

HUMAN RIGHTS ACCOUNTABILITY IN SRI LANKA

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This report is based on a mission undertaken by Associate Professor Patricia Hyndman of the Law School, University of New South Wales, Sydney, Australia, and Associate Professor of Political Science Barnett Rubin, of the Southern Asian Institute, Columbia University. It was written by Professor Hyndman and by Jeannine Guthrie, Asia Watch Associate, and edited by Sidney Jones, executive director of Asia Watch. The information here is based on interviews conducted during the mission, and on printed material and other information made available to the Asia Watch office and to the members of the mission.

I. ACCOUNTABILITY AND ITS IMPORTANCE

"Impunity is perhaps the single most important factor contributing to the phenomenon of disappearance. Perpetrators of human rights violations...become all the more irresponsible if they are not held to account before a court of law."¹

In recent years international human rights enforcement strategies have come increasingly to focus on the need to impose direct legal accountability on the perpetrators of serious human rights violations. Such accountability is essential if basic rights are to be effectively protected and future violations prevented. It is the responsibility of governments to seek accountability regardless of whether the perpetrators are members of that government or its security forces, members of groups working under the control of those forces, officials of previous governments, or members of anti-government groups.

The issue of accountability for past abuses gained prominence in the 1980s as unprecedented global political change focussed attention on the crimes of ousted regimes. Accountability was closely tied to perceived trends towards democratization and to political upheaval. The overthrow of the Communist governments of Eastern Europe and the breakup of the Soviet Union have been by far the most dramatic political change of the decade. Elsewhere, civilian governments replaced military rule in Argentina, Brazil, Chile, Guatemala and Uruguay. The Marcos regime in the Philippines and Duvalier's rule in Haiti ended in the exile of the two dictators and hope, shortlived in both cases, that human rights violations would cease. Nepal held its first multi-party election in thirty years and joined Taiwan and Korea in overturning entrenched and abusive governments. Political changes in Guinea, Sudan and Uganda in the mid-1980s also held out the promise of increased respect for human rights.

Many new governments in the past decade have embraced human rights language and used it to denounce the abuses of their predecessors. In a few cases this interest in past violations led to real improvement in human rights policy. In most, implementation of plans to address accountability was stymied by a variety of political factors. In some, demands for accountability were used to purge the country of followers of the old regime and repression continued. As José Zalaquett pointed out in 1988, "A policy to deal with past human rights abuses should have two overall objectives: to prevent the recurrence of such abuses and to repair the damage they caused, to the extent that is possible. Other objectives, such as retribution or revenge, cannot be considered legitimate..."² Neither can acts designed to disable political opposition or curb public criticism by producing a scapegoat without the intention of truly ending abuses or fully investigating reports of violations.

Unlike most of the countries mentioned above, Sri Lanka has not experienced a dramatic change in its political system. It has enjoyed regular elections since it gained independence in 1948. But Sri Lanka has been torn by a decade-long civil war, several militant insurgencies and brutal government anti-

¹Report of the Working Group on Enforced or Involuntary Disappearances to the Forty-seventh session of the Commission on Human Rights, E/CN.4/1991/20, p.85, para 406.

²José Zalaquett, "Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints (with special reference to examples from Latin America)," prepared for Aspen Institute for Humanistic Studies Conference on "State Crimes: Punishment or Pardon," November 1988.

insurgency campaigns. Demands for accountability for past abuses are aimed squarely at perpetrators within the current administration and emanate from an angry citizenry, from human rights groups, and from Sri Lanka's donor nations. These donors, influenced by the sweeping changes in other regions, are exerting heavy pressure on the Sri Lankan government to address issues of accountability that usually emerge after a radical change of government.

Asia Watch recognizes the difficulties that governments may face in bringing members of their own forces to justice for violations of human rights, particularly in situations of extreme civil unrest, and the right of all governments to take measures to control civil strife. In implementing any policy of accountability the state must balance its undeniable obligation to punish gross violations of human rights and its need for economic and political stability, using international human rights conventions as guides.

Following a period of systematic human rights violations, whatever human rights policy a ... government puts in practice will necessarily be subsumed within a larger objective which aims at one or more of the following: To achieve a measure of national unity and reconciliation, particularly when the human rights violations of the past took place in a context of (if not directly caused by) extreme political polarization and civil strife, including forms of armed struggle.... To build or reconstruct institutions that are conducive to a stable and fair political system. To procure the economic resources needed to achieve those ends, particularly when the transition periods are marked by fragility and a measure of economic success is instrumental for political stability.

It is important that the ... government publicly states the rationale for the human rights policy it adopts, in terms of its relationship to specific human rights aims and the larger national objectives being pursued.³

In this context, laws which grant immunity from prosecution or other legal protection to those who have committed gross violations⁴ are antithetical to the promotion of human rights. Recent experiences in several Latin American countries and the Philippines clearly demonstrate that failure to punish members of the armed forces can lead to continuing abuses, even where the government initially authorizing the violations has changed and the new government is eager to improve the country's human rights record. Prosecution and punishment of past abusers is essential to the deterrence of future violations.

Equally important is the investigation, public acknowledgement and full disclosure of information regarding past violations. The government has an obligation to make known all that can be reliably established about gross violations of human rights; their nature and extent; the identities and fate of victims; the identities of those responsible for the policies and practices that resulted in the violations; the identities of the perpetrators and those who knowingly aided and abetted them.

A third concern essential to full accountability is the need to make reparations, to the extent

³ibid.

⁴The terms gross violations or gross abuses apply to acts of genocide, arbitrary, summary or extrajudicial executions, forced or involuntary disappearances, torture or other gross physical abuse, and prolonged arbitrary deprivation of liberty.

possible, to the victims or the victims' families for gross violations. While insufficient on its own to end future violations (critics in Sri Lanka have maintained that the government's willingness to pay reparations to victims of human rights violations, but unwillingness to punish members of its forces who perpetrate abuses contributes to the feeling of impunity enjoyed by the security forces), it is nonetheless desirable that some effort is made to repair the damage done by abusive forces.

Countries which have ratified or acceded to international human rights conventions have legal as well as moral responsibilities to ensure that human rights violators are held accountable for their activities and that whatever possible remedy is provided. Some Conventions spell out this requirement expressly. For example, Article 3 of the International Covenant on Civil and Political Rights (the ICCPR), which was ratified by Sri Lanka in 1980, provides that the parties to the Covenant undertake:

"(a) to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) to ensure that any person claiming such a remedy shall have his right there to determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) to ensure that the competent authorities shall enforce such remedies when granted."⁵

The UN Human Rights Committee has stressed the necessity for parties to the ICCPR to investigate serious human rights violations and "to hold responsible" their perpetrators,⁶ and UN General Assembly Resolution 33/173 (1978) urged all governments to

"ensure that law enforcement and security authorities or organizations are fully accountable, especially in law, in the discharge of their duties, such as accountability to include legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances...."

The UN Working Group on Enforced and Involuntary Disappearances visited Sri Lanka in October 1991 and released its report on that mission in January 1992. The Working Group acknowledged that a huge number of disappearances had occurred in Sri Lanka between 1983 and 1991 — "by far the highest number ever recorded by the Working Group for any single country." The report recommended that government

⁵Similarly, Article 5 of the Genocide Convention (which Sri Lanka ratified in 1950) states:

"The Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention, and, in particular, to provide effective penalties for persons guilty of genocide or any of the other acts enumerated in Article 3."

⁶See e.g. HRC Report 37, UN GAOR Supp No 40, Annex V, General Comment 7(16), para 1 (1982); UN Doc E/CN.4/Sub.2/Add.1/963.

forces responsible for disappearances in Sri Lanka be rigorously prosecuted and "that severe disciplinary punishment be meted out to government officials who have failed to take adequate measures to prevent disappearances." The Chairman of the UN Human Rights Commission, in his statement on Sri Lanka at the 48th session of the Human Rights Commission, urged the Sri Lankan government to accept and implement the Working Group's recommendations, including recommendations which support retroactive accountability for violations.

UN General Assembly Resolutions and the Commission on Human Rights⁷ have urged all governments 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 voluntary disappearances..."

The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions⁸ adopted by the UN General Assembly in December 1989 are particularly pertinent as to the types of measures which should be adopted by governments in whose territories disappearances occur, and where lawyers and litigants seeking to bring to justice those responsible have been subjected to harassment.⁹

In response in part to pressure from donor governments, the Sri Lankan government has undertaken a variety of initiatives designed to meet its international human rights obligations. It has exhibited a new willingness to discuss issues of accountability and has promised to accept the recommendations of human rights groups. In December 1991, the government announced its acceptance of most of the recommendations Amnesty International made in its September 1991 report on the situation in Sri Lanka.¹⁰ Asia Watch welcomes these steps, but the real test will come in how effectively the new initiatives are implemented. This report, based on the information collected during Asia Watch's mission to Sri Lanka in December 1991, will examine the new human rights agencies and task forces set up over the last two years, how well they address the most serious human rights concerns in Sri Lanka and what still needs to be done.

⁷See e.g. GA Res 33/173, para 1(b) (1978).

⁸GA Res 44/162.

⁹See especially Principles 1, 2, 6, 15. In this Report they are referred to as the UN Principles.

¹⁰In its report, *Sri Lanka - the Northeast*, ASA 37/14/91, Amnesty International made 32 recommendations to the Sri Lankan government. They include suggestions for better control and instruction of army personnel and police officers and prompt prosecution of criminal cases against members of the security forces, better protection for detainees, and the strengthening of new human rights initiatives.

II. THE CURRENT HUMAN RIGHTS CONTEXT

In the past decade, two primary conflicts have defined Sri Lanka's human rights environment. The first, an ongoing war between the predominantly Sinhalese government and Tamil guerrilla groups demanding a separate state (notably the Liberation Tigers of Tamil Eelam, or LTTE) reached a violent peak between 1983-1987 (Eelam War I), and then, after a brief ceasefire, re-erupted in June 1990 (Eelam War II). The second, an insurrection by the mainly Sinhalese Marxist-nationalist JVP (Janatha Vimukthi Peramuna, or People's Liberation Front) erupted in 1987 and became most violent in 1989-1990. Both the LTTE and the JVP have committed serious and systemic violations of humanitarian law, including killing and torture of prisoners and political assassinations. While the JVP has now been effectively destroyed (the government captured and summarily killed all of its major leaders), the LTTE today controls the Jaffna peninsula, where it continues to terrorize sectors of the population.

Successive governments in Sri Lanka have contributed to the violence, engaging in purges of suspected sympathizers of the various guerrilla groups, disappearances and extrajudicial executions. A common estimate by human rights groups of the total number of reported disappearances of suspects after arrest by the security forces or abduction by vigilante groups linked to the security forces is 40,000 since 1983.¹¹

Sri Lanka has been under emergency rule almost continuously since 1983.¹² Since the early 1980s Tamil militant groups have been fighting for a separate state of Eelam in northern and eastern Sri Lanka, where the majority of Tamils live. As that insurgency degenerated into civil war after 1983, the Sri Lankan security forces adopted increasingly repressive measures against suspected militants, detaining hundreds of Tamil men without charge or trial, and killing and "disappearing" hundreds of civilians. The militants struck back by massacring Sinhalese and Muslim civilians.

On July 29, 1987, the Indian and Sri Lankan governments signed the Indo-Sri Lankan Accord, which provided for an end to armed conflict, substantial local autonomy for the Northern and Eastern provinces, an amnesty for political prisoners and an end to the state of emergency.¹³ Most importantly, the accord provided for an Indian Peace Keeping Force (IPKF) to replace Sri Lankan troops in the North and East to disarm Tamil militants.

¹¹Some estimates are much higher. A European Parliamentary delegation which visited Sri Lanka in 1990 estimated the total number of killed and disappeared between 1988-90 at 60,000. Many of the disappearance cases from this period were the victims of the government's brutal counter-insurgency campaign against the JVP, characterized by death squad killings, burning bodies left on the roads as a warning to the insurgents, dropping bodies into the sea from helicopters, and cremating bodies with no investigation. After the JVP's leadership was killed in custody, JVP activity all but ceased. Nonetheless, despite the lack of any armed insurrection, intermittent disappearances continue in the South.

¹²The State of Emergency was proclaimed on May 18, 1983. It was suspended for five months on January 11, 1989, reinstated on June 20, 1989 and has continued without interruption since then except for short period to allow for elections in February 1990.

¹³It should be noted that violent opposition to the accord prevented implementation of many of its provisions."Sri Lanka: "Emergency Reimposed as Killings Continue," *News From Asia Watch*, July 18, 1989.

The JVP reacted to the accord with outrage, embarking on violent campaign to overthrow the government, assassinating government officials, politicians, civil servants and ordinary citizens suspected of pro-accord sympathies. In all some 6,000 people may have been killed by JVP violence before its leaders, Rohana Wijeweera and U. Gamanayake were apprehended and killed by police in custody in mid-November 1989. The government's reaction to the JVP insurgency, like its crackdown on suspected Tamil militants, was to detain and disappear suspected sympathizers on a massive scale. Many of the tens of thousands of deaths and disappearances reported in Sri Lanka in the 1980's were of suspected JVP members.

The IPKF itself proved to be abusive and unpopular and made its own contribution to continuing instability by supporting a rival Tamil faction, the Eelam People's Revolutionary Liberation Front (EPRLF) against the LTTE. As the presence of the Indian troops became an increasing political liability for the Sri Lankan government, the latter began negotiating with the LTTE. The LTTE entered into negotiations with the government in April 1989, and by June they had declared a ceasefire with government security forces. Fighting continued, however, between the LTTE and IPKF. By July, both the LTTE and the Sri Lankan government had demanded the withdrawal of Indian troops. In September, the Indian government agreed to withdraw its troops, and by the end of 1989 the IPKF had withdrawn from all but two Northeastern districts, Trincomalee and Jaffna. As they withdrew, the LTTE began to take over primary responsibility for policing the Northeast.¹⁴ They collected taxes, established checkpoints, and systematically exterminated members of rival Tamil groups who had been supported by the Indian army.

In March 1990, the last Indian troops finally left Sri Lanka. Most of the EPRLF leadership fled the Northeast as a result, fearing an LTTE backlash with some justification: several EPRLF leaders were subsequently assassinated by suspected LTTE members. There was to be a brief respite before fighting resumed.

The Second Eelam War, as it is now called, began on June 8, 1990 when LTTE guerrillas broke the 14-month ceasefire with the Sri Lankan army, opening fire on a military convoy in Vavuniya (northcentral Sri Lanka) which had ignored their orders to stop. A corporal was killed and nine soldiers were wounded. This was the first in a series of escalating attacks against police and military personnel in which hundreds of police officers were abducted by the LTTE in a matter of days. Although most were subsequently shot and buried in mass graves or burned, it is believed that some police personnel are still in LTTE custody. The attacks on police stations effectively ended negotiations between the LTTE and the Sri Lankan government. Within a week the government had declared war on the LTTE.

For much of 1990, this war was characterized by the massive displacement of civilians, massacres of Muslim, Sinhalese and Tamil villagers by the LTTE, the security forces, armed village defense units and vigilante groups¹⁵, and heavy aerial bombardment and helicopter strafing of civilian areas on the Jaffna

¹⁴In December 1988 the Northern and Eastern Provinces were merged into the Northeastern Province as provided by the Indo-Sri Lanka Accord of July 1987. This merger is subject to approval by the electorate of the three districts formerly comprising the Eastern Province, but a referendum has not yet been held. Asia Watch refers to this area as the "northeast" (rather than "north and east") because of its current legal status. Asia Watch takes no position on what this area's future status should be.

¹⁵From the beginning, the government's anti-insurgency campaign against the LTTE resembled closely its earlier campaign against the JVP. As early as June 1990, residents in Batticaloa began reporting burning bodies on public

peninsula. Military offensives against the LTTE have been accompanied by indiscriminate bombing and shelling of civilian areas; detentions, torture, killings and disappearances of young Tamil males; and reprisals against civilians for LTTE attacks on the security forces. Human rights groups have documented pervasive torture of detainees in police stations and army camps. The government has supported, trained and armed groups with a history of abuses against civilians, sometimes supporting two or more rival factions against each other, sometimes encouraging the formation of death squads composed of members of the security forces.¹⁶

On June 28, 1990 the late Deputy Defense Minister Ranjan Wijeratne admitted that army bombing and strafing had killed a number of civilians, attributing the deaths to pilot error. Many of these attacks may indeed have been badly aimed attempts to flush out LTTE cadre hiding in residential areas, but there are also credible reports of deliberate aerial attacks on non-combatants.

Since June 1990, Sri Lankan army planes and helicopters have done untold damage to private property and institutions which provide essential services to the residents of Jaffna. These attacks virtually paralyzed northern Sri Lanka. The Sri Lankan military's air raids destroyed homes, hospitals and businesses. The northern city of Jaffna and its surrounding area, the base of LTTE operations, remain without electricity as a consequence of the military's targeting of the main power grid in July 1990. While the International Committee of the Red Cross (ICRC) is allowed to bring in some fuel for the Jaffna hospital, storage of medicines and blood for transfusions is extremely difficult. Observers describe mined roads and attacks by army helicopters on virtually any moving vehicle, including boats filled with refugees, cars and trucks carrying wounded civilians and people on bicycles carrying supplies into town.

After Wijeratne was killed by a car bomb in Colombo in March 1991, the very heavy and indiscriminate aerial bombardment which was the trademark of his campaign against the LTTE began to decrease. But a journalist with whom Asia Watch met in December 1991 emphasized that indiscriminate bombing on the Jaffna Peninsula continued; military planes flying at over 3,500 feet to avoid LTTE anti-aircraft fire were inaccurate.

In August 1990, after a series of brutal massacres of hundreds of Muslim civilians by the LTTE, Muslim leaders demanded that the Sri Lankan government arm their communities.¹⁷ The government responded by establishing Muslim "home guards" in eastern Sri Lankan villages who were soon accused of retaliatory killings of Tamils and other civilians in neighboring villages. Similarly, Sinhalese "village defense units" were armed by the government in April 1991 after a massacre in a village south of Moneragala in which some forty Sinhalese civilians were reportedly killed. In July 1991, according to the

roads and dead bodies found floating in the lagoon. Widespread death-squad activity, closely resembling anti-JVP activity in the south, has been reported in Batticaloa and Amparai districts. Between April 26-28, 1991 seven headless bodies were found in Batticaloa District with notes saying they had been killed by a vigilante group, the "Black Cobras."

¹⁶See *Human Rights Watch World Report 1992; An Annual Review of Developments and the Bush Administration's Policy on Human Rights Worldwide*, December 1991, pp.459-470. See also, "Human Rights in Sri Lanka; an Update," *News From Asia Watch*, March 12, 1991.

¹⁷Sri Lankan Muslims, who mostly speak Tamil, are considered to be a separate ethnic group based on their religion. Tamils are predominately Hindu, Sinhalese are mostly Buddhist, although there are Christians from both groups.

