(i): Freedom to leave and return to Sri Lanka	Addition of freedom to leave Sri Lanka	A, B, ER & in the interests of the detection and punishment of offences; can also be restricted "by procedure established in law applicable to the entry and exit of persons to and from Sri Lanka".	
	14(2): Rights under Articles 12(2) and 14 to apply to those non-citizens to whom the Indo-Ceylon Agreement of 1964 and its amendments applies [ie Plantation Tamils who do not have Sri Lankan citizenship]	New		

RESTRICTIONS ON FUNDAMENTAL RIGHTS (see also above)				
Article	Proposed Change		Comment	
15	Restrictions on fundamental rights	The amendment to Article 15 would continue to allow a broad range of rights as they apply to all citizens to be restricted under emergency regulations on the grounds specified: Articles 12(1)(a), 12(2), 13(1), 13(2), 13(5), 13(6), 14(1)(a-i).	Most of the rights covered by the Constitution can be restricted on very broadly defined grounds. The Constitution will not guarantee many rights, as the constitutional provisions can be over-ridden by law, including by emergency regulations.	
16	16(1): Existing written and unwritten law to continue in force	None	The law provides for whipping, which is considered a cruel, inhuman or degrading punishment by international human rights standards	
	16(2): Award by court of any punishment recognized in existing written law will not contravene the provisions of fundamental rights chapter	None		
REMEDY FOR THE INFRINGEMENT OF FUNDAMENTAL RIGHTS				
Article	Provision	Proposed Change	Restriction	Comment
17	17(1): Remedy for the infringement of fundamental rights by state action, through application to Supreme Court under Article 126	Replaces the words "by executive or administrative action" to "by state action"		The change to "infringement of fundamental rights by state action" is less precise than the previous wording and likely to create interpretational problems
	17(2): Provision for "a body of persons", "Sri Lankan in character", to apply to Supreme Court on behalf of aggrieved person who is unable to make the application themselves	New	The "body of persons" can make such application provided it is "in the public interest" and the aggrieved person does not object	

Article	JURISDICTION OF THE SUPREME COURT		Comment
	Provision	Proposed Change	
121	Ordinary exercise of constitutional jurisdiction of Supreme Court in respect of Bills	<p>121(1): Time limit for reference to be made to Supreme Court by President or any citizen increased from one week to two weeks</p> <p>121(2): Bar on proceedings in parliament in relation to a Bill concerning which the jurisdiction of Supreme Court has been invoked is increased from three weeks to one month</p> <p>121(3): Time within which Supreme Court must make its determination regarding such a Bill is increased from three weeks to one month</p>	
122	Special exercise of constitutional jurisdiction of Supreme Court in respect of urgent Bills	<p>122(1): Introduces bar on Bills to amend, repeal or replace the Constitution being treated under the urgent procedure</p> <p>122(1)(c): Increases time limit within which Supreme Court must make its determination regarding urgent Bills from "twenty-four hours (or such longer period not exceeding three days as the President may specify)" to "seventy-two hours (or such longer period not exceeding eight days...)"</p>	
126	Fundamental rights jurisdiction of Supreme Court and its exercise	<p>126(1): Replaces words "by executive or administrative action" with reference to infringement of fundamental rights with the words "by state action"</p> <p>126(2): Increases the time within which application to Supreme Court must be made by a person alleging infringement of their fundamental rights from one month to four months</p>	<p>The change to "infringement or imminent infringement by state action of any fundamental right..." is less precise than the previous wording and likely to create interpretational problems</p> <p>This amendment represents an improvement, but the four month limit may still be insufficient in some situations, such as when a person is held in unlawful custody, unable to activate the jurisdiction of the Supreme Court. There should be provision for such persons to apply to the Supreme Court to entertain their applications outside the time limit in the interests of justice.</p>