

SECURITY WITH
HUMAN RIGHTS

LOCKED AWAY

SRI LANKA'S SECURITY
DETAINEES

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of more than 3 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

AMNESTY
INTERNATIONAL



First published in 2012 by
Amnesty International Ltd
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom

© Amnesty International 2012

Index: ASA 37/003/2012 English
Original language: English
Printed by Amnesty International,
International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Cover photo: Guards' quarters at Welikada prison, Colombo, Sri Lanka.

© Gaston Lacombe for International Bridges to Justice

www.amnesty.org

CONTENTS

1.	SUMMARY	5
2.	INTRODUCTION	6
3.	THE FRAMEWORK OF UNLAWFUL DETENTION	10
	THE PREVENTION OF TERRORISM ACT	13
4.	PATTERNS OF ARBITRARY DETENTION IN SRI LANKA	15
	DENIAL OF DUE PROCESS	18
	TORTURED.....	22
	DENIED ACCESS TO FAMILY	27
	DENIED ACCESS TO LEGAL COUNSEL	29
	DETAINED INCOMMUNICADO / ENFORCED DISAPPEARANCE	31
	THREATENED.....	34
	DEMANDS FOR BRIBES	36
5.	“REHABILITATED”?	38
6.	CONCLUSIONS	44
	RECOMMENDATIONS.....	45
7.	ANNEX	48
	Presidential Directives on Protecting Fundamental Rights of Persons Arrested and / or Detained.....	48
	19 August 2011 Regulations under the Prevention of Terrorism Act.....	49
	Letter to Sri Lanka's Commissioner General of Prisons, May 2011.....	50
8.	ENDNOTES	52

THE RIGHT TO LIBERTY: ARTICLE 9 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

- 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**
- 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.**
- 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.**
- 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.**
- 5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.**

1. SUMMARY

The Sri Lankan government won its long war with the Liberation Tigers of Tamil Eelam (LTTE) in 2009, but the legacy of unlawful detention practices established during the conflict continues. Constitutional provisions and other legal and procedural guarantees meant to protect individuals from wrongful incarceration and ensure fair prosecution of suspects have been supplanted in Sri Lanka by provisions of antiterrorism laws and emergency measures geared to serve perceived military expediency rather than protect human rights and the rule of law.

For the past three decades, Sri Lankan authorities have circumvented or ignored protections built into the ordinary criminal justice system, sometimes acting outside the law, but often taking advantage of security legislation that allowed them to arrest suspects without evidence or warrants and to hold them without charge or trial for extended periods. This security regime has been a way of life for a generation of policymakers, law enforcement and military personnel, civil servants and ordinary Sri Lankans. It has warped public concepts of justice and due process, and eroded faith in law enforcement. It has disabled healthy checks on executive power, expediting arrests and detentions at the expense of human rights, obstructing legal challenges to detention, and restricting the free flow of information.

Hopes that the end of the armed conflict would end (or at least decrease) these practices have been frustrated. Sri Lankan authorities continue to arrest and detain suspects without minimal safeguards. Sri Lankan law permits police to remove prisoners from their cells and transport them from place to place for the purpose of investigation – a practice that has contributed to torture and custodial killings. Detainees have been held incommunicado and tortured in unofficial places of detention which have included private homes, repurposed schools, administrative buildings and warehouses. Torture, enforced disappearances and extrajudicial executions continue in Sri Lanka in part because of these arbitrary detention practices. The culture of impunity that was established in Sri Lanka during the course of the armed conflict continues to pervert the rule of law and hamper the provision of justice.

This report exposes ongoing unlawful detention practices in Sri Lanka as part of a pattern of human rights violations that has persisted after the end of the armed conflict. Sri Lankan authorities must stop these practices, investigate and prosecute reported human rights violations against detainees, and repeal or amend laws that do not conform to international human rights standards.

2. INTRODUCTION

Arbitrary and illegal detention have become routine tools of law enforcement in Sri Lanka. They are used against people the Sri Lankan government believes may be security threats, including suspected members of armed groups, but also against their family members and colleagues; they have been used to arrest outspoken, peaceful critics and other perceived political opponents of the government, including journalists, as well as some prominent criminal suspects and individuals attempting to migrate illegally.¹ Some people have been detained without trial for years. Most security detainees are eventually released for lack of evidence.