***Sunday Times of Sri Lanka*, the army announced that it was stepping up recruitment for the National Guards Battalion, a volunteer force which normally receives only five days' training, with a view toward deploying it in eastern Sri Lanka. Defense officials were quoted as saying that they planned to continue to deploy civilian home guards and members of "non-LTTE Tamil groups" to protect the districts of Trincomalee, Batticaloa and Amparai. Between June 1990 and December 1991, these three districts were the site of some of the worst massacres of civilians by all parties.¹⁸**

Many of the tens of thousands of disappearances reported in recent years have occurred following round-ups of large numbers of people suspected of links to militant groups. Since the outbreak of the Second Eelam War, these "cordon and search operations" as they are called by the government, have been widely reported in refugee camps and in villages in the Northeast. Young men are the primary targets of these operations, although women, children and elderly men have also been reported among the missing. In some cases, hundreds of people at a time have been taken by security forces; many subsequently disappear. Amnesty International describes a typical case:

"On 2 August 1990, 150 men were reportedly taken from Pottuvil refugee camp, only 30 of whom were subsequently released. The police and the STF both denied that they had carried out the detentions, and the whereabouts of the remaining 120 men remains unknown, to Amnesty International's knowledge. A local person is reported as saying that in the days following these detentions, smoke was seen rising from the police station. It is suspected these prisoners may have been killed and burned."¹⁹

Several similar cases were reported in September 1990. On September 5, 158 people were reported missing from Vantharumoolai refugee camp in Batticaloa district after being taken into custody by the security forces. Four days later, 167 people, including 38 children under 10 years of age, were detained by security forces from three villages in the same district. In the case of Vantharumoolai, the army in October acknowledged 32 of the 158 arrests and claimed all 32 had been released after questioning. To Asia Watch's knowledge there has been no attempt on the part of the government to account for any of the missing.

According to statistics provided to Asia Watch, disappearances in the east between 1990 and December 1991 numbered at least 2900 persons in Batticaloa District, about 2200 in Amparai district, over 1300 in Trincomalee district, and about 1000 in Vavuniya, Mannar, Mullaithivu and other parts of the north.

The Sri Lankan government has often accused the LTTE of using civilians as "human shields" against attacks by the army, firing from within homes and hiding in heavily populated residential areas. In the early days of the war, this was used as a rationale for civilian casualties and the incessant air raids on Jaffna. Reports from reliable local non-governmental observers support these accusations but add that

¹⁸ In the most recent of such incidents, an estimated 136 civilians were killed in two massacres in eastern Sri Lanka at the end of April 1992. The first victims were Muslims from the village of Alichipathana. Witnesses there accused the LTTE and neighboring Tamil civilians of shooting and hacking to death some 58 villagers on the evening of April 28. The following morning a group of Muslims thought to be homeguards retaliated, attacking nearby Tamil communities and killing 78.

¹⁹ *Sri Lanka - The Northeast*, Amnesty International, AI Index: ASA 37/14/91, September 1991, p. 23.

the army has been guilty of even more blatant shielding, actually rounding up civilians from refugee camps and marching them, with hands bound, ahead of the troops into LTTE gunfire or through minefields, threatening to shoot them if they try to run away or beating them.

In August 1990, for example, when a helicopter chasing an LTTE van opened fire on the Chatti Church refugee camp and four of the 1500 people housed there were killed, refugees fled to the Chatti Mosque. There, mosque elders successfully turned away army personnel who tried to take the non-Muslim refugees to use as shields. But as the army moved towards Mandaithivu, nearly 500 civilians from other camps were arrested. According to this report, the civilians were forced to march in front and behind the army, sometimes with their hands chained together in threes. Some were forced to walk for several days without food before finally being left at a makeshift refugee camp, others were released along the way and made their way home or to camps through extremely dangerous territory, dodging abusive soldiers and the LTTE, with little food or water.

On September 29, 1990, members of the Special Task Force (STF), and elite corps of the army, reportedly rounded up four tractorloads of Tamil civilians near Thirukkivil, many from refugee camps, and took them to Kanjikudicharu. Some were made to march in front of the STF forces, possibly to clear mines, while others were held close to STF men as shields to protect their exposed side when carrying weapons. During the mission, the LTTE and the STF exchanged fire on several occasions, seriously endangering the hostages.

Government forces are also guilty of killings of civilians in reprisal for killings of members of the security forces. The Kokkadicholai massacre of June 1991 is one of the most recent and best publicized of these incidents. The Presidential Commission of Inquiry into the incident at Kokkadicholai will be discussed at length in this report.

Indian Tamils from the plantation regions of Sri Lanka have also fallen victim to retaliatory attacks and other violations in connection with the war. In Uva, in April 1991, over one thousand plantation workers were temporarily forced from their homes, fleeing unidentified attackers. It is thought that these attacks were in retaliation for LTTE killings of Sinhala villagers in the area.

According to reports by human rights groups, Indian Tamils were subjected to frequent cordon-and-search operations in 1991 by security forces in search of LTTE members rumored to have infiltrated the plantations. These searches were particularly frequent in Uva Province, in the southeast, but in mid-August 1991, there were also a number of reports of "disappearances" among plantation Tamil youths in Nuwara Eliya District. The ICRC has been contacted for help in tracing some of them.

The close attention to events in the Northeast which has dominated human rights discourse in the last year, was for a time distracted by the most dramatic politic event of 1991, the attempted impeachment of President Ranasinghe Premadasa. The impeachment bid included accusations of government complicity in serious human rights violations. On August 28, 1991 over one hundred parliamentarians, including forty from the ruling United National Party (UNP), moved to bring impeachment proceedings against President Premadasa on charges of treason, bribery, misconduct and intentional violation of the Constitution. The motion charged that the President had

failed to protect and intentionally and knowingly prevented the investigations and conduct of inquiries and/or to punish those responsible for the...murder of the well-known

journalist Mr. Richard De Zoysa²⁰, the disappearance of Mr. Lakshman Perera, the disappearance of Mr. Krishna Hussain and thousands of others including youth who were arbitrarily abducted, tortured, killed and otherwise disposed of by hired killer groups.

It also accused Premadasa of operating a "police state" to intimidate political opponents and discourage public dissent.

The president responded to the impeachment motion by suspending Parliament, preventing debate on the motion until September 24. Shortly thereafter, eight leading dissidents from the UNP, including former Education Minister Lalith Athulathmudali and former Mahaweli Development Minister Gamini Dissanayake, were expelled from the party. The Supreme Court upheld these ejections on December 3. In October, the impeachment motion failed after enormous controversy and debate over the legitimacy of the petition and the accusations it contained, and the dissidents formed a new party, The Democratic United National Front.

The impeachment charges referred to disappearances which occurred during the height of the government's anti-insurgency campaign against the JVP in 1988-89, but despite the absence of an active insurgency in the south, extrajudicial killings, disappearances, illegal arrests and detentions, ill-treatment at initial places of detention and abuse of power continue to occur. Asia Watch was told by human rights activists in Colombo that there had been approximately 100 reported cases of disappearances in the south in 1991.

The continuing imposition of emergency regulations throughout Sri Lanka encourages such disappearances and ill treatment by permitting suspects to be detained at police stations and unauthorized places, sometimes for weeks, without entries being made in information books maintained at the police stations.²¹ Police are known to falsify entries, giving later dates of arrest in cases where abuse is

²⁰**The February 1990 murder of Richard De Zoysa, a well-known journalist, by armed abductors who his mother, Dr. Manorani Saravanamuttu, identified as including Senior Superintendent of Police Ronnie Gunasinghe, has become something of a test case for international human rights groups who joined Sri Lankan activists in calling for an independent investigation.**

In June 1990 the magistrate ordered that Gunasinghe be arrested and produced before court. The police failed to do so and the case was postponed until July 1990. In July, at the magistrate's request, the Attorney General reviewed the case and found there was insufficient evidence to arrest Gunasinghe. The investigation was turned over to the police. Dr. Saravanamuttu has alleged that police involved in the case have acted to protect Gunasinghe.

Gunasinghe and another officer named in the inquiry subsequently brought a 1 million rupee defamation suit against Dr. Saravanamuttu, which effectively blocked any further bid for an independent inquiry. In January 1992, Dr. Saravanamuttu petitioned the Supreme Court alleging that police refusal to provide her with the statements they recorded from her and other eyewitnesses to her son's abduction denied her right to equality and equal protection under the law. On March 27, 1992, the Supreme Court upheld her complaint and directed the government to pay Dr. Saravanamuttu Rs.10,000 in compensation. The recorded statements were finally provided to her earlier in March while her petition was being considered.

²¹**Concerned about the inaccessibility of emergency regulations, particularly to those accused of offenses, in February 1992, the Civil Rights Movement of Sri Lanka released a statement calling on the government to publish a complete list of emergency regulations made since 1989 and make copies available at government offices, and to publish all future regulations in English, Sinhala and Tamil newspapers. See Appendix II for the full text of that statement.**

alleged. Torture in police custody is commonplace. In one recent case, the torture of a suspect after arrest by Deraniyagala Police on August 7, 1991 resulted in his permanent paralysis after two and a half months treatment in various hospitals. Another suspect arrested by the Ratnapura Police on August 24, 1991 was still being treated in Colombo General Hospital four months later for the injuries inflicted on him by torture.²² Writs continue to be filed in record numbers by detainees alleging serious ill-treatment at the time of arrest.²³

Government blockades of the north restricting transport of essential supplies including food and medicine have caused severe shortages. The food embargo was relaxed in August 1991, but by the end of the year, there was still a lengthy list of prohibited items, including medicines, soya-based foods, sanitary napkins, surgical equipment, bandages, batteries, gasoline and matches. All goods transported to the Northeast are subject to military approval and anything which is potentially useful to the militants is banned, no matter how essential to the general public. The official list, published in August 1991, shows only a fraction of the goods that are actually kept from reaching the north. Local commanders on the road have final say over the import of essential supplies.

The conditions described in this report have forced a huge proportion of the population of northeastern Sri Lanka to flee their homes. This enormous displacement of people is one of the most serious and potentially long-lasting problems created by the Second Eelam War. It is estimated that between June and September 1990, more than one million people were displaced by the fighting in the Northeast. At least 700,000 and perhaps over one and a half million are still displaced, many of them housed in refugee camps in Sri Lanka; about 200,000 more are refugees in South India. In January 1992, the Indian government began to repatriate some 30,000 refugees who had indicated their willingness to return. There is concern that some may have done so under duress. Several thousand have so far returned to the eastern town of Trincomalee where fighting between the LTTE and the army continues.

Since the end of January, the LTTE has engaged in a series of ambushes and larger offensives against the military in the Northeast, some near areas housing newly returning refugees. Observers speculate that these "hit and run attacks" are designed to keep the army from concentrating efforts on the Jaffna peninsula. The army has responded in kind, with raids described as "test" operations throughout the east²⁴. Despite news that the government and military may be divided on the desirability of a large-scale offensive for control of the Jaffna peninsula, there is fear in Sri Lanka that these raids are leading up to a

²²Asked about the ill-treatment and torture of suspects, the Inspector General of Police admitted that this was a "tradition," but said that in all such cases there had to be an investigation by an officer of the rank of Assistant Superintendent. He said that there was a set procedure to be followed, and disciplinary action could be (and had been) taken. On the other hand he said that the Special Task Force, was not subject to his control as Inspector General, although it is administratively part of the police structure.

²³See for example, Supreme Court Application No. 546/91, the petition of K. Premadasa, in detention at Pallekelle and not charged with any offence.

²⁴During the last week in February, the army launched the largest of these recent operations, "Vanni Wickrema III." This operation, employing 3,000 troops, armor and air support took control of LTTE territory around Poornawasakulan, 15 miles northwest of Vavuniya, and Thalaimannar. Another major operation was launched against Mullaithivu in March.

massive battle and potentially very heavy civilian casualties.²⁵

On April 10, 1992 about 25 civilians were killed, and many others were seriously injured when suspected LTTE cadre bombed a bus in Amparai in eastern Sri Lanka. The bomb, which may have been hidden in the fuel tank, exploded as passengers were about to disembark. The bombing may have been to commemorate the anniversary of the killing of more than 20 LTTE members by security forces in eastern Sri Lanka last year.

²⁵**"The Sri Lankan Conflict and Standards of Humanitarian Law; An Appeal to the Government of Sri Lanka and the LTTE Leadership," *Asia Watch*, April 23, 1992, Vol.4, Issue 14.**

III. RECENT INSTITUTIONAL REFORMS

Soon after the war broke out in June 1990, news of large scale human rights violations by government forces fighting the LTTE began to reach the international community. Donor governments preparing for the annual aid consortium meeting in Paris in October of that year and representatives to the UN Human Rights Commission which met in February and March of 1991 were flooded with reports by human rights organizations and other non-governmental organizations (NGOs) of human rights violations associated with the war and calls for government accountability and conditions on aid. Many of these reports focused on the heavy damage caused by the army's aerial bombardment of Jaffna and military attacks on civilians.

US representatives at the consortium meeting joined other donor nations in acknowledging human rights abuses by government forces as well as the LTTE, and urged the government to discipline those involved in violations -- an important step. To a greater extent than ever before donor governments acknowledged the link between foreign aid and human rights in Sri Lanka, putting much pressure on the Sri Lankan government to address their concerns.

Further pressure was exerted in April 1991 when a move was made in the United States Congress to attach minimal human rights conditions to the foreign aid bill for fiscal years 1992 and 1993. The bill would have contained specific human rights stipulations for continued U.S. aid to Sri Lanka, including requirements that the Sri Lankan government establish a public register of detainees and ensure that detainees had access to lawyers and family members; enhance efforts to investigate disappearances and prosecute those responsible; minimize civilian casualties in combat operations; and make serious and substantial efforts to investigate and prosecute those responsible for the murder of Richard De Zoysa. Although the bill was vetoed by the Bush administration, the message to the Sri Lankan government was clear. Demands for human rights protections and government accountability for violations would be increasingly tied to foreign aid policies.

The government of Ranasinghe Premadasa got the message. Beginning in late 1990, the Sri Lankan government undertook to set up several new commissions and task forces with the express purpose of protecting human rights. These initiatives were clearly in direct response to international criticism: the mandate of the first, the Special Task Force on Human Rights, sometimes known as the Officials' Committee, was "to formulate and implement a strategy to meet charges of human rights violations worldwide." It was charged in particular with collecting data "to meet allegations of disappearances and extra-judicial executions" and helping to expedite disciplinary actions against officials charged with excesses.

In quick succession after the formation of the Special Task Force on November 30, 1990 came three other bodies: the Human Rights Task Force, responsible for protecting the rights of detainees; the Presidential Commission of Inquiry into the Involuntary Removal of Persons, to look into disappearances; and the Kokkadicholai Commission, charged with investigating a particular incident in which between 67 and 160 civilians were killed by Sri Lankan army personnel in villages in the area of Kokkadicholai in Batticaloa district in retaliation for the deaths of two soldiers killed by an LTTE landmine. In addition, the All Party Congress is finalizing a proposal to establish a national Human Rights Commission with wide jurisdiction to document, monitor and protect human rights.

Break with Earlier Efforts

These were welcome developments and represented a major break with earlier initiatives. Other agencies concerned with detainees had been set up before the 1990 initiatives, but they were focused less on preventing human rights violations than determining which detainees were suitable for release and rehabilitation or encouraging suspected rebels to surrender.

One of these was the Committee to Process, Classify and Recommend Rehabilitation and Release of Suspects\Surrenderees (the Jayalath Committee). Set up in 1988, the Jayalath Committee, which is still in existence, was mandated to inquire into the thousands of suspects held in detention under the Prevention of Terrorism Act or under the Emergency Regulations, to process and classify them, and make recommendations for their release or rehabilitation. It was not designed to monitor the protection of detainees' rights, although it has kept some records on the huge number of detainees picked up during the government's anti-insurgency campaign against the JVP.

A second was the Independent Surrender Committee which was established in April 1990 to "take all such measures as were necessary to create a climate of confidence in which those who participated in the youth unrest in recent years and were still at large would feel encouraged to surrender and join the mainstream of national life." Not designed as a human rights initiative, the Committee did nevertheless make some useful recommendations on the protection of these detainees. In its final recommendations to the government the Independent Surrender Committee expressed its continuing concern for the detainees who had surrendered as a consequence of its call to them to do so, and members offered to continue to visit detention centers to ensure the safety and welfare of the detainees even after the dissolution of the Committee. The Committee's final report set out 19 recommendations, some of which dealt directly with human rights issues including:

(7) That all detainees in Police stations be transferred to detention centers and that a terminal date be fixed to complete this process.

It also asked the government:

(11) To make available complete lists of names and addresses of inmates of each detention camp or holding centre for the perusal of the public. These lists should be made available at kachcheris (public halls) or other convenient centers accessible to the public.

(16) To take measures to strengthen the confidence in the police and security forces by ensuring:-

- (i) that arrests are not made at night, and**
- (ii) when arrests are made, the next of kin or the chief householder is informed of the identity of the person making the arrest, and the place in which such person will be held, and also to guarantee the security and the safety of the person arrested.**

Regrettably, these recommendations have not been implemented and Asia Watch delegates were reliably informed that some of those who had surrendered at centers established by the Independent Surrender Committee and had subsequently been released had since disappeared. Others were still in detention and had no idea when they might be released. Many have filed fundamental rights cases. The few government-created bodies with a human rights mandate existed largely on paper.²⁶

The New Agencies

The various agencies established since 1990 and described below were much more consciously designed to respond to international criticism and prevent human rights abuses, but serious questions remain about how effectively they are working and what can be done to strengthen them. There is much confusion in Sri Lanka about these bodies and widespread ignorance of their existence — factors which inevitably make them less useful.

The Special Task Force on Human Rights (The Officials' Committee)

The appointment of this Special Task Force was announced on November 30, 1990 with the objective "to formulate and implement a strategy to meet charges of human rights violations world-wide." Its responsibilities include the collection of "data to meet allegations of disappearances and extra-judicial executions," and assisting "in expediting court and departmental disciplinary action against state officers charged with excesses."

The Committee (now called the Officials' Committee) is convened and coordinated by Bradman Weerakoon, Presidential Advisor on International Relations. It meets once a month at the Presidential Secretariat, and also meets regularly with donor representatives. It is well placed to play a powerful role in pressing for the effective enforcement of fundamental rights and in insisting on the rigorous accountability of those who violate them. At a meeting with the Asia Watch delegates in December 1991 Weerakoon indicated that the Committee would indeed play such a role, although by May 1992 it had little to show in terms of concrete results. Noting the government's acceptance a few days earlier of the recommendations made by Amnesty International, Weerakoon said that the Committee had already contacted the security forces, relevant Commissions and other government agencies, requiring them to report back within 10 days on their proposed strategies to implement those recommendations. More than four months later, none of the strategies proposed by these bodies have been made public and to our knowledge the Committee has not pursued a single prosecution.

The Human Rights Task Force

²⁶For example, the government in a statement to the Human Rights Committee of the United Nations referred to the Organisation for the Protection of Human Rights Through Law Enforcement (ORPTLEA) as a body which had helped disseminate human rights information to law enforcement agencies. The Sri Lankan Bar Association, whose president was supposed to be an ex-officio member, only found out about the organization from the government statement. For other examples see Appendix I.

On August 23, 1991 the government of Sri Lanka established the Human Rights Task Force (HRTF),²⁷ chaired by Supreme Court Justice (retired) J.F.A. Soza. The HRTF is mandated to monitor the observance of the fundamental rights of persons detained in custody other than by a judicial order and to create and maintain a comprehensive and accurate register of detainees. To this end, the HRTF investigating officers have visited detention camps, interviewed detainees and begun to compile a register of detainees in permanent places of detention, all of which are located in southern Sri Lanka. These names are being entered into a central computerized list which contained 4302 names of current detainees, as of late December 1991.²⁸ Public access to information contained in these lists is reportedly available through a 24-hour information hot-line.²⁹ Since one of the major factors facilitating extreme mistreatment of detainees and extra-judicial killings is the lack of a reliable (or indeed any) system for recording detentions as they take place, the HRTF could be instrumental in preventing abuse and disappearances.

The Human Rights Task Force does, however, have a number of shortcomings. To date the HRTF has only visited permanent, army administered detention centers in southern Sri Lanka. As of April 1992, its officials had not yet attempted to visit detainees in police stations and detention centers run by the police or in army camps in the Northeast, nor had they begun keeping records on persons detained at interrogation centers or other temporary holding facilities. This is a serious shortcoming since as a rule, these are the facilities where the most severe violations occur. Torture in police lock-ups is pervasive, one official even referred to it as a "tradition," and hundreds have disappeared after arrest from army camps in the Northeast. It is essential, therefore, that the place of initial detention, before the transfer of detainees to permanent detention centers, be closely monitored.³⁰

In addition, the Human Rights Task Force has not attempted to establish whether a full disclosure has been made of all centers where detainees are being held, or if the police and army were complying

²⁷Authorized by the Sri Lanka Foundation Law No.31 of 1973 and by Emergency Regulations of July 31, 1991 and August 10, 1991.

²⁸As of January 1992 the Country Working Group on Sri Lanka (Geneva) estimated that there were about 11,000 persons in detention throughout Sri Lanka. (*Sri Lanka; Human Rights Situation, Memorandum Prepared on Behalf of the European NGO Forum on Sri Lanka by the Country Working Group on Sri Lanka (Geneva)* for the Forty-Eighth Session of the United Nations Commission on Human Rights, January 1992.)

²⁹Although the list is being computerized, Asia Watch noted some technical problems with the systems in use. Although the HRTF has been able to purchase high quality computers and software, the staff appears to have had little training. The HRTF office is using two mutually incompatible types of computer software and no consistent system of name transliteration. There are two main databases which use different programs. One is a database of current detainees, with names, addresses, and some identification codes. The other is a database of missing persons, containing names, but little other information. There is no easy way to compare these lists and there did not seem to be anyone there who was proficient in the use of the systems. Furthermore, the HRTF keeps no record of former detainees. Their names are simply deleted from the data base upon release. This makes it virtually impossible to trace persons the police or security forces claim to have released.

³⁰ Shortly before this report went to print, on April 13, 1992, officials of the HRTF announced that they would begin making surprise visits to police stations. Asia Watch welcomes this announcement and will continue to monitor the Task Force's progress.

with the requirement that they report all detentions. According to the Amnesty International recommendations accepted by the government, all security forces must immediately report any detention to the HRTF as well as issue receipts for prisoners to family members. Justice Soza himself, however, expressed the greatest skepticism that they would actually carry out these recommendations. Other officials and human rights organizations have expressed the same concern. At present the HRTF waits for reports from the security forces or complaints from the public rather than actively intervening at the point of greatest danger to detainees. During the Asia Watch mission the delegates recommended to the HRTF that each of its 15 proposed regional offices (planned as part of the implementation of the Amnesty International recommendations) include a small task force engaged in full-time, unannounced visits to police stations and army camps.

The HRTF was established under Emergency Regulation 673/2, which like all Emergency Regulations, was created by the President under the Public Security Ordinance.³¹ The HRTF should insist on observance of paragraph 3 of its establishing Emergency Regulation, which states:

"Where a person is, otherwise than by an order of a competent court, detained in custody under regulations made under the Public Security Ordinance or under the Prevention of Terrorism Act, No.48 of 1979, the person having custody of such detained person shall cause a copy of the order under which such person is being detained to be served on the Human Rights Task Force appointed by regulations made under the Sri Lanka Foundation Law No.31 of 1973."

Another useful power is that given by paragraph 5 of Emergency Regulation 674/17:

"For the purpose of carrying out its powers and duties the HRTF shall take such action as may be required ... to do all such acts or take all such steps as may be necessary conducive [sic] to the attainment of its objects, including the summoning of such persons and the receiving of such evidence as may be necessary ."

Asia Watch welcomes the HRTF's establishment of a 24-hour information service and regional offices. Their establishment, along with efficient publicity of their existence, could greatly improve the lot of prisoners in Sri Lanka's detention system and discourage the grave violations which have prevailed. More publicity about the Task Force is needed, not just for the benefit of foreign embassies, which receive regular reports, but also for human rights groups and their clients. Advertisements in the regional broadcast and print media are also essential.

The Presidential Commission of Inquiry into the Involuntary Removal of Persons

³¹This process bypasses normal parliamentary legislative procedure, and takes effect immediately. The President's proclamation that a state of emergency exists cannot be challenged in court, "although there is a provision for it to be approved by Parliament..." The Emergency proclamation is in force for only a month at a time,"but a fresh proclamation can always be made, so that emergency rule can be prolonged indefinitely. Upon declaration of an emergency, a set of regulations called the Emergency (Miscellaneous Provisions and Powers) Regulations is made. There is also provision for the emergency regulations to override existing laws. However, they cannot override the norms of the Constitution." [*Report of the Working Group on Enforced or Involuntary Disappearances, United Nations Commission on Human Rights, Forty-eighth session, E/CN.4/1992/18/Add.1, pp. 12-13.*]

The Commission was appointed by Emergency Regulation No. 644/27 on January 11, 1991 for a one-year period. Its mandate is to inquire into "allegations that persons are being involuntarily removed from their places of residence by persons unknown and that the whereabouts of such persons so removed are not known." In particular it is required "to ascertain the veracity of such complaints and to recommend immediate measures to prevent the occurrence of such alleged illegal activity and to take steps according to law against any person or persons or groups found to be responsible therefor."

The Commission is empowered to inquire only into complaints of "removal" taking place from January 11, 1991 onwards. It is not mandated to investigate any of the tens of thousands of reported disappearances which occurred at the height of the government's anti-insurgency campaign against the JVP, or indeed any disappearance which occurred in the first six months of the Second Eelam War.

Public hearings commenced in August 1991. By that date the Commission had received 601 complaints, of which 535 were outside its mandate. Of the remaining 66, 13 persons had been "traced" and the complainants duly informed. Investigations into the whereabouts of the other 53 were continuing. It should be noted that the fact that a detainee's name was found in the records of a police station or detention center does not guarantee that the Commission knows his present location, only that his whereabouts "at a certain point in time" were established. In fact, according to the UN Working Group on Disappearances, which met with the Commission in October 1991, in at least two cases where a detainee's name was found in police records, the police reported that the missing person had been transferred to another facility and his whereabouts were unknown.

When a person was located, the Commission informed the relatives but did not follow up the case. The Commission, in fact, did not follow up the case if the person had been transferred, so that it could not ascertain whether he had finally been found by his relatives; and there were several cases in which the information received by the police indicated that the person had escaped."³²

By mid-December 1991 the Commission had received a total of 2501 complaints relating to 2750 missing persons (some complaints refer to more than one person). On April 24, 1992, the Presidential Secretariat issued a progress report on the Commission stating that it had received 370 complaints which fell within its terms of reference. Of alleged removals after January 11, 1991, 40 missing persons had been traced and their whereabouts reported to their relatives; 319 cases were still under investigation. The Commission's inquiries are proceeding slowly; in only three of the cases which it has investigated has public testimony been taken. In one case the Commission found that the missing person was last seen in police custody and according to the report, "the possibility of legal and disciplinary action against the officers concerned is now being examined." Reports on the other two cases are not yet available.

Asia Watch, along with many other human rights organizations in Sri Lanka and abroad, has repeatedly urged the Sri Lankan Government to extend the terms of reference of the Commission to include disappearances which occurred before January 1991. The Sri Lankan government has so far rejected this recommendation. In December 1991, Government officials gave a variety of reasons for their refusal to

³² *Report of the Working Group on Enforced or Involuntary Disappearances*, January 8, 1992, Commission on Human Rights Forty-eighth session, E/CN.4/1992/18/Add.1.

investigate the vast majority of Sri Lankan disappearance cases when the Asia Watch delegation met with them in Colombo. These were as follows:

(1) The Report of the UN Working Group on Disappearances was awaited before any decision on the extension of the mandate retrospectively would be made.

(That report is now available and is highly critical of the Sri Lankan government's human rights record. It notes that the number of disappearance cases it encountered in Sri Lanka was far higher than for any other single country and that "testimony seems to suggest there are many more." It also concludes that both the army and the police have been involved in disappearances as have government-linked death squads and army trained civil defense units. The report makes a number of recommendations designed to deal with disappearances, including the extension of the Commission's mandate "to allow consideration of cases prior to 11 January 1991.")

(2) The inquiry could not go into incidents occurring before February 1990 as until then Emergency Regulation 55FF allowed the disposal of bodies without inquests.

(3) The Indemnity Act of 1982, which protects government personnel from prosecution for acts "legal or otherwise" committed for the purpose of restoring law and order, rendered pointless any earlier inquiry (although this currently only covers the period until December 1988).³³

(The Working Group report concludes that "acts found to involve grave violations of human rights, such as disappearances, should not benefit from indemnity legislation." Asia Watch strongly supports this position and urges the Sri Lankan government use all means necessary to investigate reported disappearances from before 1991. While Asia Watch recognizes that in many cases no record of the detention may exist, it is nevertheless the responsibility of the Sri Lankan government to make a good faith effort to locate missing persons and provide that information to their families.)

(4) A retroactive extension would produce an enormous volume of work, which would take an unacceptable time to process given present procedures. Thus any change in the jurisdiction of the Commission was "impracticable." The Commissioners themselves all agreed with this assessment.

(Several organizations have suggested that the working methods of the Commission need to be reviewed. Even without the thousands of extra cases retroactive accountability would add, the Commission has proceeded far too slowly. The report of the Working Group points out that the Commission has undertaken a "time-consuming `quasi-judicial' process," and recommends that it "might be encouraged to employ summary procedures" in order expedite their inquiries. An alternative, also suggested by the UN Working Group, would be for the Commission to focus only on determining involvement in disappearances cases, and then allowing the civil administration to prosecute.)

As of January 11, 1992, the mandate of the Commission was extended forward for another year. The same Commissioners were reappointed under the new warrant. This is a necessary and welcome step, but

³³The original Act permitted extensions – the latest of which extended the deadline to December 17, 1988. Between 1983 and 1990 tens of thousands of deaths and disappearances were reported which cannot be investigated or prosecuted under the current laws.

given its present inability to enquire into disappearances occurring before January 1990 and the extremely slow pace of its investigation into cases in 1991, the Commission cannot possibly fulfil the hopes which its establishment inspired.

The Kokkadicholai Commission

This Commission was appointed under section 2 of the Commissions of Inquiry Act (Chapter 393) following a report by Justice D.G. Jayalath, who had visited the scene the day after the Kokkadicholai incident. It is alleged that after the explosion of an LTTE landmine killed two soldiers and seriously injured a third, angry government troops massacred at least 67 civilians (unofficial estimates are as high as 160) and burned homes in the villages of Mahiladithivu, Muthalaithivu, and Munaikadu in the Kokkadicholai region of Batticaloa District. There are also unconfirmed reports from local sources and international observers that as many as 21 women were raped during the attack. Residents of Kokkadicholai managed to get news of the massacre to journalists in Colombo, forcing the government to respond with unprecedented speed. It appointed a three-person commission of inquiry to investigate the massacre.

The Commission visited Kokkadicholai on June 27, 1991 and conducted sittings both at the Air Base in Batticaloa and at the Bandaranaike Memorial International Conference Hall in Colombo. The sittings of the Commission were held in public and could be attended by the press. The Commission collected detailed testimonies from Tamil villagers, including the village officers appointed by the government, claiming that 67 unarmed civilians were shot or burned to death by soldiers after two of the latter were killed by a mine presumably laid by the LTTE. The Asia Watch mission was able to observe one of the village officers giving testimony to this commission.

By mid-December, 136 witnesses had testified. Most of the evidence of witnesses regarding the deaths and missing persons had been heard, and the Commission then moved on to hearing witnesses' testimony about damage caused to houses and property. The procedure adopted was to hear the evidence of all the civilian witnesses, before turning to the evidence of army personnel and other official witnesses, and to hear the evidence *in toto* both about the killings and about property damage before proceeding to the report stage.

The Commission's original mandate required its report to be submitted within three weeks. However, due to the procedure adopted, and to the large number of witnesses testifying and the difficulties they experienced (partly due to the violence in the region and partly due to their fear of being seen to come forward and thus become targets for consequent retribution from the security forces), it was not possible to conclude sittings within that time frame. On November 11, 1991 one of the witnesses, Vijayaratnam, who was responsible for getting together other witnesses, was killed during army operations. The killing is thought to be unrelated to the inquiry.

Due in part to pressure from the Sri Lankan government to release a report on the progress of the investigation prior to the beginning of the aid consortium meeting on February 7 1992, the commission's preliminary report was released on January 30, 1992. It found that army personnel stationed in Kokkadicholai were responsible for the retaliatory killings. Military sources reported that five soldiers, including one officer had been placed in military custody in connection with the incident and could face

court martial proceedings.³⁴ None of the army personnel allegedly responsible for the massacre were required to testify. Only the camp commander gave evidence, and only in the form of unsworn testimony.

The Commission's full report, delivered to the Cabinet of Ministers in late March 1992, recommended the payment of Rs.5,245,225 in compensation for deaths, injuries and damage to property as a result of the incident which Bradman Weerakoon said affected 189 families in three villages.³⁵ According to a government spokesman, Cultural Affairs and Information Minister W.J.M. Lokubandara, the Commission's final report failed to provide "evidence against any particular soldier or soldiers...[therefore] the offenders cannot be brought before a court of law."³⁶ The Commission recommended that the army undertake its own investigations and take action under military law. The Commission, which in its preliminary report had indicated that the killings were the result of "unrestrained behavior" on the part of certain soldiers rather than of planned military action, also called on the army to provide better instructions and training to military personnel.

In an interview on December 19, 1991, Bradman Weerakoon told Asia Watch that the people responsible for unlawful killings would definitely be charged, probably before a military tribunal, if the report showed that there is evidence of their involvement. He mentioned 17 members of the armed forces (a list of their names is contained in Appendix I) who had been at Kokkadicholai camp at the time and who had been arrested, initially under close arrest but then under open arrest, in connection with the killings.³⁷ When the Asia Watch delegation expressed surprise that this did not seem to be well known in Sri Lanka, Weerakoon said that the diplomatic community had been made aware of the arrests some time before, but that the press may not, for whatever reason, have given the arrests much publicity.

As regards the 17 detained security personnel, Asia Watch was told by Brigadier H.F. Rupasinghe, staff officer for human rights, Joint Operations Command, that the army had suspended its inquiry because of the existence of the Kokkadicholai Commission, which was a superior inquiry. Now that the Commission's final report had been made, according to Colonel Sarath Munasinghe the army would follow prescribed procedure. A court of inquiry would be held, followed by a summary of evidence and a court martial. A court martial could be expected to take about a month and the whole process about three months.³⁸

Presidential Commission of Inquiry into the Incident Alleged to have Occurred on the Palampiddi-Iranal Huppalkulam-Vavuniya Road, on 3rd May 1991 (The MSF Incident)

Like the Kokkadicholai Massacre, the May 3, 1991 military helicopter attack which injured four

³⁴ *Reuters*, January 30, 1992.

³⁵ *Island*, March 27, 1992.

³⁶ *ibid.*

³⁷ Soldiers under close arrest are guarded and confined to quarters; under open arrest they are confined to the base.

³⁸ *ibid.*

relief workers from the organization Doctors Without Borders (Medecins Sans Frontiers, or MSF) sparked immediate international criticism and the Sri Lankan government quickly appointed a one-man commission of inquiry. Although the vehicle was marked with the appropriate emblems and the MSF personnel were following a route they thought had been approved by Joint Operations Command (JOC), the commissioner concluded that the team had been on the wrong road during a curfew and the helicopter was flying too high to see the vehicle's markings. After the inquiry, which was conducted partly in Sri Lanka and partly in France (where the injured MSF personnel had been flown for treatment) the Commissioner concluded that:

"no person or persons, in the service of the Sri Lanka Government was responsible for any wrongful act of omission or commission and the question of what action should be taken against such person does not arise for consideration."

At the end of his conclusions the Commissioner stated:

"I would like to stress as a matter of fundamental importance that the inviolability of humanitarian relief organization vehicles displaying their respective logos as agreed upon in document P3, and their personnel travelling in them, should be strictly observed, once their identity is established."

He set down general guidelines within which he suggested that the JOC and representatives of all the humanitarian organizations should work out the modalities of the procedures.

Asia Watch understands that since the time of the incident there has been much more satisfactory co-operation between the security forces and humanitarian organizations in combat areas.

The Proposed Human Rights Commission

The All Party Conference is finalizing a proposal for a Human Rights Commission which would have wide jurisdiction to promote and protect human rights and to document and monitor violations. At the time of the Asia Watch mission, objections to the draft proposal had been raised on the basis that in its proposed form the Commission would encroach on the jurisdiction of the Supreme Court.³⁹ In its current form, if approved by Parliament, the HRC would be able to "play a mediatory and reconciliatory role in disputes concerning human rights violations," and conduct investigations, but adjudicatory powers would remain with the Supreme Court. "The Commission could, under the proposed amendment to article 126 of the Constitution, petition the Supreme Court and prosecute on behalf of the aggrieved party through its own panel of lawyers."⁴⁰ The final draft was expected to be ready for submission to the government in December, but had not been completed when this report went to print.

Conclusion

³⁹See Appendix I for details.

⁴⁰*The Island*, March 2, 1992.

Although the human rights agencies described above have been given mandates and functions which, if effectively used, could significantly improve human rights protection, it is difficult to assess their performance thus far. The failure of the Human Rights Task Force to attempt to investigate the places of detention with the worst human rights records is worrisome, and the fact that it makes its reports to foreign embassies but not to local NGOs suggests that these initiatives were designed as much to placate Sri Lanka's critics as to improve current conditions or ensure accountability for past abuses; that the preliminary report of the Kokkadicholai Commission was admittedly timed to precede the aid meeting in Paris further reinforces this impression.

Where government bodies have begun to do good work and make useful recommendations, the government must follow through. It is vital that the findings of do not simply sit gathering dust on government shelves, as occurred with the very constructive recommendations of the Independent Surrender Committee.

Many Commissions have become bogged down in their own inefficient procedures, or by lack of adequate funding. This is particularly true of the Commission of Inquiry into the Involuntary Removal of Persons which is proceeding at a snail's pace. In its present form, this Commission is of little use. An efficient and expeditious enquiry into the fate of disappeared persons must be undertaken at once, and to do so requires a complete overhaul of its current operating procedures. It must also be provided with adequate funding. The exceedingly large number of well-documented disappearances which currently fall outside the Commission's mandate, make it doubly crucial that the Commission make these changes now. Pressure on the Sri Lankan Government to demand full accountability for these disappearances will continue to mount.

IV. RESTRICTIONS ON EFFECTIVE HUMAN RIGHTS PROTECTION

For there to be confidence in government assurances about the protection of human rights, two conditions must be fulfilled. Immediate and effective steps must be taken to provide a remedy for the victim of a human rights violation, and those who perpetrated the violation must be held personally accountable. Detainees must be allowed to question the legality of their detention or protest against torture; families of disappearance or extrajudicial execution victims must be able to find out exactly what happened to their relatives and demand justice. Even before the reforms instituted by the government over the last two years, victims had one possible avenue of redress: the Supreme Court. Under Article 126 of the Constitution, the Supreme Court was given sole jurisdiction to hear any question relating to infringement by the executive branch of government of any fundamental right.⁴¹ In practice, this has been applied to a great many cases of illegal detention and mistreatment in custody.

But use of the Supreme Court to hear such cases, and the effective operation of some of the new agencies and task forces described in the last chapter, has been and will continue to be limited by a number of factors. These include intimidation of lawyers and witnesses by police or other parties; reprisals taken against families of victims; failure to prosecute or convict security forces for human rights abuses; unclear chains of command within the security forces; and continued use of restrictive emergency legislation.

In this chapter, we will analyze what problems victims of human rights abuses have faced in the past in their efforts to seek redress and what this means for the operation of the new agencies.