The LTTE also detained thousands of prisoners over the course of the conflict, many of whom were held incommunicado, tortured and killed. Among the LTTE's reported prisoners were Tamils it suspected of disloyalty to its cause, Sri Lankan police and military personnel, and Sinhalese and Muslim civilians.²

Unlawful detention in Sri Lanka is linked to a climate of impunity where human rights violations of all types go uninvestigated and unpunished. Unlawful detention means innocent individuals may be denied justice; it can also mean that people who are guilty of crimes escape accountability. Although many people in Sri Lanka have been detained without any evidence of wrongdoing, some may face credible charges and should be subject to prosecution.

International law prohibits arbitrary detention. The principle that "No one shall be subjected to arbitrary arrest, detention or exile" is enshrined in Article 9 of the Universal Declaration of Human Rights. The prohibition of arbitrary detention is recognised as a rule of customary international law, and therefore binds all states irrespective of whether or not they have treaty obligations. This prohibition extends to times of war.³

Sri Lanka authorities imprison individuals for months and years for alleged unlawful acts, without bothering to prosecute and prove to a court that they have indeed broken the law. In Amnesty International's view, such conduct is the epitome of "arbitrary arrest or detention".

The use of unlawful detention against suspected supporters of armed groups in Sri Lanka dates back decades. In 1993 Amnesty International found that almost 5,000 political prisoners suspected of involvement with the JVP uprising of 1988–1991 had been detained without charge in detention camps, prisons, police custody and "rehabilitation" camps in Sri Lanka.⁴ Since armed conflict with the LTTE erupted in 1983, tens of thousands of Tamils suspected of links to the LTTE have been arrested and detained under the Prevention of Terrorism Act (PTA)⁵ and Emergency Regulations promulgated under the Public Security Ordinance,⁶ for the purpose of investigation and interrogation by Sri Lanka's intelligence and security forces, or for what the Sri Lankan authorities have termed rehabilitation.⁷

On 30 August 2011, Sri Lanka finally lifted the state of emergency, which had been in place almost continuously since 1971,⁸ but retained the repressive PTA, which contains many similar provisions to the now lapsed Emergency Regulations.⁹ The authorities simultaneously introduced new regulations under the PTA which maintained the ban on the LTTE and continued the detention of LTTE suspects without charge or trial.¹⁰ People released from months or years in detention have remained under surveillance by intelligence forces; they are frequently required to report weekly or monthly to the police. The Sri Lankan Army, which maintains a massive presence in the north,¹¹ is deployed for civil policing under Sri Lanka's Public Security Ordinance,¹² and the Special Task Force (STF), an elite police commando unit with a history of human rights violations,¹³ remains active island-wide. Former detainees have been harassed, rearrested and physically attacked. Killings and enforced disappearances of newly released detainees have also been reported.

HUMAN RIGHTS DEFENDER FORCIBLY DISAPPEARED AFTER RELEASE FROM DETENTION

Stephen Sunthararaj, a project manager for the Centre for Human Rights and Development (CHRD) in Colombo, was abducted in May 2009 by armed men reportedly wearing military uniforms immediately following his release from almost three months in police detention in Colombo. He remains missing and no progress has been made in the investigation into his apparent enforced disappearance.

According to CHRD, Sunthararaj was taken into custody by the Sri Lankan Army near the CHRD office on 12 February 2009 and handed over to the Kollupitiya Police where he was detained until 7 May 2009. Fundamental rights application No. SCFR 265/2009 seeking his release was filed with the Supreme Court; and is still pending. After several representations made to the Authorities by his wife, Sunthararaj was produced in Fort Magistrate Court on 7 May 2009 (Case No B330). He was released from police custody by the court at about 3.30 p.m.

While returning from court in the vehicle of their lawyer K.S. Ratnavale, Stephen Sunthararaj and his wife observed that they were being followed by two persons travelling on a motor bike. They identified the men as two army intelligence officers in civil dress who had been present at the police station where Stephen had been held and who had reportedly attempted to prevent his release. They reportedly followed the car Sunthararaj was travelling in up to the Kollupitiya Junction in Colombo. Stephen Sunthararaj and his wife continued on to the CHRD office nearby, and arranged to have their children collected from home so that the family could stay at a friend's house.