Redress Through the Supreme Court

The daunting procedure of formally claiming infringement of fundamental rights has been greatly simplified in recent years since it became possible for detainees to send letters directly to the Supreme Court claiming their detention was illegal. In exercising what is called "epistolary jurisdiction," the Supreme Court treats these letters as a notification of an intended claim and sends them on to the Sri Lankan Bar Association, which follows them up. If the petitioner seems to have a valid case, the Bar Association lodges a formal claim with the Court.⁴²

The caseload is enormous. In 1990, over 1400 letters were sent to the Bar Association; in 1991, 1935

⁴¹Article 126 provides that the Supreme Court shall have the sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative actions of any fundamental right or language right declared and recognised by Chapter III or Chapter IV of the Constitution.

⁴²The Legal Aid Centre of the Sri Lankan Bar Association has been providing this service since 1989. The Centre specializes in fundamental rights cases involving arbitrary arrest and detention by state agencies.

The Supreme Court has relaxed its interpretation of the one month time limit under Article 126 in relation to the lodging of these claims. (See e.g. *Namasivayam v Gunawardene* [1989] 1 SL Law Rep 394; *Siriwardena v Rodrigo* [1986] 1 SL Law Rep 384. For a restrictive interpretation of the time limit in relation to a claim against the public service see *Gamaethige v Siriwardena* [1988] 1 SL Law Rep 384.)

cases were deemed to be sufficiently strong to proceed with formal claims. On a single day in December 1991, an Asia Watch delegate accompanied members of the Bar Association to Pallakelle Detention Centre to interview detainees who had sent letters to the Court. Each lawyer saw about 10 petitioners, with 130 interviews conducted in all. Although the Bar Association of Sri Lanka has funding provided by the governments of Australia and Canada, and international non-governmental organizations to act in these cases, none of the lawyers receives adequate remuneration and some take no fee at all.⁴³

Although its power under the Constitution to "grant such relief or make such directions as it may deem just and equitable in the circumstance" has not, thus far, been used to bring to account the individuals who have perpetrated the violations, the Supreme Court has found many claims of illegal detention and mistreatment justified, and has issued orders both for immediate release and for payment of compensation to the victims. Nevertheless, the obstacles the Court and the Bar Association (the sheer volume of claims causing a serious overloading of the system being one) have found in reviewing claims and taking appropriate action are symptomatic of the larger, systemic problems in addressing human rights violations in Sri Lanka.

Intimidation and Harassment of Human Rights Petitioners

Government security forces and opposition groups can put severe pressure on petitioners, lawyers, litigants, witnesses and families to drop human rights cases. In November 1990, the Supreme Court heard complaints from two petitioners that they had been pressured by police to drop their claims. The first petition was directed against police in Homagama Police Station, about 15 miles outside Colombo, and the second was lodged against officers of the Galagedera Police Station.

Five Fundamental Rights Cases against the Homagama Police

The first was the case of five persons who petitioned the Supreme Court in late June 1990 in separate fundamental rights applications alleging severe mistreatment by police officers of the Homagama Police station. According to their complaints, filed by the Legal Aid Centre of the Bar Association of Sri Lanka on behalf of the petitioners, they were all taken into custody around April 23, 1990 and were tortured by police. All five were pressured to withdraw their fundamental rights petitions, and one of them was abducted and disappeared before his case could be heard in court.

Ratnayake Wijesiri, Katri Achige Gamini Priya Kumara, Mallika Aratchige Anura, Porage Lakshman, and Pitipane Achige Mahinda⁴⁴ accused police personnel at the Homagama police station of inflicting severe torture including pulling out their teeth with a pair of pliers; tying their hands and hanging them by their hands from ropes passed over beams in the roof; burning them with lighted cigarettes; forcing them

⁴³The Association receives Rs.1000 (US\$23.80) in each case and each lawyer is entitled to an honorarium of Rs.150 (\$3.50) per interview.

⁴⁴ Supreme Court Application No. 20/90,
Supreme Court Application No. 22/90,
Supreme Court Application No. 23/90,
Supreme Court Application No. 24/90,
Supreme Court Application No. 31/90.

to inhale chili powder dropped into a smoldering coconut shell after covering their heads with gunny bags; and assaulting them with clubs and other wooden implements. According to their complaints, Ratnayake Wijesiri lost four teeth as a result. Katri Achige Gamini Priya Kumara lost three teeth. Pitipane Achige Mahinda lost two teeth and Porage Lakshman lost one tooth. Their lawyer's note also indicates that the the petitioners were never informed of the reason for their arrest, and were detained without a court order.

The petitioners named Headquarters Inspector of the Homagama Police, Rohan Fernando, and six other subordinate officers as the perpetrators of these violations. The main allegations of torture were against Fernando.

Two weeks after their arrest, around May 6, 1990, Senior Superintendent of Police Henry Perera visited the Homagama Police Station to investigate complaints about activities at the station. After questioning the five petitioners, and other detainees being held at the time, and examining their injuries he transferred them to the Maharagama police station, about five miles away. From there, the petitioners were produced before the Judicial Medical Officer for examination. The doctor's medical reports, sustaining the charges, were filed in the Supreme Court.

Four of the petitioners were released on June 1, 1990 while the fifth was released on June 14, 1990. No charges were filed against them. The Supreme Court application of Ratnayake Wijesiri was taken up for argument and concluded on January 23, 1992 and judgement was reserved. The other cases were scheduled for argument on February 19, 1992.

In November 1990 at the time applications on behalf of the five petitioners were being taken up for hearing, four police officers from Homagama station, including Rohan Fernando, the officer accused of the most serious abuses, were found with one of the petitioners just outside the Court premises. What happened next strongly suggests they were attempting to frighten him into withdrawing his petition.

A lawyer unconnected to the cases approached Ms. S. Beneragama, BASL's Legal Aid Duty Officer, and requested that she cancel her proxy of the five applications because the petitioners wished to retain other lawyers to appear for them. None of the petitioners was in court at the time. Ms. Beneragama protested, saying that she would have to get the authority of the President and Secretary of the BASL to do so. The lawyer seeking to have the petitions withdrawn then filed papers with the Supreme Court canceling the proxies of the petitioners and issuing new ones in his own name.

When the cases were called to court, the lawyers who now claimed to represent the petitioners moved to withdraw their fundamental rights applications. The Court proceeded to question the petitioners, who had in the meantime filed affidavits stating that attempts to withdraw their petitions were fraudulent because the lawyers had obtained their consent through threats and they wished to proceed with their original applications.

After questioning the police officers and the lawyer, the Supreme Court ruled that "in the case of at least four of these petitioners the purported revocation of the proxies of Ms. Sumana Beneragama has not been voluntary" and that "the proxies originally filed are valid and will continue. Miss Beneragama Attorney-at-Law appears for the petitioners on behalf of the Bar Association and will continue to so act."

Accordingly, the petitioners in Applications Nos. 20/90, 22/90, 23/90 and 31/90 were allowed to pursue their applications. The petitioner in Supreme Court Application No. 24/90 (Porage Lakshman) said

that he wished to withdraw his application, fearing death or serious injury to himself or his family members if he proceeded. He was given time to consider his position and in the end decided to pursue the petition.

The Court warned the police officers present not to interfere further with the petitioners and asked the five to inform the court of any future threats or intimidation. The police officers assured the court that they would not interfere in the proceedings or cause harm to the petitioners or their family members, and Senior Superintendent of Police Henry Perera said he would take steps to ensure petitioners' safety, warning all police stations in his area (under which Homagama fell) that they should not be harmed.

On April 3, 1991 when Supreme Court Application No. 24/90 was called, Porage Lakshman was absent and his counsel informed the court that he had disappeared. The Supreme Court ordered the police to report on his disappearance. According to that report, the petitioner was abducted by unknown persons in army uniforms in a Pajero Jeep, license No. 32 Sri 7298, which was registered to the Matara Police station. The report stated that "Porage Lakshman along with 4 others had been abducted by some institution engaged in anti-narcotic activities." Asia Watch was told that his mother and sister had also been taken into custody by the police on a fabricated drug charge.

HQI Rohan Fernando, against whom the petitioners made allegations of torture, remained in the Homagama police station for nearly two years after the original accusations, and was even allowed to remain there after he was accused of attempting to intimidate the petitioners. He has now been transferred to another post.

The Case of Seetha Weerakoon

The second case involved a young woman, Seetha Weerakoon, who was a high school student in Galagedera. She and her younger sister were arrested on August 12, 1989 by soldiers and turned over to the Galagedera Police Station. Her sister was released within 14 days, but Seetha was held until August 27, 1990. Her father, who tried to seek her release, was asked to appear before a presidentially appointed Advisory Committee set up under the Emergency Regulations⁴⁵. He was able to show that there was no detention order covering Seetha's detention, and the Advisory Committee, which according to the

⁴⁵Regulation 17(4) of the Emergency Regulations states:

17(1) Where the Secretary to the Ministry of Defence is of the opinion with respect to any person that, with a view to preventing such person --

(a) from acting in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services ...

(where) it is necessary so to do; the Secretary may make order that such person be taken into custody and detained in custody. ...

(4) For the purpose of this regulation, there shall be one or more Advisory Committees consisting of persons appointed by the President, and any person aggrieved by an order made against him under this regulation may make his objections to such a Committee.

Emergency Regulations must be provided with background on detention cases, did not know why she had been detained. A lawyer helped lodge a fundamental rights case with the Supreme Court, but when he did so, Seetha's father was threatened by the Officer-in-Charge of the Galagedera Police Station and asked to withdraw the claim. The lawyer then filed an affidavit attesting to the intimidation. The Court warned the police officer not to engage in such practices and ordered that Seetha, who had been transferred to Kandy Remand Prison, have access to her family and lawyers and be paid compensation. The Court also directed the Officer-in-Charge of the Galagedera Police Station to pay Seetha a further Rs. 2500 (US\$59) as it was shown that he was personally responsible for the infringement of her rights

Access to the Court System

In addition to intimidation, litigants often experience practical difficulties getting to courts to file applications and pursue claims. This is particularly so where the relevant court sits only in Colombo. Although the situation has improved somewhat – the Attorney General told the UN Human Rights Committee in April 1991, during its consideration of Sri Lanka's second periodic report under the ICCPR that the Constitution had been amended to allow Provincial High Courts to issue writs of *habeas corpus*— there are still many cases which require people to travel to Colombo to file claims. The delays experienced by the Kokkadicholai Commission provides an illustration of the unsatisfactory nature of this arrangement. In addition to the difficulties of transport in the Eastern province, many witnesses to the June 11 massacre at Kokkadicholai hesitated to go to Colombo because they were frightened for their safety. Due to the difficulty of travelling to Colombo, the very fact that they undertook the journey would more easily identify them as people giving evidence to the Commission. The Attorney General when asked about the problem of access to the Colombo courts said,

"At any rate, Colombo was not more than 200 miles from the most distant part of the country. So even having Colombo as the centre for filing habeas corpus would not be a problem..."⁴⁶

These remarks belittle the very real dangers faced by many people who need to travel to the capital from outlying districts, particularly if they must travel from the north and east, to pursue petitions.

Persecution of Lawyers

In southern Sri Lanka, the danger for lawyers prepared to take human rights cases was at its height in 1988-89, when they faced threats, arrest and detention, or in some cases, death.

Kanchana Abhayapala, a lawyer who had filed numerous *habeas corpus* petitions on behalf of persons illegally detained and persons who disappeared in the custody of the security forces, was shot and killed by unidentified gunmen on August 24, 1989. He had earlier received death threats from unidentified callers who warned him to stop filing *habeas corpus* petitions and who claimed to be responsible for the murder of Charitha Lankapura, another lawyer who was killed in July 1989.

Sanath Karaliyadde was shot to death on the night of October 26, 1989 after being abducted from his home by three armed men, one of whom was wearing an army uniform. Karaliyadde had been

⁴⁶UN Press Release HR/CT/118, p.6 (April 9, 1991).

representing the family of a 16-year-old student who was shot dead by police during a demonstration in June 1989.

Neville Nissanka, another lawyer who had filed many *habeas corpus* petitions, was abducted by unidentified persons on October 3, 1989. His body was discovered in front of his house the next day.

A communication by the Sri Lankan government to the UN Working Group on Involuntary and Enforced Disappearances in 1991 stated, "Magisterial inquests have been held and investigations are continuing [into the killings of lawyers] in accordance with the directives of Magistrates."⁴⁷ Asia Watch was unable to find any instances of such proceedings and the Bar Association was unaware of any.

Although the situation in the south improved by 1990-91, lawyers who sought to hold security personnel responsible in human rights cases still encountered threats and harassment. Batty Weerakoon, a senior lawyer involved in the case of Richard de Zoysa, was threatened with death in May 1990.

Asia Watch found ample evidence that human rights activists in the North and Northeast continued to operate under conditions of very great danger, and that ordinary civilians in many cases were too frightened to make inquiries about friends or family who disappeared after being taken into custody by members of the security forces or paramilitary groups. Reports from areas controlled by the LTTE indicated arrests of people suspected of not supporting the movement, let alone actively opposing it. The delegation also received reports of public executions and of severely tortured people dying because they were too afraid to seek medical treatment. Under such circumstances, it is not surprising that relatives and friends may be much too frightened to report torture, mistreatment, deaths or other severe violations of human rights.

It is worth pointing out that police or other members of security forces named as violators of fundamental rights can also fall victim to such attacks. On November 25, 1991, one of the police officers accused of abducting and killing 12 civilians in the Gampaha area in March 1989, was shot and killed by a sharpshooter in broad daylight on the premises of the Attangagalla magistrate's court where the case was being heard. The officer's father-in-law, who was present at the time, was also killed. Although their killer was never identified, there is speculation that former death squad members, when brought to trial, may be vulnerable to mob-style assassinations by their former colleagues to keep them from testifying on the activities of death squads. In fact, the fear of such assassinations may be one reason that the government is reluctant to agree to retroactive accountability.

Establishing Accountability for Abuses

It is one thing for a petitioner's claim to be accepted as legitimate. It often is quite another to determine who or what agency is to be held accountable for the abuse involved. The delegation was told that when the Supreme Court finds that a person has been illegally arrested, there is no police inquiry into why that has occurred. If the Court finds that someone has been tortured, there is likewise no inquiry. Such inquiries would be the responsibility of the Inspector General of Police. One of the problems appears to be that the Inspector General has the power to decide whether or not to conduct an inquiry, and thus has to

⁴⁷UN Doc E/CN.4/1991/20, para 365.

take personal responsibility for a decision to do so. It may help to ensure implementation of Supreme Court decisions if legislation is passed which would require a formal inquiry and report in any case where the Supreme Court has found that illegal detention, arrest or ill-treatment has been proved, and there is evidence implicating one or more government officials. The report should be required within a specified period of time, should be made public, and should recommend measures to be taken to ensure that those responsible are brought to account.

The problem of establishing accountability for human rights abuses is exacerbated by the plethora of different units within the police department, and by the often blurred command structure of the armed forces, paramilitary groups acting in liaison with them, and the various civilian and volunteer groups organized by the army. From some of the cases before the courts, it is clear that people are moved from one police station or detention center to another without any records being kept of the transfer, and without any clear allocation of responsibility between different units of the security forces for the safety and well-being of the detainee.

The following case, provided by INFORM,⁴⁸ is based on the testimony of witnesses in the inquiry into the disappearance of Police Constable B.M.G. Basnayake of the District Intelligence Bureau (DIB) of Badulla, the first case to be publicly heard by the Presidential Commission of Inquiry into the Involuntary Removal of Persons. The testimony, which tracks one detainee from police station to police station and through various special anti-insurgency units before he was disappeared, provides a vivid description of the break-down in the chain of command and lack of accountability of the multiple police forces assigned to anti-subversion intelligence and operations in Sri Lanka. It also illustrates the difficulties faced by family members, even those familiar with police procedures, in tracing relatives.

According to his wife, Kanchana Basnayake, when Officer Basnayake left home on January 11, he told her that he was going to the National Intelligence Bureau (NIB) in Colombo. He never returned. After her husband had been gone for several days, Mrs. Basnayake went to the Badulla police station and talked to Inspector of Police Chandrasena, who also said Basnayake had gone to Colombo.

Almost two weeks later, on January 22, Mrs. Basnayake managed to get an appointment with the Superintendent of Police for Badulla, who told her that she should ask the Superintendent of Police for Matara about her husband's whereabouts. She then contacted the Minister of Parliament for the region, who said that he had learned that her husband had been taken to Matara, but had escaped. She went to Matara and met with Superintendent of Police Gomes who denied that Officer Basnayake was ever in Matara.

Unable to get more information from the local police, Mrs. Basnayake then travelled to the office of the NIB in Colombo. Officials there told her that her husband had been there on January 14 and 15 and had then been taken to Matara. She was asked to go to the CID (Criminal Investigations Department) for further information.

On May 29, more than four months after she began searching for her husband, Mrs. Basnayake

⁴⁸ *Sri Lanka Information Monitor*, "Situation Report, December 1991: Update on the Human Rights Situation in Sri Lanka in 1991 With Specific Focus on the Background Against Which Human Rights Abuses Can Take Place," INFORM, December 1991.

received a letter from the CID asking her to come to the CID office for an interview. She was told by officials there that her husband had been questioned regarding his links to a known subversive leader and that he had escaped from police custody while in Gandara in Matara District on the January 16, 1991.

As the article points out, the most interesting result of these proceedings was the unprecedented disclosure of detailed information on the operations of various special forces within the police department. In particular, the inquiry exposed a distinct confusion regarding the chain of command and a disturbing degree of freedom from normal police regulations and procedures enjoyed by certain anti-subversion units - conditions which encourage 'disappearances.'

For example, in his testimony before the Commission, Nimal Gunatilaka, Senior Superintendent of Police (SSP) and Deputy Director of the Counter-Subversive Unit (CSU) of the National Intelligence Bureau (NIB) admitted that the Superintendent of Police of Badulla, Officer Basnayake's superior, was never told the nature of the inquiry against Basnayake. He also admitted that he himself did not know who was responsible for CSU operations in Matara District.

Officer Basnayake was taken to Matara by Sub-inspector Jayatilaka, who was then assigned to the NIB in Colombo. In his testimony, Officer Jayatilake said that he was directed to deliver Basnayake to Special Assistant Superintendent of Police (ASP) in charge of 'radical groups,' Senaka Silva. Instead, he handed him over to the Assistant Superintendent of Police M.K. Sugathadasa of the Matara DIB. Jayatilaka also admitted that he did not record the events of a trip he took to Dikwella in Matara during this visit in any police log book; he maintained that such reporting was not "required." In fact, there appears to be no written record of any National Intelligence Bureau officer actually delivering Basnayake to Sugathadasa.

Jayatilake also pointed out that the NIB does not actually make arrests; it only conducts investigations and questions people arrested by the police or by other security forces.

When Police Sergeant Harrison of Matara was questioned, he explained that there were two counter-subversion units active in the Matara area. One was the CSU, located on the police station premises, which was charged with intelligence gathering. The other was an 'operational' unit which was located at the Superintendent's office, some distance away.

Senior Superintendent of Police Gomes maintained that ASP Silva was not required to inform him before handing Officer Basnayake over to ASP Sugathadasa. He had not ordered anyone in Matara to arrest anyone in Badulla and knew nothing about Basnayake's detention. He also said that there were three Superintendents' Offices in the Matara District and each of the three units had an intelligence unit and a separate CSU. The operational units were set up in 1989 and Sugathadasa had been in charge of the Matara unit since 1990. The operational unit had no fixed headquarters; they moved around the area and the personnel assigned to the unit also acted as security guards for ASP Sugathadasa. The operational unit made the arrests and then handed over suspects to the CSU for interrogation.

According to Gomes, the District Intelligence Bureau and the Counter-Subversive Unit were independent law enforcement bodies. The DIB only gathered information; the CSU gathered information but could also conduct 'operations' and make arrests. The DIB was administered by the NIB in Colombo.⁴⁹

⁴⁹According to his testimony, one of the offices of the NIB is at 10 Cambridge Place in Colombo.

The CSU was administered by another unit in Colombo, and engaged in what was called 'non-coordinated' work, meaning that CSU officers were not required to wear uniforms or attend the weekly reviews of police personnel. Both the CSU and the DIB were technically under the supervision of an Assistant Superintendent of Police in the area, but in fact, they appear to answer directly to Senior Superintendent of Police for the entire area, and are mainly administered from Colombo.

In his testimony, ASP Sugathadasa reported that during the period he worked in Matara, the NIB in Colombo oversaw the DIB, and an NIB officer from Colombo came to Matara once a week. The Counter-Subversion Unit was later re-named the Security Coordinating Unit (SCU) and a separate officer was in charge of each unit. The SCU undertook anti-subversive operations on its own and also participated in operations ordered by the SSP. On such occasions, they would draw on any available police personnel. Sugathadasa estimated that he had signed over 5,000 detention orders while posted in Matara, but also admitted that he signed these without ever reading them.

Sugathadasa also linked his presence at the hearing to an investigation by the CID into the activities of another special police force, the Bureau of Special Operations (BSO), to which he had been transferred. Sugathadasa claimed there was a conspiracy against him by the National Intelligence Bureau. The Bureau of Special Operations was founded by the late Defense Minister Ranjan Wijeratne to combat "economic crimes" and Sugathadasa worked under the supervision of Deputy Inspector General of Police Udugampola until Udugampola was forcibly retired in January 1992. (See below.)

When first questioned about the Bureau of Special Operations, Chandra Jayawardena, Director of the CID, denied any knowledge of the Bureau and said that there was no official information about it. When shown the issue of the Police Gazette of the April 17, 1991 which published details about the unit, he admitted he was mistaken. According to INFORM, he also expressed some annoyance that the BSO seemed to function above normal police procedures. According to his testimony, the BSO had the power to arrest anyone, in any part of the country, and was only required to inform the District Inspector General. Normally, the Superintendent of Police had to approve police activity in his area.

On the practice of moving detainees, the Attorney General, addressing the UN Human Rights Committee in April 1991, said:

"Unlike any normal investigation, a person held for terrorist activities was moved from place to place to prevent the possibility of his associates attempting to rescue him. Persons under detention or their relatives could appeal to the Advisory Board for relief. Further application could be made to the Court of Appeal under habeas corpus applications or to the Supreme Court..."⁵⁰

The UN Working Group on Disappearances noted in its 1992 report that:

"The large number of persons and institutions authorized to detain, interrogate and transfer detainees makes it very difficult to trace the whereabouts of missing persons and to identify the persons or institutions responsible unless full cooperation is obtained from the different offices and branches of the police or armed forces. If such cooperation is

⁵⁰UN Press Release HR/CT/120, p.2.

refused and information is denied to the investigator, it seems to be very difficult to establish the whereabouts of a detainee who has been transferred several times to different police or military divisions... During meetings with government officials, the Working Group was informed that some missing detainees could not be traced because of numerous transfers."

The fact that members of the security forces are also transferred seems to be used as an excuse to avoid follow-up in cases where there have been allegations of human rights violations by police officers. Ranil Wickremasinghe, Cabinet spokesman and Minister of Industries, Science and Technology, told the Asia Watch delegation that in some cases where abuse had been alleged, it turned out that the officers in question had been transferred to the Northeast and therefore their files were not available.

An illustration of the government's approach to this issue is the Attorney General's response to queries from the UN Human Rights Committee on April 9, 1991. He said that:

"allegations that service personnel who committed those crimes were not being dealt with were unfair. Unfortunately, there were such cases involving service personnel, but before indicting someone information was needed. When there was no information, there could be no indictment. That was the situation, and efforts were being made to bring it under control." (UN Press Release HR/CT/119, p.6.)

Asked by Asia Watch about the policy adopted when there is a Supreme Court finding of illegal acts by the police in fundamental rights cases, the Attorney General said the problem was that the Supreme Court acted on the balance of probabilities, whereas as Attorney General, he had to produce proof beyond a reasonable doubt for a prosecution to succeed.

Ernest Perera, the Inspector General of Police, told Asia Watch that there were three or four cases proceeding in the magistrates courts, and other cases of assault or wrongful arrest. When insufficient evidence is found to satisfy the Supreme Court about the justification for an arrest or detention, he said, it is often because the police cannot be expected to expose the operations of the National Intelligence Bureau (NIB) simply in order to provide evidence for the Court. He pointed out that people the world over are detained on the basis of intelligence information, and cited Singapore and Malaysia as examples.⁵¹

Asked about the defence of security personnel charged with torture or illegal detention, the Attorney General said that his office no longer acted in cases where torture was alleged. The reason was that in obtaining instructions from the client in such cases, the office would obtain confidential information: if it then appeared that there was evidence that torture had been committed, the Attorney General would be required to prosecute, and this would be unfair to a former client, now the accused.

Failure to Arrest or Charge Security Personnel

Most arrests of army and police personnel reported in the press in recent years have been for

⁵¹See *Silencing All Critics*, Asia Watch, September 1989, for an analysis of how the Singapore government abused its Internal Security Act to arrest and detain critics of the government.

criminal offenses such as robbery and rape. According to *The Island*,⁵² the end of January 1992, police headquarters had received thousands of complaints from the public alleging rape, murder and looting by police officers, and that inquiries had not yet been conducted into the vast majority of complaints. In the rare cases when charges have actually been filed, prosecutions, convictions and enforcement of sentences are rare.

The Liyanarachchi case is probably the best-known of all cases filed against security officers. On March 18, 1991, the Colombo High Court found three police officers guilty of the abduction of Wijedasa Liyanarachchi, a lawyer with ties to the JVP who died at the hospital where he was brought by police on September 2, 1988. Testimony by medical examiners and witnesses indicated that he had died of massive injuries caused by beatings with blunt weapons.

All three officers had been charged with murder in 1990, but pleaded guilty to amended charges of conspiracy and wrongful confinement. They were sentenced to prison terms, but the sentences were suspended and fines imposed. All were permitted to return to work. The senior officer implicated in the case died shortly thereafter of an apparent suicide.

A fourth officer, Deputy Inspector General of Police (Southern Range), Premadasa Udugampola, the police officer who actually ordered Liyanarachchi's arrest, was not charged but testified at the trial. The court judgment found his testimony provided "highly incriminating circumstantial evidence" of his own guilt and urged the Attorney General, law enforcement agencies and the President to launch an investigation.

Until January 16, 1992, Udugampola headed the controversial Bureau of Special Operations (BSO) in Colombo. According to press sources in Sri Lanka the BSO brought over 25 million rupees in fines and confiscations to government coffers in the first year of operation. The BSO was scheduled to celebrate its first anniversary on January 16 with an all-night religious ceremony and almsgiving which was to be attended by Prime Minister D.B. Wijetunga. On morning of January 16, police seized all weapons issued to the Bureau, and Udugampola was sent on compulsory leave prior to retirement in mid-April. Most of the invitees did not attend the ceremony.

In March, amid rumors that the former police officer was planning to flee the country, immigration officials impounded Udugampola's passport and directed the National Intelligence Bureau to take action to prevent him from leaving the country. In April, after appealing to opposition politicians for protection, Udugampola held a secret press conference in which he accused the Premadasa government of complicity in the death squad killings of hundreds of political opponents. (See Chapter V).

On April 12, 1992 the *Sunday Times* reported that the Ministry of Defense was to issue detention orders for Udugampola. The Maligakanda Magistrate also re-issued a summons for him to appear before court on April 27. Udugampola had previously received orders to appear before the CID by April 6 in connection with the newly re-opened investigation into the Liyanarachchi case, but failed to do so, fearing abduction.

⁵² *The Island*, January 30, 1992.

Retaliatory Action Taken Against Successful Petitioners

Even when those claiming infringement of their fundamental rights are fortunate enough to win a case in court, they may find that the instructions of the Court to release them or to provide compensation are either not carried out, subjected to long delays or made subject to unnecessarily harsh conditions.

One successful petitioner who brought a claim of unlawful detention against the police was a 29-year-old woman⁵³ who was held in illegal custody from September 26, 1989 until November 6, 1991. On October 21, 1991 the Supreme Court decided in her favor, ordering her release and Rs.30,000 (US\$723) in compensation. The State failed to release her and another complaint was filed on December 25, 1991. After this complaint the Inspector General of Police and the Secretary to the Ministry of Defence were directed to appear before the Supreme Court on November 7, 1991. The day before they were scheduled to appear in court she was finally released, but was ordered to report to the police station once a month.

In several cases, former detainees were required to report periodically to a police station as much as 100 miles from their homes. These were extreme cases, but many examples were provided in which unnecessarily inconvenient and time-consuming reporting obligations were imposed, in cases where either the release should have been unconditional or the reporting obligation should logically have been attached to the police station nearest to the detainee's place of residence.

The most dramatic example brought to Asia Watch's attention was that of Mrs. B.D.W. Padma Kanthi,⁵⁴ a teacher from a village near Negombo, a coastal town about twenty miles north of Colombo, who brought a successful petition claiming illegal detention to the Supreme Court. The Court ordered her release with a compensation payment of Rs.25,000 (US\$600), but she was ordered to report regularly to a police station 100 miles away.

Similarly, since his release, DG Premadasa,⁵⁵ an undergraduate of Vidyalankara University (near Colombo), has been required by the police to report once a month to Bandarawala Police Station, a journey he can ill afford, and which takes him away from his studies and takes three days to complete.

In another case,⁵⁶ the government informed the Supreme Court that a woman claiming illegal detention had already been released when in fact she was still in detention. After the Court ordered that the petitioner be released unconditionally, she was forced to sign a statement promising to report once every two weeks to a police station 30 miles from her home — even though there was a police station only two miles away. Such reporting conditions are very disruptive, and do not assist former detainees to re-establish a normal life on their release.

⁵³Supreme Court Application No. 22/91.

⁵⁴Supreme Court Application No. 10/91.

⁵⁵Supreme Court Application No. 70/91.

⁵⁶Supreme Court Application No. 66/91.

The Continuance of the Prevention of Terrorism Act, the Emergency Regulations and other Restrictive Legislation

Many of the human rights protections contained in the Constitution are rendered illusory by the continued existence of the Prevention of Terrorism Act, the Emergency Regulations and other restrictive legislation.⁵⁷

Under Article 13 freedom from arbitrary arrest and detention are guaranteed. Section 9 of the Prevention of Terrorism Act, however, provides that where the Minister has reason to believe or suspect that any person is connected with or concerned in any unlawful activity, he or she may issue a detention order for a period not exceeding three months at a time, provided the aggregate period of such detention does not exceed a period of 18 months. Emergency Regulation 17 provides that where the Secretary to the Ministry of Defence is satisfied upon material submitted to him that it is necessary to do so, he may issue a detention order to prevent a person from acting in any manner prejudicial to the national security or the maintenance of public order. Under such detention order a person may be detained "in such place as may be authorized by the Inspector General of Police." There is no time limit placed on the period of detention.⁵⁸

The Supreme Court in a series of cases (SC 6/90 and 27/88) has held that the Executive must place sufficient material before the Court to enable the Court to make a decision regarding the validity of an order issued under the Prevention of Terrorism Act or under Emergency Regulation 17. Despite these judgments, Asia Watch was told that the Ministry of Defence had recently sent a list of names to the Supreme Court, indicating that the people listed should not be released. This was justified solely on the basis of an executive decision that they were hardcore terrorists.

Responding to concern expressed by the UN Human Rights Committee in April 1991 about the restrictions imposed by these and similar provisions the Attorney General Sunil de Silva said:

"Restrictions on fundamental rights imposed by the government during the ongoing emergency were temporary. They would be lifted when the threat to national security and

⁵⁷See "Sri Lanka: Emergency Reimposed as Killings Continue," *Asia Watch*, July 18, 1989.

⁵⁸In both *habeas corpus* cases before the Court of Appeal and in fundamental rights cases before the Supreme Court, when complaints have been made about arbitrary arrest and detention, the government has sought to argue that it was not necessary for it to disclose to the Court the grounds on which a detention order had been issued. It was sufficient that, in the opinion of the executive, such an order was necessary. For example in Court of Appeal Application No 7/88, an application for a writ of *habeas corpus*, the submission of Senior State Counsel was that:

"detention is ordered on the basis of the opinion formed by the Secretary. It is a power exercisable on a subjective standard. Therefore, the production of a detention order ex facie valid is a sufficient defence and the application should fail if the Petitioner does not establish malafides against the Secretary."

public order ended. A time-frame for their removal could not be stipulated while the causes for their introduction in the first place remained."⁵⁹

In response to questions from the Asia Watch delegation as to why the emergency regulations could not now be lifted in the South since the situation there was so much improved, Ranil Wickremasinghe, Minister of Industry and Cabinet Spokesman, said that there were still security problems there. There were two bomb explosions in Colombo in 1991 and in December precautions were essential to secure the safety of the delegates to the South Asian Association for Regional Cooperation (SAARC) conference which was holding its sixth summit of heads of state in Colombo. He added, however, that the regulations were not generally enforced — they were used only in relation to terrorist activities.

Similarly, in responding to concerns of the UN Human Rights Committee about retroactive emergency laws, the Attorney General said:

"experience had shown that conduct which was not harmful when normalcy prevailed, assumed terroristic proportions in a time of emergency. Outlawing current forms of terrorism would only result in even more ingenious methods being devised for future use. If, however, the law permitted such acts to be retrospectively made into offences and the perpetrators apprehended and punished, it would serve as a deterrent. However, the provision was only used in extreme situations."

Emergency laws which even government officials admit are not generally necessary and which are said not to be generally used should not exist. They virtually guarantee abuse. During the examination of Sri Lanka's Second Periodic Report under the ICCPR in April 1991, members of the UN Human Rights Committee, while sympathizing with the government regarding the difficulties it faced in dealing with violence, nonetheless stressed that emergency measures taken to deal with such exigencies must be within the framework of the law, and that some of these provisions, including indefinite detention without charge or trial and retroactive criminal laws, are in violation of Sri Lanka's international legal obligations.⁶⁰

Another law which obstructs accountability is the Indemnity Act.⁶¹ This legislation provides that no legal proceeding shall be instituted for an act done or purported to be done by a Minister, Deputy Minister or any public servant, "whether legal or otherwise" for the purpose of restoring law and order. There have been extensions of the indemnity granted by the 1982 legislation. The latest extension was made by Act No. 60 of 1988 which extended the deadline to December 17, 1988.⁶²

The existence of indemnity legislation of this kind is inconsistent with the establishment of an

⁵⁹UN Press Release HR/CT/119, p.3.

⁶⁰See for example, UN Doc CCPR/C/SR 1059 paras 16,17.

⁶¹Act. No. 20 of 1982 as amended by Act. No. 60 of 1988.

⁶²The Sri Lankan government failed to adopt Amnesty International's recommendations to repeal the Indemnity Act and to extend the mandate of the Commission of Inquiry into Involuntary Removal of Persons backwards to cover disappearances before January 1991.

effective system of accountability, and extensions of the dates of such indemnity are dangerous. They create a climate in which those who abuse their official power have reason to believe they can continue to do so — and that once more parliament will extend the deadline. One of the primary reasons Sri Lankan officials gave for the impossibility of extending the mandate of the Commission on the Involuntary Removal of Persons to cover disappearances which occurred during the height of the government crackdown on JVP activity was the existence of this indemnity legislation, and of Emergency Regulation 55FF which allowed for the disposal of bodies without inquest.⁶³

Conclusion

It is not enough to point to an impressive array of laws and institutional mechanisms adopted to protect and promote human rights. Unless these laws and mechanisms are utilized to secure the effective enforcement of rights, and unless that enforcement is strictly monitored, the introduction of such measures will serve only a cosmetic purpose. Such measures may enable a government to deflect, for a limited time, criticism that it is failing to fulfil its international human rights obligations. They will do little to improve the human rights situation in the long term unless individual members of the security forces are held accountable — and are *seen* to be held accountable — for human rights violations they commit.

The report by the UN Special Rapporteur on Extra-Legal, Arbitrary and Summary Executions states:

"Active members of non-governmental human rights organizations, trade unions and political parties have been the most outstanding groups of victims of summary or arbitrary executions, since they are often perceived as enemies or subversive elements by the established, dominant power groups... It is an alarming trend that human rights defenders should be deliberately selected as targets of summary or arbitrary executions, since, without their activities, human rights violations would largely remain undetected, would not be reported to the authorities or to the public, would not be investigated and would not be punished. The implications of the attacks on these groups of persons are serious, leaving in no doubt the aims of the attackers. The integrity and well-being of the entire community of a country depend very much on their uncompromising struggle... Rigorous measures must be taken to protect this group of persons."⁶⁴

Fundamental rights provisions, an independent judiciary, and the most elaborate mechanisms with mandates to protect particular categories of rights, or to inquire into particular categories of abuses, will all be of no avail if aggrieved citizens do not feel safe to lodge complaints, if witnesses to human rights abuses are frightened to come forward to provide testimony and if lawyers or other activists seeking to make security and other personnel accountable for their actions are harassed, or worse, killed.

⁶³This regulation was repealed in February 1990.

⁶⁴ UN Doc. E/CN.4/1990/22, paras 459,460,472.

V. FREEDOM OF EXPRESSION

Many people to whom Asia Watch spoke voiced considerable concern at the perceived unreliability of the Sri Lankan media and its lack of any real independence. Since only the English language media was accessible to the Asia Watch delegation, comment here is restricted to aspects that the delegation could observe for itself.

A general comment can, however, be made on the approach to freedom of expression in the Constitution, and in current or proposed legislation. Article 15(2) of the Sri Lankan Constitution provides that free expression may be subject to such restrictions "as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence." As the UN Human Rights Committee pointed out to the representative of Sri Lanka in April 1991, restrictions simply "in the interests of" are not permissible. Under the ICCPR the only restriction acceptable are those which are "necessary" for the protection of "the rights or reputations of others [and] of national security or public order or of public health or morals" (Article 19(3)).

It is also important to note that the electronic media — which reaches a much wider audience in Sri Lanka than do newspapers, journals and other similar publications — is entirely state-owned. This state control can be, and is, used to provide generous opportunity for coverage of the government position, while denying adequate (or in some cases, any), air-time to the government's opponents.

Other restrictions are reported on the press. Although there are a number of newspapers and journals which are not government-owned, Asia Watch was told that pressure can be, and is, applied to affect their activities. The government has power over the allocation of newsprint, and newspapers are dependent on government advertising. In some instances, after publicity was given to opposition viewpoints, or after opinions had been aired which were seen as critical of the government, there has been legal action taken against papers, physical threats to journalists, closure of printing presses, as well as demotions and dismissals.

The most recent incident occurred in April 1992 after the *Sunday Times*, a state-owned newspaper, carried an explosive statement by the former head of the Bureau of Special Operations, Deputy Inspector General of Police Premadasa Udugampola, in which he accused government-backed vigilante groups called "Black Cats" made up of "persons in army uniforms identifying themselves as army personnel" of engaging in an anti-JVP "killing spree" in 1988-89.⁶⁵ Udugampola provided another paper, *Aththawith* with a list of 830 people who he maintains were killed between July and November 1989 by these death squads.

The *Sunday Times* also featured a short interview by their political correspondent with the former officer, who is in hiding, in which Udugampola attributed his forced retirement from the BSO in January with "embarrassing" information Bureau investigations had uncovered linking smuggling, drugs, gambling casinos and arms supplied to the LTTE.⁶⁶

⁶⁵ *The Sunday Times*, April 5, 1992. For more on former DIG Udugampola see the "Liyanarachchi case," Chapter IV.

⁶⁶ "In sworn affidavits, copies of which were distributed to the press, Udugampola has ... alleged that a Sri Lankan arms supplier for the Tamil rebels has bribed top police officials to scuttle an investigation into his business.