In the evening around 6.00 pm the family left the CHRD office in the friend's vehicle. On the way they stopped at the Kollupitiya Police Station to retrieve Sunthararaj's mobile phone, passport and bank books which the police had confiscated when he was detained. They were approaching the Town Hall Junction, when two people travelling on a motor bike blocked their way. A white van pulled up close to the vehicle and 4 or 5 people alighted, reportedly wearing army uniforms and armed with pistols. They forced open the door of the vehicle in which Sunthararaj and others were travelling, grabbed him, bundled him into the van and sped off. They also took the ignition key for the vehicle, preventing the driver from pursuing them.

Officers of the Cinnamon Garden Police took the vehicle together with the passengers to the Cinnamon Garden Police Station where their statements were obtained. According to CHRD, after his abduction, Palitha Kohana, then Permanent Secretary to the Ministry of Foreign Affairs, reportedly told US and EU diplomats that Stephen Sunthararaj had been arrested, not abducted, and that he was in state custody.¹⁴ Three years later, there has still been no official acknowledgment of the detention of Stephen Sunthararaj and no information provided to his family about his whereabouts or wellbeing.

Sri Lanka's police and armed forces (the Army and Navy prominently), and affiliated intelligence units all detain and interrogate prisoners. Armed Tamil groups affiliated with the Sri Lankan government are also known to capture, detain and question prisoners at the behest of the authorities. All these institutions have been accused of holding detainees incommunicado and without charge. Some detainees have been warned prior to release not to communicate with human rights organizations or otherwise reveal information about their detention under the threat of re-arrest or death. Others have been offered deals – such as publicly recanting previous statements that were critical of the authorities, or denouncing someone else in exchange for release. Members of the security forces have used secret places of detention to interrogate and torture detainees, some of whom have reportedly been tortured to death or extrajudicially executed. Family members of wanted suspects have been arrested, threatened or forcibly disappeared to put pressure on the individual to surrender.

Critics of the government's arbitrary detention practices have themselves been subject to harassment, attacks and unlawful detention. On 9 December 2011, in Jaffna, two activists were apparently subjected to enforced disappearance en route to a meeting to organize a rally by families demanding the release of Tamil detainees held without charge.¹⁵ Colleagues allege that they were abducted by the army in Jaffna and suspect they are held being in secret and incommunicado.

Amnesty International opposes all systems of administrative detention, including those based on unsubstantiated accusations that a person represents a threat to security or public order. It is unacceptable for governments to ignore safeguards built into ordinary criminal justice systems to ensure that people receive due process and are protected against unlawful deprivation of liberty. Administrative detention must not serve as a substitute for criminal proceedings; the fact that the police have been unable to gather sufficient proof to prosecute a person suspected of involvement in illegal activities does not justify administrative detention.

Amnesty International calls for the abolition of all provisions in laws, ordinances and regulations empowering the authorities to hold people in administrative detention in Sri Lanka. The organization further calls on the Sri Lankan authorities to release all those held under administrative orders, unless they are charged with internationally recognized offences and remanded by an independent, civilian court.

In conducting research for this report Amnesty International interviewed former detainees and family members of current ones – many of whom requested anonymity to reduce the risk of retaliation against relatives in Sri Lanka. Amnesty International reviewed legal case material submitted to the organization by individuals and their lawyers, as well as material collected by other organizations and legal researchers. Amnesty International takes no position on the guilt or innocence of individuals whose detentions are discussed in this report, but

emphasises that everyone must be able to enjoy the full range of human rights guaranteed under national and international law, in particular their right to due process.

Examination of the case material revealed a number of consistent, common complaints:

- Abduction-style arrests without warrant by unidentified, plain-clothed agents utilizing unknown or unofficial places of detention for initial interrogations – some detainees did not even know which branch of the security forces was responsible for the initial arrest, let alone the names of arresting officers.
- Family members of persons wanted for questioning by the authorities have been harassed, threatened and even detained in their place.
- Many were never formally told why they were arrested or how long they might be held, and some did not know under what law they were detained. Families, who may live far from the place of detention, typically knew even less about the laws and procedures being applied to their relatives in detention.
- Detainees' access to family members was frequently obstructed, and notification of relatives when people were arrested or transferred from one facility to another was inconsistent.
- Detainees were routinely denied access to legal counsel during the initial period of detention, lasting days or weeks. Some believed they had no right to a lawyer while in the custody of police or intelligence services.
- Detainees were rarely allowed to challenge their detentions in court; most court procedures were limited to rubber stamping detention orders and transfers.
- Detainees report being subjected to torture or other cruel, inhuman or degrading treatment or punishment (other ill-treatment), in particular beatings ; they accused military personnel and paramilitary cadres working with government forces police, inmates and prison guards of abuse.
- Police and army personnel sought bribes in exchange for releasing detainees.
- Individuals released by the authorities have continued to be subjected to military surveillance, re-arrest, and harassment by the authorities. Some were warned against telling others about their mistreatment. In all cases people contacted by Amnesty International outside the country expressed fear that relatives still in Sri Lanka would face retaliation if they spoke publicly about their situation.

3. THE FRAMEWORK OF UNLAWFUL DETENTION

Preventive or administrative detention is permitted under Sri Lankan law for perceived security threats and for compulsory participation in “rehabilitation” in the case of people who surrender to the authorities in connection with certain security offences (“surrendees.”)¹⁶ These powers were granted by temporary Emergency Regulations that lapsed with the end of the state of emergency in August 2011 – and in the more permanent counter-terrorism statute, the Prevention of Terrorism Act (1979), which is the principle law now being applied to administrative detainees. In the past, these laws were often applied in succession to prolong the administrative detention of suspects. The extended abuse of this legal framework (justified as necessary during the conflict) created an environment in which unlawful detention became the norm in Sri Lanka, and associated violations, such as torture, enforced disappearances, and even extrajudicial executions became pervasive. Amnesty International's research showed that torture and other ill-treatment are most prevalent during pre-trial detention and especially in cases of incommunicado detention and enforced disappearance. Sri Lanka's track record is particularly poor in this regard; arbitrary detention has been practiced on a widespread and systematic basis. With the end of the conflict, however, there is no sign that the situation has improved.

The Emergency Regulations were created under the Public Security Ordinance. They allowed for up to 12 months preventive detention, or for up to 24 months under Regulation 22 of the Emergency Regulations 2005 (ER 2005 as amended by ER 1462/8, 2006) for “rehabilitation” of persons who surrendered to the authorities in connection with a variety of security offences described in the regulation. In 2009 regulation 22 was applied by the authorities “for the purpose of rehabilitating and re-integrating approximately 12,000 ex-LTTE [c]adres who either surrendered or were forced to surrender during the final stages of the conflict.”¹⁷

Some witnesses told Amnesty International they were unsure what law they or their relatives were currently held under, but thought the authorities had employed two or more different pieces of legislation to extend their total time in detention without charge. Amnesty International learned for example, that a widely publicized release of 118 PTA prisoners from Boosa detention centre in March 2011, was in fact merely a transfer from one form of arbitrary detention (custody of the police Terrorist Investigation Division) to another (detention for up to two years under the Emergency Regulations in Poonthottam rehabilitation camp), still without the benefit of charge or trial.

In May 2011 Amnesty International wrote to Sri Lanka's Commissioner General of Prisons seeking information about detainees held under the PTA and emergency regulations; we did not receive a reply.

At the end of August 2011 Sri Lanka finally lifted the State of Emergency, but on 29 August (just 24 hours before the emergency lapsed), the President introduced new regulations under the Prevention of Terrorism Act, which extended the detention of persons detained under the

11 LOCKED AWAY: SRI LANKA'S SECURITY DETAINEES

Emergency Regulations for 30 days pending issuance of detention orders under the PTA or remand by a magistrate. The Sri Lankan government vowed that as of 1 September 2011 any person arrested or detained would be handled under the Code of Criminal Procedure Act or the PTA:

According to new regulations made under Section 27 of the PTA for the treatment of detainees and surrendees consequent to the Lapsing of the Emergency Regulations:

1. Detainees under the lapsed regulations shall be produced forthwith before a Magistrate who will bring the suspect under the Code of Criminal Procedure Act.
2. If this production does not take place within 30 days from 30th August 2011 and the Magistrate does not take steps to remand him on material available, the detainee shall be released
3. If a detention order either under Part II [the PTA Section on "Investigation"] or Part III [the PTA Section on "Detention and Restriction Orders"] has been issued in respect of the detainee before the expiry of 30 days, the detainee shall not be released subject to the availability of the right of bail in given circumstances.
4. Those who were remanded by the magistrate under the provisions of the lapsed regulations will be deemed to have been remanded under the Prevention of Terrorism Act.¹⁸