On April 12, 1992, the *Sunday Times* reported government retaliation against papers which ran stories featuring Udugampola's allegations and the indictment of Udugampola himself:

"Following the startling allegations contained in Deputy Inspector General of Police Premadasa Udugampola's statement last week, it would seem that the independent press is to be put on trial.

This is not because the Press in anyway formed part of the killer squads named "Black Cats" as referred to by Mr. Udugampola, but simply because it published the statement of the controversial DIG. ...

Other newspapers carried the statement on Monday and on Wednesday, the 'Aththa', the Communist Party newspaper carried a further statement by Udugampola together with a list of persons allegedly killed by the 'Black-Cats' in the North Central Province. Prime Minister D.B. Wijetunge issued a statement countering Mr. Udugampola's allegations. ..."

After the stories ran, according to a *Sunday Times* correspondent, around midnight on April 8, three unidentified men claiming to be CID officers came to the home of the editor of the paper, but he was not available to see them. After they left, a complaint about the incident was filed with the Kollupetiya police station.

Early the next morning the Deputy Inspector General of CID, Amarasena Rajapakse and a Senior Superintendent of Police came to see the editor and asked him how the *Sunday Times* had gotten Udugampola's statement. Meanwhile another team of CID officers had gone to take the statement of Lokubanda Wanigasekara, editor of *Aththa*

"But more was to follow. By 11 a.m. the A.S.P. Asoka Wijetilleke had indicated he wished to record a statement from this Columnist too. This he did at 2:25 p.m. on Thursday.

Here again, the CID said that what they wanted to know was how this Columnist came to interview DIG Udugampola.

While all these seemingly innocuous statements were being recorded for the declared purpose of taking action against Mr. Udugampola for allegedly violating the 'Established Code,' an altogether different scenario was taking shape behind close doors at the Attorney General's Department."⁶⁷

According to the retired police officer, [former Defense Minister] Wijeratne's murder, a powerful explosion that demolished Sri Lanka's military headquarters soon after, and former Indian Prime Minister Rajiv Gandhi's assassination in May can all be linked to the probe.

He claims the explosives that were used in all three incidents which are believed to have been masterminded by Tamil Tiger militants in Sri Lanka, belong to the business firm." (Inter Press Service, April 12, 1992.)

⁶⁷Sunday Times Political Correspondent, "Mephistopheles claims the soul," April 12, 1992.

That afternoon, based on information collected during these investigations, indictments were filed in the High Court of Colombo against Wanigasekara, editor of *Aththa*, Welivita Arachchige Dharmadasa, *Aththa's* publisher, and against Udugampola under Section 120 of the Penal Code and Section 26 of the emergency regulations.⁶⁸ Legal action was also threatened against the *Sunday Times* and the *Island*.

The storm surrounding Udugampola's revelations was the most recent in a series of highly volatile political events which have rocked Colombo in the past year — all of which have, in one way or another, challenged President Premadasa's legitimacy. Restrictions on freedom of expression were particularly apparent surrounding the attempt to impeach President Premadasa. Notice of the impeachment resolution was handed to the Speaker on August 27, 1991. On August 30, President Premadasa was given ninety minutes of television time to express his stand on the matter. The resolution's sponsors were given no air time at all. Indeed, the Minister of State for Information, A.J. Ranasinghe, was widely reported to have said that the dissidents and the pro-impeachment groups could not "of course" expect coverage on the State-controlled media.

On September 5, 1991 three opposition parties issued a joint statement saying that, acting under emergency powers, the police "have begun to enter printing presses and carry a spurious investigation in a threatening and intimidatory manner calculated to instill a fear regarding the publication of anything in favor of impeachment." Organizers of a pro-impeachment rally were reported to have been threatened at gun-point. While putting up posters in Borella on September 10, 1991 a supporter of the impeachment resolution was attacked and injured by unknown assailants. Also while putting up posters in Kurunegala and Ratnapura, opposition supporters were reported to have been arrested for a brief period.

Kellie Senanayake, the proprietor of the Navagama Printing Press, was questioned by police after the Navagama Printers had printed an edition of *Yukthiya* (an independent newspaper) in which the impeachment attempt received considerable coverage. On October 4, 1991, seals and a police guard were placed on the premises. While the premises were under police control the printing machinery was extensively damaged causing considerable financial loss and preventing the printer and his employees at the press from working.⁶⁹

In another instance Victor Ivan was taken in for questioning by the CID on October 21, 1991, the day after, *Ravaaya*, the paper of which he is editor, had published the names of the 43 MPs alleged to have

⁶⁸"Under emergency regulations the penalty for such an offense is rigorous imprisonment of at least three months and not more than 20 years and the imposition of a fine.

Section 120 of the Penal Code states: Whoever by words, either spoken or intended to be read, or by signs, or by visible representations or otherwise, excites or attempts to excite feelings of disaffection to the President or to the Government of the Republic, or excites or attempts to raise discontent or disaffection amongst the people of Sri Lanka or to promote feelings of ill-will and hostility between different classes of people, shall be punished with simple imprisonment for a term which may extend to two years." (*Sunday Times, April 12, 1992*).

⁶⁹On April 3, 1992, the Supreme Court ruled that the sealing of Navagama Printers by the police was unconstitutional, that the police caused "wanton damage" to Navagama's printing press, and falsified police reports claiming that they found the press dismantled when they arrived. The court awarded Senanayake Rs.25,000 in damages.

signed the impeachment motion.

In addition to restrictions on freedom of expression such as those just outlined, the proposed Media Commission Bill is also causing concern. The final text of the Bill was not settled at the time of the Asia Watch mission, and indeed Ranil Wickremesinghe told the delegation that its passage appeared to be stalled in the All Party Conference, where it had been sent by the Cabinet. The proposed restrictions contained in the Bill as it currently stands, however are wider than those acceptable under the ICCPR. For example, a potentially restrictive interpretation could be given to two of the Act's objectives: (i) "to ensure the upholding of the unity and integrity of the country and the rights, freedoms and social values reflected in the Constitution, in the media" and (ii) "to ensure the strengthening of national unity, ethnic harmony and multiculturalism, by means of the media."

One Colombo journalist described the current situation of freedom of expression in Sri Lanka in bleak terms: "During the last so many years of pressures by governments, both of the United Front and the UNP, the media has been both emasculated and subject to self-castration."⁷⁰ As a consequence of this state of affairs, people in Sri Lanka are increasingly distrustful of the media coverage of news of national importance. This is particularly unfortunate when an impartial and independent media could to play a constructive role in promoting understanding and dialogue, particularly when peace initiatives are under discussion.

In February 1992, the human rights organization INFORM included in their monthly "situation report" a particularly graphic illustration of the kind of self-censorship exercised by the state-owned media.⁷¹ INFORM's report featured the following unabridged text of an article written by attorney Charles Abeysekera on human rights and foreign aid, which had been published — in a severely abbreviated form — by a state-owned newspaper. INFORM also published an explanatory note by the author:

The Sunday Observer, a newspaper of the Lake House group which is owned and operated by the state, requested me to give them a note, of about 800 words, on the linkage between human rights and foreign aid for publication in their page entitled "Open Space." This was in the context of a debate that has been going on for some time on the question of foreign intervention in the Sri Lankan human rights situation. Statements by politicians, editors of the national press and writers of letters to the newspapers have all decried such interventions as meddling in the internal affairs of Sri Lanka and an infringement of the country's sovereignty. The latest instance was when a Canadian fact-finding team that visited the country in January 1992 was castigated for its comments. Noteworthy in this respect were some editorials in the Daily Observer and a statement by the State Minister for Information; he claimed that Sri Lankans had been properly appreciative of human rights when these critics were still in trees and asked them to look after the rights of their own populations. Particularly irksome to the proponents of these views was the linkage of foreign aid to the issue of human rights. This was frequently referred to as imperialist or colonialist interference.

⁷⁰A. Samaranayake, "Through a splintered mirror", *Pravada* Vol.I, No.I, November 1991, p.11.

⁷¹The monthly magazine *Pravada*, of which Charles Abeysekera is an editor, also ran the piece in its February 1992 issue.

I responded to the request because I thought that some plain speaking was necessary. My note was published in the issue of 16 February 1992 but in a severely truncated form.

I tried in my note to lay down the general position with regard to national sovereignty and the international covenants on human rights and to discuss the Sri Lankan situation in that context. Most of the specific comments on the situation of Sri Lanka have been edited out. Thus my line of argument has been vitiated and my note made to appear rather vague.

There is no censorship of the press in operation now. However, self-censorship is a common phenomenon, particularly in the government-owned press.

My note appears below, with the sections edited out by the Observer under-lined.

Charles Abeysekera

HUMAN RIGHTS AND FOREIGN AID

The relationship between human rights and foreign aid has become so mixed up with notions of national sovereignty that some discussions seem to have lost sight of reason. It is therefore better to begin by separating them.

Human Rights are today, those civil, political, economic, social and cultural rights embodied in the Universal Declaration of Human Rights and in the International Covenants to which all nations, including Sri Lanka have subscribed. These rights are to be universally enjoyed by all human beings. They are primarily a reflection of the experiences during and after the second world war, even though the concepts have had a far longer history.

The important thing to note is that when nations subscribe to these covenants and other instruments they are in effect agreeing to cede a part of their sovereignty to international organs. There is the United Nations Commission on Human Rights which meets in Geneva and is composed of about 50 elected states. There is the UN Committee on Human Rights, a group of selected individuals in their own right, which meets in New York. Governments have agreed to be answerable to these institutions with regard to the observance of human rights in their territories. For example, all governments have to subject themselves to a regular five year report to the UN committee; it was Sri Lanka's turn last year and the representatives of the government did not have an easy time at those hearings. The Commission on Human Rights has the right to receive representations and where they deem it necessary, to send working groups and rapporteurs to find out for themselves the exact situation in a country. The Working Group on Disappearances which visited Sri Lanka in October 1991 was one such.

The international covenants thus make a state answerable to international organs for their adherence to the norms of human rights.

Not only that. These same agreements enjoin all states to do their best to ensure that human rights are observed at the global level. There have also developed other organizations, not at the state level, concerned with the promotion and advancement of human rights, such as for example, Amnesty International, Asia Watch, the International Commission of Jurists. Governments often find themselves answerable to them as well. The Sri Lankan government, for example, accepted a visit from Amnesty last year and agreed to accept and implement most of their recommendations.

The situation, then, is that all countries have agreed, voluntarily, to cede a part of their sovereignty with regard to the way they deal with their citizen's rights.

In this context, to speak of interference is totally wrong. We have to accept that the outside world has the right, and even the duty, to look into our human rights record. To say that we were safeguarding human rights while "they" were in trees and to point to shortcomings in their own countries is simply no answer. We can certainly point out such defects; we have the right to do so. But it will even be worse than the pot calling the kettle black.

What we have to be ashamed of is not that intervention of this type is taking place, but that we have behaved in such a shameless and blatant manner in violating the civil rights of our citizens that we invite this justified intervention. The Working Group on Disappearances has just reported that they have recorded 12,000 disappearances attributable to state security forces; they say that this is the highest recorded by them for any country. We are well known for torture and deaths in custody, for extra-judicial killings and for reprisal massacres. We are equally well known for arbitrary arrests and for detentions for long periods.

The fact that the anti-state forces in Sri Lanka are equally well known for their brutality is no answer either. The LTTE does indulge in massacres of unarmed civilians, in killing off their opponents, in keeping prisoners in inhuman conditions and in torturing them and in extortion. This however does not legitimise similar tactics by the state, which is expected to adhere to a set of civilised norms.

If these are the conditions under which we live and we have been demonstrably unable to improve them by our own efforts, the I, for one, am thankful for foreign intervention. After all, a government unresponsive to many measures advocated for long by local human rights groups accepted them when they came from Amnesty.

As for the link with foreign aid, two things are happening together. An increasing consciousness in the world about international responsibility for the safe-guarding of human rights is putting pressure on aid-giving governments from their own citizens. They respond to that by putting pressure on Sri Lanka to improve its human rights record in the area which they think is most effective - linking aid with human rights, putting conditions on aid. Again, I think they are behaving rationally and that their behavior is in our interest. After all, we know that the government acts with a certain amount of circumspection in the period before the aid meeting. We do not object to that, do we?

There is, however, another aspect about which I am not so sure. This is the new concern of the IMF, the World Bank and their supporters with what they call "good governance." This concern is, I think, primarily concerned with erecting the kind of juridical structure necessary for the spread of market relations and has to be discussed in another context.

The LTTE and Restrictions on Freedom of Expression

The government is not the only party to take unjustifiable measures to curtail freedom of expression in Sri Lanka. Severe restrictions have also been imposed by the LTTE. The Asia Watch delegation learned from reliable sources that freedom of expression is tightly curtailed in the areas under LTTE control, that civilians living in the north would not dare to voice criticism of the LTTE, whatever their private opinion, and that the printed publications which are produced there are subject to tight LTTE censorship. One case of the consequences of voicing views perceived to be non-supportive of the LTTE is that of Soosapali Norbert, a Tamil author and journalist. Norbert disappeared after being forcibly taken from his home in Jaffna late on May 7, 1991. Norbert, who had, at an earlier stage, been a member of the People's Liberation Organization for Tamil Eelam (PLOTE), had consistently been critical of the advocacy of violence by Tamils. The abductors were reported to be in uniform and to have identified themselves as members of the LTTE.

Another victim of LTTE censorship, a young poet and dramatist from the University of Jaffna named Thiagarajah Selvanithy (Selvi), is one of several University students currently being detained by the LTTE. Selvi was abducted from her home on August 30, 1991. Although the LTTE gave no official reason for her detention, she was abducted the day before a play she was acting in was due to open.

"Since all cultural activity is controlled by the LTTE, when the English society (of the University of Jaffna) wanted to put on a drama their scripts were passed by the 'censors.' The drama was basically about a Palestinian prisoner who was tortured by the Israelis, and the defiance of the prisoner who vowed to fight for his motherland. Nobody thought it would offend the LTTE. It occurred to people only much later that torture and mistreatment of prisoners by state powers had been experienced by many Tamils. But this experience was alien to the LTTE. Its cadres had been ordered to take cyanide as a means of evading capture. Those imprisoned and later released were ostracized. To the LTTE, torture and brutality towards prisoners were not things experienced by them but only what they have meted out to the others. And worse, a member of the Jaffna literary scene now working for the LTTE, had commented that the heroine in the play was strongly reminiscent of the late Dr. Ranjani Thiranagama."¹²

¹² *The Trapped People Among Peace Makers and War Mongers; Report No.9*, University Teachers For Human Rights (Jaffna), February 18, 1992, pp.56-57.

The murder of Ranjani Thiranagama in September 1989 rocked Jaffna University and the human rights community. A dedicated teacher, outspoken human rights advocate and a leading member of the University Teachers for Human Rights (Jaffna), Dr. Thiranagama was murdered by an unidentified gunman as she was cycling home from work.

VI. CONCLUSIONS

Sri Lanka has taken important steps over the last two years to address allegations of human rights abuses. After the First and Second Eelam Wars and the JVP insurrection, it became clear that the government practice of adopting the tactics of its armed opponents only made things worse.

The reforms undertaken since the meeting of donor countries in October 1990, leading to the creation of such agencies as the Special Task Force, the Human Rights Task Force, and the Presidential Commission of Inquiry into the Involuntary Removal of Persons, are to be welcomed, although it is still too early to assess how well they are succeeding, particularly in preventing abuses against detainees in the period immediately after arrest. The more the government is able to publicize these new agencies, the more effective they may become.

But in the meantime, other problems persist which the government will have to address as it continues its efforts to prevent abuse. It is still difficult for Sri Lankan citizens to claim their rights have been violated by the state. Those who lodge petitions with the Supreme Court claiming that their fundamental rights have been violated, or lawyers acting on their behalf, can face harassment, intimidation or even death — if they can overcome the logistic difficulties of filing complaints in the first place.

If they succeed in getting charges filed against members of the security forces, it is by no means certain that the latter will be arrested; if arrested, then tried; or if tried, then convicted. Even in the very rare cases where security forces are found guilty, their sentences are often not enforced.

Laws persist, like the Indemnity Act, which undercut attempts to hold security forces accountable for human rights offenses and some restrictions on freedom of expression remain which hamper an open debate over the government's role in human rights violations.

The government has made a good faith beginning in addressing the problem of human rights abuses. The real test will be when ordinary citizens feel that if their rights are violated, they have a very good chance of bringing the person responsible to justice. It will be some time before the principle of accountability takes root in Sri Lanka.

APPENDIX I
MECHANISMS SET UP BY THE GOVERNMENT OF SRI LANKA
TO PROTECT HUMAN RIGHTS

I. The Commission for Elimination of Discrimination and Monitoring of Fundamental Rights

Establishment

This Commission was set up under the Sri Lanka Foundation Law No.31 of 1973 as amended by Act No.35 of 1981. Regulations enacted under the authority of this law were approved by Parliament on July 24, 1986 and published in Gazette No.416 of August 22, 1986. They provide *inter alia* for the establishment of a ten-member commission and the appointment of a Director for Human Rights.

Membership

On the October 1, 1991, it was announced that the Chief Magistrate for Colombo, K.T. Chitrasiri had been appointed Director of this Commission. The current members are:

Faiz Mustapha (Chairman); Godfrey Gunatilleke; Jezima Ismail; S.C. Crossette Thambayah; Deloraine Brohier; Frank Jayasinghe; Mr. Manoharan; Dr. S.A. Cabraal; Mr. Kanage-Iswaran; Col. George Ranatunge.⁷³

Mandate and Functions

The Director may inquire into complaints of discrimination in government employment (the Commission is not empowered to investigate discrimination by a private organisation) and endeavor to mediate and settle such complaints.

Under the Regulations discrimination is defined as:

"Unjust discrimination on the grounds of race, religion, language, caste, sex, political opinion, or place of birth, by the Government, a public corporation, a local authority, a business undertaking owned by the Government or any public company in which the Government holds more than fifty per centum of the shareholding and the expression 'discriminatory act' shall be construed accordingly."

The objects of the Commission are to work towards the elimination of unlawful discrimination and to monitor the observance of fundamental rights. The Commission has the following powers and duties:

(a) to study, investigate, hold public or private hearings on alleged discriminatory acts and to prepare reports thereon;

(b) to keep under review, to study and collect information concerning legal developments

⁷³ *Sri Lanka Information Monitor*, "Year Report 1991," INFORM, January 1992, Sec.III, p.3.

constituting discriminatory acts and alleged violations of fundamental rights and to prepare and disseminate information thereon;

(c) to receive, investigate and endeavor to relieve by mediation, or such other means as is specified in these regulations, discriminatory acts;

(d) to take such action by way of conference, mediation and conciliation as may be requested by the Supreme Court in the course of the hearing of a petition filed before it on alleged discriminatory acts or on alleged infringements or imminent infringements of fundamental rights (including those affecting minorities).

Procedure to be followed

Upon receipt of a complaint the Director inquires into the complaint and summons the complainant, the party complained against and any other person who may be necessary. The complainant must state the grounds of discrimination, and why the person believes he/she has been discriminated against. If the Director finds there has in fact been an act of discrimination he will endeavor to settle the complaint by conference, mediation and conciliation. If no settlement is possible the Director will forward the complaint to the Commission which will then make such inquiry as may be necessary and endeavor to settle the matter. If the Commission also is unable to settle the matter, it may submit a confidential report to the President.

If after inquiry the Director is of the opinion that the complaint is unjustified the complainant should be informed accordingly within 8 weeks of the receipt of the complaint. The complainant may appeal to the Commission from this decision within 2 weeks of the receipt of the notification.