A pressing question for human rights defenders in Sri Lanka (and the international community) is what actually happened after 1 September 2011 to the many individuals who were detained under Sri Lanka's Emergency Regulations. It is clear from media reports of individual cases and Amnesty International's communications with Sri Lankan lawyers that despite Sri Lanka's promises to release or charge detainees, many people remained in limbo. Without a central registry of detainees, however, it is very difficult to determine the whereabouts and wellbeing of individuals who had been detained under the Emergency Regulations, under what laws they are now purportedly being held, or whether they have had access to the courts to challenge their detentions.

Thousands of individuals who surrendered to the authorities because they had some association or contact with the LTTE and others who were forcibly detained because the army suspected them of being LTTE cadres ("surrendees") were initially detained in camps created under the Emergency Regulations,¹⁹ and once in those camps, the courts had no jurisdiction over the length of detention. Although the courts are now apparently involved in approving transfers from one form of detention to another (for example from Terrorist Investigation Department [TID] custody to a rehabilitation facility), the court's role is only administrative; oversight of these detainees remains with the Rehabilitation Ministry. Sri Lankan authorities have been known to transfer detainees held for investigation by TID to "rehabilitation camps" for further detention after their PTA detention orders expire. Without a real judicial process,

there is nothing to stop the authorities from also transferring an individual back from rehabilitation into police custody.

The Sri Lankan authorities have continued to maintain that incarceration for “rehabilitation” is not detention and that surrenders to the army were “voluntary.” The courts overseeing transfers of detainees engage in a bit of play acting, requiring detainees – some of whom have been held for many months by TID and tortured in custody – to affirm that the move to rehabilitation is “voluntary.”

Mylvaganam Vinodalingam surrendered to the security forces at the end of fighting in 2009 and was detained for investigation as an LTTE suspect until January 2012 by the TID. TID brought Vinodalingam before a Colombo additional Magistrate in January and requested his transfer to a rehabilitation camp. Mylvaganam reportedly asked the court how long he would be held in rehabilitation, but the magistrate noted that the court had no power to decide the length of detention for rehabilitation, which is determined by rehabilitation authorities.²⁰

Sri Lanka's Constitution contains clear provisions prohibiting arbitrary detention, torture and other cruel, inhuman or degrading treatment or punishment, which in and of themselves are in line with international human rights law. Guarantees against these violations exist elsewhere in Sri Lankan law. However, these provisions are in effect ignored through Sri Lanka's still vast and abusive security legislation as well as in practice.

Chapter 4 Section 37 of Sri Lanka's Code of Criminal Procedure provides that a person arrested without a warrant must not be detained for more than 24 hours (exclusive of travel) before being produced before a Magistrate. The Code of Criminal Procedure (Special Provisions) Act. No 42 of 2007 extended the maximum allowable period of such detention to 48 hours in certain cases. This law expired in 2009, but the government instituted a regulation that allowed police to continue to hold detainees for 48 hours. In reality, detainees are often held for much longer periods without being produced before a magistrate. In the case of people held for so-called rehabilitation, the time period detainees are held without charge or judicial review can stretch into years, without access to counsel, and in some cases with no communication with family.

Compliance was also weak in regard to civil policing. According to Sri Lankan human rights lawyer Kishali Pinto-Jayawardena:

Generally, the right to be informed of the reasons of arrest is not adhered to by law enforcement officials. Suspects are detained without being informed of their rights and in many cases, the police fabricate charges after the arrest in order to be able to defend the initial arrest. The 24-hour time limit within which a suspect must be brought before a Magistrate is not enforced, and suspects or uninjured decoys (impostors) are often produced at the home of the Magistrate, rather than in court so as to hide any signs of torture or ill-treatment. Family members are not informed of an arrest and are often denied access to the detained person. Suspects have little or no access to legal representation and when they do, lawyers have little possibility of conferring with their clients in private. Detainees have little access to independent medical examinations; in many instances victims of torture are accompanied to

the examination by the same police officer responsible for the alleged crime of torture. These failures are more aggravated where arrests and detentions under emergency law are concerned.²¹

THE PREVENTION OF TERRORISM ACT

The Prevention of Terrorism Act was introduced as a temporary law in 1979; an amendment in 1982 made it permanent.²² The PTA has been used to extend terms of detention after detainees had already spent significant time in detention under Emergency Regulations promulgated under the Public Security Ordinance (see above). For example, individuals who were detained without charge for the maximum 12 months allowed under the Emergency Regulations were subsequently detained under PTA detention orders from the Ministry of Defence that enabled police to hold them without charge for an additional 18 months. Some detainees were sent to remand by a magistrate after these other terms expired, to be held indefinitely pending trial, although they had never been indicted.

Under Sri Lanka's Evidence Ordinance, confessions made to a police or other public officer and confessions made while in the custody of the police are not admissible as dispositive evidence in ordinary criminal cases unless they are made in the presence of a magistrate. But such confessions are admissible under the Prevention of Terrorism Act (PTA).

Confessions caused by an "inducement, threat or promise" are not admissible in any case, but the PTA reverses the burden of proof, putting the onus on victims to prove that their confessions were made under duress and thus that the evidence gathered under torture is inadmissible in court.²³

The 2010 conviction of journalist J.S. Tissainayagam under the PTA for criticizing the Sri Lankan military's treatment of civilians was based on a confession he told the court he made under duress. The court rejected his allegation and Tissainayagam was sentenced to 20 years in prison. In the wake of sustained international and domestic outcry he received a pardon and went into exile.

The PTA also allows the authorities to hold detainees where they choose and to move detainees from place to place while under investigation, practices which, as we will see from the testimony below, increase the likelihood of torture.²⁴

Under Section 9(1) of the PTA, people can be arrested without charge and detained for up to 18 months under a detention order issued by the Minister of Defence while police investigate the possibility of their involvement in illegal activity. After release, the Defence Minister can issue additional orders restricting an individual's freedom of movement, association and expression (such as restricting travel or place of residence, prohibiting his or her involvement in organizations or associations, or preventing the individual from addressing public meetings).²⁵ These orders cannot be challenged in court. Section 10 of the PTA states specifically that "an order made under section 9 shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise."²⁶

People arrested for investigation under the PTA by the police without a detention order from

the Ministry of Defence must be brought before a magistrate within 72 hours, but the law does not give the Magistrate the power to question the lawfulness of the detention, and it requires the magistrate to order the person to be detained under remand “until the conclusion of the trial;” the law does not stipulate that the individual be charged with an offence first.²⁷ People have thus been held for years without charge or trial under this act, as they wait for detaining authorities to frame a case against them that often never materializes. And given Sri Lanka's inefficient justice system, even individuals who are charged under the PTA have remained in detention for extremely prolonged periods – as long as 15 years – without being convicted.

A Sri Lankan newspaper reported in December 2011 that “[o]nly 23 Tamil detainees out of 65 held in the Anuradhapura prison have been charged with any offence. The remaining 42 detainees have been languishing in detention for two to six years, without charges.”²⁸

The same article noted that prisoners who had already been charged by the Attorney General's Department were detained for years “facing the prospect of endless court visits.” It gave as an example the case of an LTTE suspect named Thirumagal who it said “has now completed her 15th year in detention and has made 429 court visits so far. She questions how many more visits she would have to make and how many more years she would have to languish in jail, before the court delivers a ruling?”²⁹

The detainee in question, Thirumagal Chithrasenan Robert, was arrested on 8 September 1996 in Kollupitiya, Colombo on suspicion of links to the LTTE. In November 1996, her mother sought a writ of *habeas corpus* in an attempt to prove that her daughter was being unlawfully detained in a police station without being produced before a court, but she failed to secure her release. In a communication addressed to the Government of Sri Lanka dated 22 June 2004, 7 years ago and nearly 8 years after Thirumagal was arrested, the UN Working Group on Arbitrary Detention found that Thirumagal and 12 other people named in the opinion, including her husband Maxilan Anthonypillai Robert, were being held arbitrarily, deprived of a right to a fair trial and in contravention of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights. It noted that:

It was reported that... these persons were arrested on ethnic grounds, i.e. for the simple fact of being ethnic Tamils, and under suspicion of involvement with the Liberation Tigers of Tamil Eelam (LTTE), the main armed opposition group. They were held without charge or trial for several months, at the end of which they were charged under the Prevention of Terrorism Act (PTA) of 20 July 1979, and obliged to sign self-incriminatory statements, sometimes under torture. Their trials are allegedly progressing very slowly. Most of the charges were reportedly fabricated. The self-incriminatory statements were written in Sinhalese, a language most of them do not understand.³⁰

4. PATTERNS OF ARBITRARY DETENTION IN SRI LANKA

Sri Lankan authorities cast a wide net in the name of public security, and their failure to follow internationally recognized safeguards on arrest and detention makes it almost impossible for detainees to legally protect themselves. Some omissions are written into Sri Lankan law itself: the PTA permits the authorities to conduct searches and arrests without warrants and prohibits legal challenges to detention orders; the Emergency Regulations contained similar provisions. But even arrests under these security laws have been subject to a Presidential order that required arresting officers to identify themselves and inform individuals of the reasons for arrest. This order has been consistently violated in practice. Access to legal counsel is only guaranteed by Sri Lankan law in relation to trials; administrative detainees' access to counsel during police investigation is not protected.

In an April 2009 interview, then Director of Sri Lanka's Terrorist Investigation Division (TID), Senior Superintendent of Police CN Wakishta explained his agency's antiterrorism methods, excusing delays in releasing detainees and saying that people arrested by TID should look at their detention as a "sacrifice" and a "service to the country":

Prevention includes surveillance, registration, collection of intelligence and arrests. Through this we have been able to break the LTTE networks. People might say that we are hindering them through this process and we apologise for that but there is an immense service being done by following this mechanism. They should not think that by staying in detention that their freedom was curtailed. In most instances the security officers are unable to complete the screening process within 24 hours. Thus a person may be detained for a longer period. The time they sacrifice in detention should be considered as a contribution to maintaining law and order in the country. That is how we see it and we try our best to explain that to them. We do apologise for the inconveniences caused. We tell them that they have done a service to the country by being in detention.³¹

A detainee held by TID for three years looked at the investigation process differently:

First you are taken to TID and they screen you. If they think you aren't cooperating, it's like a punishment, they send you to Boosa. Where we were kept at Boosa is not a prison – it's a TID detention centre. It's a separate compound which is only monitored by TID, no prison officials are there. Even if you are brought to the hospital it is TID who accompanies you. There are none of the normal protections of the prison system.³²

And without these protections, say detainees, torture in custody is very common.

Sri Lankan security detainees and their families in contact with Amnesty International

described their capture and detention by the Sri Lankan army, or arrest by police or paramilitary personnel; interrogation by army intelligence personnel, officers from the police TID and Criminal Investigation Division (CID) and unidentified paramilitary forces.

Former detainees discussed the army's use of makeshift detention camps around the northern town of Vavuniya to house people they suspected of involvement in the LTTE, and their transfer to more permanent facilities including Boosa Detention Camp in southern Sri Lanka near Galle and CID headquarters in Colombo. Detainees also described their eventual remand to Welikada Prison near Colombo and Bogambara Prison in Kandy, where some continued to be held for extended periods without charge.

Former detainees and family members complained of "abductions" by plainclothes gangs who did not identify themselves or follow appropriate arrest procedures. Some described being held in unknown or secret places of detention for days or weeks before detainees were handed over to police or transferred to officially acknowledged facilities, and of repeated moves from one authority to another, or one police station to another as they were interrogated.

Witnesses' testimony compared treatment meted out by different forces in different types of facilities. Their descriptions were so detailed, and often so similar, that it is possible to discern some patterns in the way authorities dealt with detainees:

- Ethnicity mattered: Throughout the island, Tamils were arrested and detained under the PTA and Emergency Regulations in much larger numbers than Sinhalese or Muslim Sri Lankans. Torture in all cases was rampant. Treatment of Sinhalese arrested on suspicion of helping the LTTE, like the police officer and former army officer whose cases are described below, was severe and often accompanied by intense media campaigns meant to vilify and isolate the individuals in question.³³
- Origin mattered: Arbitrary detentions took place throughout the country, not only in former conflict areas and people of many descriptions were arrested, but Tamils who fled the final stage of fighting in the Vanni were treated differently from other Sri Lankans. They were funnelled *en masse* into a system of ad hoc detention camps. They were dealt with as a category or group that posed security threats, not as individuals with a right to challenge their detentions, and were kept out of the ordinary justice system for many months.
- Army, police and paramilitary forces collaborated in the arrest, detention and interrogation of security suspects. (This collaboration was encouraged by the Ministry of Defence, which assumed oversight of the Sri Lankan police in 2006.³⁴) The witness testimony shows that the involvement of many different agencies in investigating security detainees contributed to prolonged periods of incommunicado detention and other abuse, including repeated torture.