Time restrictions

Complaints can be made to the Director for Human Rights even after the exhaustion of all other remedies or during the pursuit of other remedies as long as the complaint is made within 180 days of the occurrence of the alleged discrimination.

If the complainant wishes to petition the Supreme Court the time limit in Article 126(2) must be complied with (ie the time limit is not extended pending the outcome of a complaint made to the Director for Human Rights).

Remedies

The Director and the Commission can only settle complaints by a process of conference, coalition, and mediation. No orders or judgements can be given and no one can be compelled to settle a matter. The Director and the Commission cannot order compensation for any wrong done.

The government's supplementary second periodic report under the ICCPR (April 8, 1991) sets out details about this Commission. It states that, during the period of a little more than four years of its work, the Commission and the Director have been able to bring about settlements in a large number of complaints of discrimination. It is said that the Commission has confined itself to hearing appeals from the decisions of the Director, or to looking into the cases referred to it by the Director. Cases so referred

are complaints where the Director has been unable to about a settlement. The report provides the following statistics: During the period January 1988 to December 31, 1989, of a total of 2204 complaints, 1441 were settled, 402 complaints had been found misconceived, 47 had been time barred, 119 not pursued, 4 withdrawn, 82 put on hold and 109 were proceeding. In the *Daily News* of the August 19, 1991, it was reported that the Commission had so far received 3442 cases and that it had settled 1576 of them through the adoption of "the mediatory process."

Address:

**The Director for Human Rights,
Sri Lanka Foundation,
27, Independence Avenue,
Colombo 7.
Telephone: 599484**

II. The Special Task Force on Human Rights or The Officials' Committee

Establishment

The appointment of this Special Task Force was announced on the November 30, 1990. This group is now called the Officials' Committee. It is convened and coordinated by Bradman Weerakoon, Presidential Advisor on International Relations, and meets once a month at the Presidential Secretariat. Mr Bradman Weerakoon told the Asia Watch delegation that the Committee also meets regularly with representatives of donor governments to keep them informed of progress.

Membership

The members of the Committee are:

K.N. Choksy, PC and Member of Parliament;
R. Paskeralingam, Secretary, Ministry of Finance;
Tilak Marapona, Additional Solicitor-General;
Walter Fernando, State Secretary for Defence;
Nihal Rodrigo, Director-General, Ministry of Foreign Affairs;
Bradman Weerakoon, Presidential Adviser for International Affairs.

Mandate and Functions

to formulate and implement a strategy to meet charges of human rights violations worldwide;

to coordinate the responses of the Sri Lankan government to such charges;

to collate data to meet allegations of disappearances and extra-judicial executions;

to assist in expediting court and departmental disciplinary action against state officers charged with excesses.

Address:

**Presidential Secretariat
Colombo, Sri Lanka**

III. Human Rights Task Force (HRTF):

Establishment

With effect from August 23, 1991, the President appointed a Human Rights Task Force in terms of Sections 3 and 4 of the regulations made by the Sri Lanka Foundation under Section 19(1) of the Sri Lanka Foundation Law No.31 of 1973.

Membership

J.F.A. Soza, retired Supreme Court judge; Sam Wijesinghe, retired Ombudsman; C. Wijenathan; businessman; P.A. de Z. Karunaratna; lawyer.

Mandate and Functions

The mandate of the Task Force runs for a three year period from the date of appointment. Its function is set out in Emergency Regulation No.673/2, gazetted on July 31, 1991, and described as

"monitoring observance of the fundamental rights of persons detained in custody otherwise than by a judicial order, including the maintainance of a comprehensive and accurate list of persons so detained, the establishment of the proper identity of each such person, the monitoring of the welfare of such persons and recording of complaints and representations made by such persons".

Emergency Regulation No.637/2 para.3 provides that

"where a person is, otherwise than by an order of a competent court, detained in custody under regulations made under the Public Security Ordinance or under the Prevention of Terrorism Act, No.48 of 1979, the person having custody of such detained person shall cause a copy of the order under which such person is being detained to be served on the Human Rights Task Force appointed by regulations made under the Sri Lanka Foundation Law No.31 of 1973."

Under regulations made under s19(1) of the Sri Lanka Foundation Act and contained in Emergency Regulation 674/7 gazetted August 9, 1991 the Task Force is given the power:

- (a) (i) to maintain a comprehensive and accurate register of such persons with full details of their detention and ensure observance of, and respect for, their fundamental rights, and ensure humane treatment for them;**
- (ii) to investigate and establish the identity of each such person by a proper identification process;**
- (iii) to monitor the welfare of such persons;**
- (iv) to ensure the safe handing over of such persons to properly identified next of kin at**

release from detention;

(v) to carry out regular inspections of places of detention, make roll calls and other necessary spot checks and to take immediate steps to remedy any irregularities; and

(vi) to record any complaints or representations or grievances that may be made to it and to take immediate action.

(b) to take such action as may be directed by the Supreme Court in respect of any such persons.

The HRTF has not made any investigation of detentions in the north or north-east. In the south HRTF investigating officers have visited detention camps, interviewed detainees and obtained comprehensive details from them. These are being entered into a central computerized list, however the names of those released are apparently being deleted on release. It would seem preferable to retain such information once collated. At the time of the Asia Watch delegation visit the HRTF had not attempted to list detainees held in police stations or to establish whether a full disclosure has been made of all centers where detainees are being held. In April it was announced that the Task Force would begin making surprise visits to police stations.

Address:

**Human Rights Task Force
75, Norris Canal Road
Colombo 10**

Phone: 694924, 694925

IV. The Presidential Commission of Inquiry into the Involuntary Removal of Persons

Establishment

The Commission was appointed for a one year period by Emergency Regulation 644/27 on January 11, 1991, to inquire into allegations that "persons are being involuntarily removed from their places of residence by persons unknown and that the whereabouts of such persons so removed are not known".

Membership

1. Initial Membership:

H.A.G. de Silva (retired judge of the Supreme Court) Chair; B.E. de Silva (retired judge of the Court of Appeal); A.C.M. Uvais (Attorney at Law).

2. Additional appointments:

K. Viknarajah (retired judge of the Court of Appeal); C.L.T. Moonemale (retired judge of the Court of Appeal).

The Commission also has an investigating unit which is headed by a retired Superintendent of Police, S.B.W. de Silva.

Mandate and Functions

The main task of the Commission is:

"to ascertain the veracity of such complaints (ie of involuntary removal of persons) and to recommend immediate measures to prevent the occurrence of such alleged illegal activity, and to take steps according to law against any person or persons or groups found to be responsible therefor."

According to its original terms of reference, the Commission was empowered to inquire into complaints of 'removal' which occurred in the twelve months period following its inception on January 11, 1991. In January 1992 the Commission's mandate was extended forward another year. The Commission does not have power to investigate incidents prior to January 11, 1991. In relation to complaints which do fall within this time frame the Commission is required to enquire into:

(i) any complaints of such alleged removal, and/or the subsequent lack of information of the whereabouts of the person or persons so removed,

(ii) the evidence available to establish the truth of such allegations,

(iii) the present whereabouts of the person or persons so removed,

- (iv) the identity of the person or persons or groups responsible,**
- (v) the evidence available to establish the truth of such allegations,**
- (vi) the steps at law to be taken against such persons responsible,**
- (vii) whether such illegal acts took place by reason of any lack of legal provision in the present laws relating to law enforcement,**
- (viii) the remedial measures necessary to prevent the future occurrence of such illegal activity.**

Proceedings

On August 5, 1991 the Commission commenced public hearings. They are open to the press and public and continue on a daily basis. By that date the Commission had received 601 complaints. Of these, 535 were outside the mandate of the Commission (ie had not occurred between January 11, 1991 and January 11, 1992). In respect of the balance of 66, the whereabouts of 13 persons had been traced and the complainants duly informed. Investigations into the whereabouts of the other 53 continued. By April 1992 the Commission had received 370 complaints falling within its mandate and was investigating 319 cases, 40 had been traced. Initially, most of the complaints came from the south but more recently complaints from the Eastern province have been made and now form around half of the case load.

Cases

At the time of the Asia Watch mission only two cases had been heard and reports submitted to the President. A third has now been completed and evidence in a fourth case was being heard in March 1992. It is in the President's discretion as to whether or not the Commission's findings will be made public.

V. Civilian Information Centers

At the 47th session of the UN Human Rights Commission in Geneva⁷⁴ the Sri Lankan government referred to "Civilian Information Centers" set up in "affected" areas (of the north and east) to co-ordinate and provide information on persons reported to be missing.

Human rights workers in the areas claim to have no knowledge of such centers. Bradman Weerakoon told the Asia Watch delegation that these centers had now all been closed. He said the names of about 1200 people had been tabulated and had been referred back to security personnel to see what had happened to them. Ben Fonseka in the Ministry of Rehabilitation prepared the report. It is unclear what has happened after the referral of the report.

VI. Mobile Legal Offices

At the same session of the UN Human Rights Commission, in its report to the UN Working Group on Enforced or Involuntary Disappearances in January 1991⁷⁵ the government stated that it had initiated 'Mobile Legal Offices' to assist people wishing to file legal claims. The only 'mobile' offices whose existence the Asia Watch delegation was able to verify were offices linked to the Mobile Presidential Secretariat. No one the Asia Watch delegations interviewed knew of instances where they had achieved positive results. The MP for Matara has reported that he had placed over 600 cases of 'disappearances' before the officials at the Mobile Presidential Secretariat in 1989, and that there had been no action taken.

In November 1990, there was a news report that government agents in each province had been instructed to gather information on 'disappearances' in their areas. Subsequently, there were Mobile Police Days held in several provinces. In Anuradhapura on November 21, 1990, for example, people came forward with 137 complaints of 'disappearances' and 24 cases regarding the welfare of detainees.⁷⁶ Although officials promised a prompt investigation, nearly a year and a half later, Asia Watch could find no information regarding the outcome of inquiries.

⁷⁴See UN Doc. No. E/CN.4/1991/20.

⁷⁵*Report of the Working Group on Enforced or Involuntary Disappearances*, Forty-Seventh Session of the Commission on Human Rights, January 17, 1991, E/CN.4/1991/20.

⁷⁶INFORM; *Sri Lanka Information Monitor*, "Year Report 1991," p.7.

VII. The Committee to Process, Classify and Recommend Rehabilitation and Release of Suspects/Surrendered (The Jayalath Committee)

Establishment

This Committee was appointed in 1988 by the then Minister for National Security.⁷⁷

Membership

D.G. Jayalath (retired judge, Court of Appeal) Chairman; D.P. Kumarasinghe (presently Deputy Solicitor-General); E.P. Amarasinghe (Deputy Commissioner of Prisons); S.K. Jinasena (Assistant Secretary, Ministry of Defense) Secretary.

Mandate and Functions

The Committee is mandated to look into the cases of the large number of suspects detained under the Prevention of Terrorism Act or the Emergency Regulations with a view to making recommendations for their rehabilitation or release.

Proceedings

According to information obtained from the Ministry of Defense the Committee has been proceeding as follows:

"To ascertain the involvements of each suspect the Committee obtained the suspect's version by requesting him to answer a questionnaire to be filled out by a public officer, or by interviewing the suspect by the Committee. A police report is obtained from the Local Police. The Committee also obtained confidential information from the representatives of the NIB and CSD. These reports and other information pertaining to the suspect are considered by the Committee before classification and recommendation for rehabilitation and release of the suspects.

Classification

Category `A': Suspects who have taken part and against whom there is adequate evidence that they are involved in acts of violence of a serious nature, ie. murder, arson, etc.

Category `B': Suspects against whom there is credible information or intelligence suggesting they have taken part in acts of violence, but due to lack of evidence they cannot be prosecuted.

These suspects may be rehabilitated after a long period of treatment.

Category `C': Those peripherily involved — those who pasted anti-government posters, distributed leaflets, distributed threatening letters, collected National Identity-Cards, etc. and who could be rehabilitated and

⁷⁷**With the abolition of the Ministry of National Security the administration of Emergency Regulations and Prevention of Terrorism Acts now come under the Ministry of Defense.**

released on condition under supervision after vigorous counselling including group counselling and after vocational training is given to them.

The period of their institutional treatment would depend on the extent of their involvement and the period required for their vocational training and other factors that may be taken into consideration by the Committee.

Category 'D': Suspects who are found to be absolutely innocent after a thorough investigation by the Committee.

These suspects are recommended to be released immediately.

According to information given to Asia Watch by the Ministry of Defence, the Committee has processed some 16,000. Of these 4,358 had been placed in Categories A (those for whom there was adequate evidence of involvement in serious acts of violence, such as murder, arson, etc) or B (those for whom there was credible information of such involvement, but inadequate evidence to enable prosecution). 6910 suspects had been released after rehabilitation by the Commissioner-General of Rehabilitation. At present the Committee is reviewing cases in Categories A and B with a view to recommending long-term rehabilitation (with the possibility of ultimate release) for those suspects not indicted by the Attorney General due to insufficiency of evidence.

At the time of the delegation's visit many of those recommended for release were said to be still in detention, and of those sent to rehabilitation centers, many also were still not free to leave. Others are reported to have been released. Asia Watch was told that there were delays because there was great pressure of work both for the Committee and for the police who made reports on the suspects. There were also difficulties in getting information, due to people's fear of reprisals if they should give evidence, and the complex nature of some of the cases. The Committee was trying to expedite the investigations.

Some detainees at the Pallekelle camp complained that they had written to the Committee but had received no reply. Asked about this, the Deputy Solicitor-General (DP Kumarasinghe) said that no replies were sent to people in Categories A and B, as these people were not informed of the charges against them. The Committee attempted as far as possible to respond to letters from people in other categories, but was understaffed.

Address:

**The Chairman
Committee to Process, Classify and
Recommend Rehabilitation & Release
of Suspects/Surrendeeds,
Ministry of Defence
Colombo 1**

VIII. The Independent Surrender Committee

Establishment

This Committee, which was one of the recommendations of the Commission on Youth Unrest⁷⁸, was set on April 20, 1991. The Committee was made up of 13 persons, all representatives of political parties:

Membership

Asitha Perera - Liberal Party; Prof. C. Suriyakumaran - All Ceylon Tamil Congress; Justice Jaya Pathirana - Sri Lanka Freedom Party; S.B. Silva - United National Party; A.L.M. Hashim - All Ceylon Muslim League; Sirisena Rajapakse - Sri Lanka Progressive Front; Al-Haj S.M. Sahabdeen - Sri Lanka Muslim Congress; M. Ramalingam - Eelavar Democratic Front; Rupa Kumaratunga - Sri Lanka Mahajana Party; M.K. Sivajilingam - Tamil Eelam Liberation Organisation; Ranjith Puswella - Eksath Lanka Janatha Pakshaya; M.I.M. Mohideen - Muslim United Liberation Front; Ashraff Aziz - Democratic Workers' Congress.

Mandate and Functions

The Committee's mandate was to "take all such measures as were necessary to create a climate of confidence in which those who participated in the youth unrest in recent years and were still at large would feel encouraged to surrender and join the mainstream of national life." The Committee was also empowered to set up a mechanism to expedite inquiries into the cases of those who had surrendered and to visit detention camps and holding centers.

Completion of mandate

The Committee concluded its work on the August 20, 1991. By then, 1871 persons had surrendered to the network of surrender centers set the Committee. These people were subsequently categorized into three broad groups: (a) those who have committed serious offenses, who will be dealt with according to the law; (b) those with slight connection to unrest will be sent for rehabilitation; (c) those who had little or no involvement with the unrest and who could be released "after due inquiry and subject to appropriate conditions." The Committee also set up District Inquiry Committees headed by retired judges to enquire further into these cases.

Recommendations

⁷⁸The Presidential Commission on Youth was appointed on October 19, 1989 with a mandate to examine the causes of youth discontent, disquiet and unrest and to recommend, within 3 months, measures to discourage these attitudes, behavior or conduct. It presented its report and comprehensive recommendations on January 19, 1990, and the report was made public. The establishment of the Independent Surrender Committee as recommended by the Commission on Youth was a beneficial implementation of one of this Commission's recommendations.

The Committee's report set out 19 recommendations to the government. Many of these recommendations could be extremely useful to the protection of detainees if implemented. They are reproduced here in full.

"(1) To set up a mechanism under the Ministry of Defence for the expeditious issue of the reports of the National Intelligence Bureau, Security Co-ordination Division and the area Police which are required for the conduct of inquiries. Difficulties in obtaining these reports are seriously delaying the inquiry process. The Committee fully appreciates the pressures brought on the police and the security forces and their pre-occupation with matters relating to national security. However, the Committee feels that the appointment of a special officer at the Operational Headquarters dealing exclusively with the function of obtaining reports will greatly facilitate the expeditious disposal of inquiries.

(2) The Ministry of Defence to expedite the setting up of Special Inquiry Committees already approved by His Excellency the President for the Pelawatte and Poonani Detention Camps.

(3) To establish Special Inquiry Committees chaired by retired judicial officers to inquire into detainees in other detention camps.

(4) To extend the mandate of the District Inquiry Committees so that they could inquire into detainees as well. Currently their mandate is limited to inquiring into surrenders.

(5) The Committee is of the view that no categorisation of detainees or surrendeers should take place without an opportunity being given such person to present himself before an Inquiry Committee in person. The District Inquiry Committees dealing with surrendeers follows this practice. It is recommended that the same practice be followed by the Committee inquiring into detainees.

(6) The Committee is unanimously of the view that categorisation on the basis of the examination of entries in youth welfare booklets is unsatisfactory. It is for this reason that the Committee has recommended the setting up of a number of Inquiry Committees so that inquiries could be expedited and each surrendeer or detainee would have an opportunity to appear before an Inquiry Committee. The Committee wishes to underscore the importance of the psychological impact on the surrendeer or detainee, of a personal interview with an Inquiry Committee chaired by a judicial officer.

(7) That all detainees in Police stations be transferred to detention centres and that a terminal date be fixed to complete this process.

(8) To review at frequent intervals of time the order made by the Honourable Minister for Defence temporarily suspending releases against the backdrop of the situation prevailing in the country. In this connection the Committee wishes to recommend a staggering of releases giving priority to (i) the aged detainees and surrendeers; (ii) the bread-winners; (iii) women, and (iv) to progressively extend this facility to other categories.

(9) To empower Superintendents of Police in various districts to take additional measures of surveillance in consultation with the Ministry of Defence where persons have been released after due inquiry, who in the opinion of the area police officers should not have been released.

(10) That the Operational Headquarters, the Ministry of Defence, the Commissioner General for Rehabilitation and Chairmen of District Inquiry Committees set up an effective procedure to ensure early

transfer to rehabilitation centres of those detainees or surrendeers whose rehabilitation has been ordered by the various Inquiry Committees.

(11) To make available complete lists of names and addresses of inmates of each detention camp or holding centre for the perusal of the public. These lists should be made available at kachcheris or other convenient centres accessible to the public.

(12) To set up the necessary arrangements relating to the issue of death certificates where it is established that a person has been missing for a period of one year as is now permitted under the law.

(13) To intensify agricultural training in the rehabilitation programmes and to link this with a land alienation policy for released youth and an aggressive agricultural extension service.

(14) To involve youth who have been released in the Janasaviya Programme, the proposed National Development Service Programme, the Vocational and Technical Training Programmes, and the development planning programmes of the Ministry of Public Administration, Provincial Councils and Home Affairs and Ministry of Youth Affairs, and to take concerted action to help released youth to find gainful employment and join the mainstream of national life of the country. Towards this end the Committee recommends the setting up of a Presidential Co-ordinating Committee.

(15) To establish a Task Force of professionals to sift and analyse the wealth of information contained in police reports, security service reports and the youth welfare booklets which could provide well substantiated conclusions relating to the two youth insurrections of 1971 and 1987. The Task Force should present their report to His Excellency the President.

(16) To take measures to strengthen the confidence in the police and security forces by ensuring:-

(i) that arrests are not made at night, and

(ii) when arrests are made, the next of kin or the chief householder is informed of the identity of the person making the arrest, and the place in which such person will be held, and also to guarantee the security and the safety of the person arrested.

(17) Since there appears to be an inevitable delay in the completion of the inquiry process, arising out of a variety of reasons, and detainees remain in detention centres often for periods exceeding 2 years, the Committee therefore, recommends that detainees be provided, while under detention, with facilities and programmes that fulfill their various economic, cultural and educational interests. This will both prevent frustration and resentment in them and prepare them for later rehabilitation and absorption in the community. These facilities may include agricultural, showing of educational video films, and engaging in literary, religious and cultural and other creative activities. The Officers-in-Charge of detention centres should be encouraged to formulate and execute such programmes with the support and assistance of the government, non-governmental organisations, social organisations and private sector.

(18) The Committee feels a certain obligation towards those who surrendered in response to their call and feels it necessary to make some arrangement to ensure the continued safety and welfare of these surrendeers, now that the Committee has terminated its functions. The Committee therefore recommends that His Excellency the President be pleased to authorise the Members of the Independent Surrender

Committee to continue to liaise with the Ministry of Defence and Officers-Charge of holding centres, visiting these centres where necessary, to ensure the safety and welfare of the surrendeers until such time as the inquiries are completed.

(19) To consider reconvening the Independent Surrender Committee, if so required, at a later date.

IX. Kokkadicholai Commission

Establishment

This Commission was appointed pursuant to the provisions of Section 2 of the Commissions of Inquiry Act (Chapter 393) subsequent to a report by Justice D.G. Jayalath, retired Justice of the Court of Appeal who had visited Kokkadicholai the day after the incident which is the subject of the Commission's enquiry.

Membership

- 1. K.D.O.S.M. Senevirantne (Chairman)**
- 2. S. Selliah**
- 3. Dr A.M.M. Sahabdeen.**

Mandate and Functions

The Commission's powers are to inquire into and obtain information in respect of the circumstances relating to:

- (1) The explosion of a device buried under the surface of the road between 12 noon and 1.30 p.m. on June 12, 1981 on the Kokkadicholai-Manmunai Ferry Road, in the Batticaloa District in consequence of which two soldiers were killed and a third seriously injured;**
- (2) The deaths of sixty-seven civilian inhabitants of the villages of Mahiladitivu, Mudhalaikuda and Munaikadu, in the Batticaloa District, and the destruction of property in the said village.**

and to report on:

- (a) whether there is any connection between the two incidents**
- (b) whether the incidents in paragraph (2) above resulted from any action taken by any members of the armed forces, and if so whether it was a result of:**

(i) military action taken against those who occasioned or were suspected of having assisted the causing of the explosion referred to in paragraph (1) above, or were suspected harbouring those so responsible, or

(ii) military action in excess of the needs of the situation, taking action against those who occasioned, or were suspected of having assisted the causing of the explosion referred to in paragraph (1) above, or were suspected of harbouring those so responsible, or

(iii) deliberate retaliatory action taken against those who were suspected of having assisted the causing of the explosion referred to in paragraph (1) above, or were suspected of harbouring those so responsible, or

(iv) deliberate retaliatory action taken against persons not any way connected with the causing of the explosion referred to in paragraph (1) above, or suspected of harbouring those so responsible,

(c) whether action if any, against any members of the Armed Forces, should be under Military Law or the normal Civil Law,

(d) whether the incidents in paragraph (2) above resulted in any action taken by persons other than any members of Armed Forces, and if so, by whom such action was taken,

(e) what compensation would suffice to make reparation for financial loss suffered by any civilian inhabitants, of the villages of Mahiladitivu, Mudhalaikuda and Munaikadu, in Batticaloa District, as a consequence of the incidents referred to in paragraph (2) above,

(f) what steps should be taken to prevent the recurrence of such or similar incidents, and to make such recommendations with reference to any of the matters that have been inquired into under the terms of this Warrant."

Proceedings

The Commission visited the scene of the incident on the island of Kokkadicholai in late June 1991. Witnesses had been questioned and observations made. On June 25 and 26th the Commission published notices in the newspapers, in Sinhala, Tamil and English, calling for any persons who wished to give evidence before the Commission and/or to make written representations.

The Commission began its sittings in July 1991. During the course of its enquiries sittings have been held both in Colombo and in Batticaloa. Those in Batticaloa have been held at the Air Force Base where between July 29 and September 16, 1991, the evidence of 80 witnesses was recorded. The sittings in Colombo are held at the B.M.I.C.H.

The following officers who had been attached to the Kokkadicholai Army Camp were placed under close arrest from June 12, 1991 until November 27, 1991 when they placed under open arrest at the Head Quarters of the Gemunu Watch at Diyatalawa.

(1)	Lt.	H.A.S. Kudaligama	(5th Battalion Gemunu Watch)
(2)	Cpl.	Nandasena D.H.	(5th Battalion Gemunu Watch)
(3)	Cpl.	Wickremasinghe M.	(5th Battalion Gemunu Watch)
(4)	Cpl.	Wijeyananda R.P.G.L.	(5th Battalion Gemunu Watch)

(5)	L/Cpl.	Bandula Pradeep L.H.	(5th Battalion Gemunu Watch)
(6)	L/Cpl.	Amarasena N.G.	(5th Battalion Gemunu Watch)
(7)	L/Cpl.	Jayarathne M.A.N.	(5th Battalion Gemunu Watch)
(8)	L/Cpl.	Sudath R.M.	(5th Battalion Gemunu Watch)
(9)	L/Cpl.	Ariyaratne K.A.	(5th Battalion Gemunu Watch)
(10)	L/Cpl.	Ananda G.V.W.	(5th Battalion Gemunu Watch)
(11)	Pvt.	Ranatunge G.D.S.H.	(5th Battalion Gemunu Watch)
(12)	Pvt.	Jayarathne W.M.A.	(5th Battalion Gemunu Watch)
(13)	Pvt.	Pathmananda R.M.	(5th Battalion Gemunu Watch)
(14)	Pvt.	Dasanayake W.D.M	(5th Battalion Gemunu Watch)
(15)	Pvt.	Upalie H.A.	(5th Battalion Gemunu Watch)
(16)	Pvt.	Ranaweera P.J.	(5th Battalion Gemunu Watch)
(17)	Pvt.	Senadheera S.H.M.	(5th Battalion Gemunu Watch)
(18)	Pvt.	Kumarasinghe T.S.	(5th Battalion Gemunu Watch)
(19)	Pvt.	Mahinda E.G.	(Pioneer Corps)

According to information from the Sri Lankan Embassy in Washington by December 1991 136 witnesses had testified, and it was anticipated that the evidence of 46 further witnesses would need to be recorded before turning to the evidence of army personnel and other official witnesses. In January Asia Watch heard that army personnel were refusing to testify before the Commission making further delays inevitable. By that time, the Commission had concluded the recording of evidence of witnesses regarding the deaths and missing persons. The remaining witnesses were to testify about damage caused to houses and property.

Due in part to international pressure, the Commission's preliminary report was released on January 30, 1992. It found that army personnel stationed in Kokkadicholai were responsible for the retaliatory killings and five soldiers, including one officer were in military custody. None of the army personnel allegedly responsible for the massacre were required to testify. Only the camp commander gave evidence, and only in the form of unsworn testimony.

The Commission's full report was released in late March 1992, recommending the payment of Rs.5,245,225 in compensation for deaths, injuries and damage to property to 189 families. The Commission's final report failed to identify the offending soldiers and recommended that the army investigate and take action under military law. The Commission also called on the army to provide better instructions and training to military personnel.

All sittings of the Commission were public sittings attended by the Press and other interested persons.

Completion of mandate

Initially the mandate required the Commissioners to investigate the incident and to report on it, the report to be completed within 3 weeks. However due to the procedures adopted, the numbers of witnesses heard, and the difficulties experienced by some of the witnesses in getting to the hearings the time limit was extended.

X. Proposed Human Rights Commission

Establishment

There is a proposal to establish a new Human Rights Commission under a new Human Rights Commission Law. The proposals for the Commission are currently before the All Party Congress.

Mandate and Functions

According to the current draft the general objectives of the Human Rights Commission are comprehensive. Some of the more important provisions are listed below:

"7.(a) To promote the equality and dignity of human beings, and encouragement of general respect for all human rights and fundamental freedoms for all without distinction as to race, sex, language, religion, caste, political opinion or place of birth.

(b) To take all actions and measures that are necessary to ensure the promotion of human rights and fundamental freedoms, and the elimination of discrimination on the basis of race, sex, language, religion, caste, political opinion or place of birth.

(c) To establish mechanisms for the protection of human rights and fundamental freedoms and the elimination of discrimination.

(d) To promote the peaceful resolution of conflict within the framework of a democratic and just social order.

(e) To document and monitor all violations of human rights and fundamental freedoms, especially widespread and systematic violations, and those violations affecting minorities and disadvantaged groups."

For the purpose of promoting human rights and fundamental freedoms, and eliminating all forms of discrimination, the Commission shall have the power and duty to:

8.(a) initiate studies and investigations into alleged violations of fundamental rights and freedoms;

(b) resolve disputes through mediation and conciliation;

(c) resolve disputes through adjudication, where mediation is not appropriate, and/or has not been successful;

(d) conduct public education programmes regarding the promotion of human rights and fundamental freedoms;

(e) monitor and document violations of human rights and fundamental freedoms, including systematic violations and violations of the rights of groups;

(f) hold regular public hearings where persons or groups of persons can make submissions;

- (g) prepare public reports at regular intervals, not less than once a year;**
- (h) design such programmes and plan such actions promoting the human rights and fundamental freedoms of minorities and disadvantaged groups;**
- (i) advise any body, institution or person, governmental or non-governmental, regarding the incorporation of human rights norms in any legislation, subsidiary legislation, administrative practice or other document, code or practice;**
- (j) do all such other things as are necessary for, or incidental to, the attainment of the objects of the Commission.**

14. The Commission shall have the jurisdiction to inquire into any allegation regarding the violation of human rights and fundamental freedoms by a State or non-State actor, at its own initiative, or on receiving a complaint from any of the public.

15. Any person who considers him or her self to be aggrieved by an act that violates his or her human rights or fundamental freedoms may invoke the jurisdiction of the Commission.

36. On receipt of an investigation report, the Commission shall first endeavor to resolve the complaint by way of mediation and conciliation.

45. In the event that mediation and conciliation is not successful, or that any of the parties objects to mediation and conciliation on reasonable grounds, and/or that the Commission considers mediation and conciliation to be inappropriate, the complaint shall be referred for adjudication.

53.(a) There shall be established an Human Rights Adjudicatory Panel consisting of a chair and ten other persons.

61. Where it is established to the reasonable satisfaction of the Hearing Panel that the defendant has done an act that is in violation of the human rights and fundamental freedoms of the aggrieved person or persons, the Commission shall have the power to grant such relief or make such directions as it may deem just and equitable in the circumstances in respect of any violation of human rights and fundamental freedoms including: (three specific instances follow)

64. Any person or group of persons who refuses to comply with an order made by the Hearing Panel in terms of the above sections shall be guilty of the offence of contempt against, or in disrespect of the authority of the Commission and shall be punishable in terms section of this Law.

69. The Commission shall submit to Parliament, every year, a report documenting the activities of the Commission. This report shall also document widespread violations of human rights and the existence of any legislation or administrative practices which are in conflict with the people's human rights and fundamental freedoms.

73. The Commission shall develop and conduct information programmes to foster public understanding of this Law and the role and activities of the Commission thereunder and to foster public recognition of the principles of human rights and fundamental freedoms.

83. The Commission shall review all bills published in the Gazette with a view to ascertaining whether the provisions of the bill are in violation of the human rights or fundamental freedoms of any citizen or group of citizens."

XI. The Organisation for the Protection of Human Rights Through Law Enforcement Agencies (ORPTLEA).

Establishment

The Organisation for the Protection of Human Rights Through Law Enforcement Agencies (ORPTLEA), was set up by the authority of the Sri Lanka Foundation and presented as a tool for limiting violations by the police. ORPTLEA was referred to by the Attorney General in a report to the UN Human Rights Committee⁷⁹ as a body which has taken several useful steps in the dissemination of human rights information to law enforcement agencies. Its objectives as he described them were to:

"study and formulate the principles, practices, procedures and prerequisites for the observance of human rights in the performance of law enforcement functions in Sri Lanka, and to assist in formulating policies and codes of conduct which through co-ordination and integration would advance the administration of justice in general and the observance of human rights in particular."

In his report to the Human Rights Committee, the Attorney General named the President of the Sri Lankan Bar Association as an ex-officio member of the Committee and the Executive Committee of the Bar Association was said to nominate two members of the Bar Council as members. Officials of the Bar Association, however, knew nothing about ORPTLEA until they saw the government's report to the Human Rights Committee.

Membership

According to that report, the membership is classified as Ex-Officio Members and Nominated Members. The Ex-Officio members will be:

- (1) Chairman, or other member of the Judicial Service Commission, appointed by the Chairman, Judicial Service Commission.**
- (2) The Attorney General**
- (3) The Secretary, Ministry of Defence**
- (4) The Secretary, Ministry of Justice**
- (5) The Secretary, Ministry of Social Services**
- (6) The Inspector General of Police**

⁷⁹UN Doc.CCPR/ C/42/Add.9, p.5.

- (7) The Commissioner of Prisons**
- (8) The President of the Bar Association of Sri Lanka**
- (9) The Chairman, Sri Lanka Foundation.**

The nominated members will be;

- (1) Two persons to be nominated from the Judicial Service**
- (2) Two persons to be nominated by the Attorney General**
- (3) Two persons from the Armed Services**
- (4) Two persons from the Departments of the Ministry of Justice**
- (5) Two persons from the Department of Probation and Child Care Services**
- (6) Two persons from the Police Department**
- (7) Two persons from the Prisons Department**
- (8) Two persons from the Bar Council nominated by the Executive Committee of the Bar Association**
- (9) Two persons to be nominated from the Sri Lanka Foundation by the Chairman, Sri Lanka Foundation**

There will be a group or persons who shall be designated as Advisers to the Organisation. The Advisers will be:

- (1) The Bribery Commissioner**
- (2) The Secretary, Ministry of Education or his nominee**
- (3) The Secretary, Ministry of Higher Education or his nominee**
- (4) A representative in the field of Forensic Medicine nominated by the Chairman of the University Grants Commission**
- (5) A representative in the field of law, nominated by the Chairman of the University grants Commission**
- (6) A representative in the field of Sociology nominated by the Chairman of the University Grants Commission**
- (7) Director of the Judges Institute**
- (8) The Chairman, National Dangerous Drugs Control Board**
- (9) The Secretary, Ministry of Labour or his nominee**
- (10) Any other person appointed by the Council.**

Mandate and Functions

The objects of the Organisation will be -

- (1) To take steps to promote and co-ordinate the work of law enforcement officials and agencies in their recognition of, and respect for, human rights as accepted and formulated by the community of nations.**
- (2) To study and formulate the principles, practices, procedures and pre-requisites for the observance of human rights in the performance of law enforcement functions in Sri Lanka.**
- (3) To assist in formulating policies and codes of conduct which, through co-ordination and integration, would advance the administration of justice in general and the observance of human rights in**

particular.

(4) To encourage every law enforcement official and agency to observe the duty of disciplining themselves in conformity with the principles and standards as formulated in the Universal Declaration of Human Rights, fundamental rights as embodied in the Constitution and laws of Sri Lanka and such other Human Rights Instruments as may be ratified by the Government of Sri Lanka.

(5) To take all necessary steps including the holding of seminars, conferences and exhibitions, the preparation and dissemination of literature and information for the furtherance of the above objects.

Proceedings

In the second supplementary periodic report made by the government under Article 40 ICCPR (April 8, 1991) it was reported that the organisation had taken several meaningful steps to implement further the UN Code of Conduct for Law Enforcement Officials and had conducted several national and international seminars and training programs for law enforcement officers with a view to improving the quality of human rights protection in Sri Lanka.

The government also reported there that the organisation had distributed human rights literature to the Armed Services, has prepared and displayed posters of the Universal Declaration of Human Rights, the UN Code of Conduct for Law Enforcement Officers and Rules for Behavior in Combat, had conducted seminars for the conscientization of Armed Service personnel and the Police in Human Rights norms.

XII. Committee to Probe the Arrest of Students

This information is taken from the Human Rights Committee proceedings considering the government's second periodic report under the ICCPR. No further information is available.

Membership

This committee is headed by a senior Cabinet Minister.

Mandate and functions

The purpose of this Committee is to "ensure that only young people and students who had participated in subversive activities were arrested by the security forces and to guarantee the protection of the law to those who had been arrested."

XIII. Presidential Commission on Youth Unrest

Establishment

The Presidential Commission on Youth was appointed under Section 2 of the Commissions of Inquiry Act (Cap 393).

Membership

The following members were appointed:

**Professor L. Jayatileke (Chairman); Professor G.L. Peiris; Dr. R. Coomaraswamy;
A.S.M. Ali; R.I.T. Alles; M. Ruwanpathirana; S. Fernando**

Mandate and Functions

"The Government, having pledged to eliminate the causes which resulted in violent opposition to the democratic way of life, is taking several measures in this direction. Very recently, the President appointed a Committee to investigate youth unrest, and mandated it to identify causes for such unrest and suggest ways to strengthen their efforts for the protection of human rights and the restoration of peace and normalcy in Sri Lanka." (This information is taken from the Human Rights Committee proceedings considering the government's second periodic report under the ICCPR (April 1991.)

The terms of reference were to inquire into and obtain information in respect of "disquiet, unrest and social discontent among a section or sections of the youth and the factors which have contributed to the existence and growth of such discontent" and report on

- (a) the causes for such disquiet, unrest and discontent sometimes manifesting itself in the rejection of existing institutions and in acts of violence,**
- (b) any existing or perceived grievance, improper discrimination or lack of equal treatment leading to such attitude, behavior or conduct,**
- (c) any inadequacy in the policies and the administration of any governmental agency or other public body, or educational institute, in the satisfaction of legitimate youth needs and aspirations, and, within a 3 month period to make recommendations with reference to any of these matters.**

Conclusions and Recommendations

The Commission issued a comprehensive report (which has been made public) on the last day of the 3 month period of its mandate.

XIV. Ombudsman

This information is taken from Sri Lanka's supplementary second periodic report under the ICCPR (April 8, 1991).

Establishment

An Ombudsman (Parliamentary Commissioner for Administration) was created under the Parliamentary Commissioner for Administration Act No.17 of 1982. Provision for the establishment of such an office is contained in Article 156 of the Constitution.

Mandate and Function

The Ombudsman is required to investigate petitions concerning the infringement of a fundamental right or other injustice by public officials presented to a special parliamentary committee by Members of Parliament. At the conclusion of his inquiry, the Ombudsman reports to the committee with his recommendations.

The Ombudsman is vested with wide powers under Sections 10, 15 and 16 of the 1982 Act. He may investigate not only a violation of a fundamental right but any other case of injustice. He may refer a question of fact or law of exceptional public importance to the Supreme Court for determination. Once the Ombudsman has concluded his investigation he is required to report to the Parliamentary Petitions Committee.

During its consideration of Sri Lanka's Second Periodic Report under the ICCPR, the expert from Sweden asked why it was necessary for an aggrieved party to go through his or her Member of Parliament in order to use this avenue of redress. He also expressed concern as to whether MPs would in any case be aware of the ICCPR and the rights it sought to protect. In response the Attorney General stated that the Ombudsman was "an additional remedy...and individuals had access to other remedies." It would seem that this remedy would be of greater use if it were more accessible.

APPENDIX II