When individuals fleeing fighting in the Vanni at the end of the armed conflict encountered Sri Lankan army personnel in Mullaitivu they were expected to surrender and admit their association with the LTTE. They were interrogated and many reported being tortured or otherwise ill-treated. Those who admitted links to the LTTE and who did not appear to

investigators to be “hard core” or important LTTE leaders were detained for “rehabilitation”. Individuals who seemed uncooperative or were suspected to be lying were tortured in Vavuniya, and then transferred south for further interrogation by the CID or TID in Colombo. Thousands were sent to a TID-run detention camp within the Boosa Prison complex in Galle, and hundreds were eventually sent on to remand prisons. Even then, most were never charged.

But many other Sri Lankans throughout the island have ended up in administrative detention. There were repeated sweeps in Colombo and its suburbs and in central Sri Lanka around the tea estates, and in eastern Sri Lanka, and very few of the individuals arrested were ever charged with an offence. For example, TID claimed to have arrested 50 LTTE “sleeping cadres” in antiterrorism efforts focused on Sri Lanka’s Hill Country.”³⁵ At least six young tea estate workers arrested as alleged LTTE suspects between 2008 and 2010 remain in detention in Badulla prison under the PTA. Police alleged that some of them had possessed firearms, but according to Sri Lankan activists monitoring their cases, no evidence was ever produced and no formal charges were brought against any of them.

CID headquarters in Colombo, a place mentioned by several witnesses, has long been notorious for torture. As one detainee arrested in the north described it:

“This move to Colombo this was the worst...this was the worst...this was total torture....there they had an electric chair...I can't think about it...you know they have some sayings...the 2nd floor that is inquiry....4th Floor hard inquiry with torture....if you go to 6th Floor, torture... you don't come back.”³⁶

Torture was also described in TID detention both in Colombo and at the TID detention centre at Boosa. A handful of TID officers have been identified as perpetrators of torture, not only, apparently, to extract intelligence or punish non-cooperation, as posited by former detainees, but also to increase pressure on families to extract bribes. One of the officers named by a former detainee interviewed by Amnesty International in January 2012 also appears in UN Special Rapporteur on Torture Manfred Nowak’s report on his October 2007 visit to Sri Lanka.

POLICE OFFICER DETAINED

Lakshman Cooray, a police superintendent accused of involvement in the assassination of a government Minister, has been detained by the TID since August 2009. Nearly 17 months after his arrest, on 7 February 2011 Cooray was indicted by the Colombo High Court, but instead of transferring him to a remand prison, the court agreed to his continued detention on orders of the Ministry of Defence in TID custody at Boosa Detention Camp where his lawyer told the Court he was tortured.

In April 2011 Cooray’s lawyer asked the court to move his client to remand prison, arguing that continuing to detain him in the custody of the TID would deny him a fair trial. He noted that even after his client was indicted by the Colombo High Court, he continued to be held by the TID and that he had been subjected to torture. He noted that medical reports had confirmed that his client was tortured.

Prosecutors argued that Cooray, as a senior police officer with alleged LTTE connections, “ cannot be treated

in the same way one would treat a person accused of a crime... if the accused was brought to prison it would adversely affect investigations that were presently taking place." The state also claimed that while the medical officer who examined Cooray did find burn marks on his body, his report did not mention when or how the burns had occurred. The judge ordered TID to file a report noting how long the burns that were found on Cooray's body had been there.

In July 2011, Sri Lanka's Supreme Court accepted a fundamental rights petition on behalf of Cooray alleging that he had been tortured and unlawfully detained. It named several TID officers as respondents, including TID Officer-in-Charge Prasanna de Alwis, along with Sri Lanka's Inspector General of Police, Defence Secretary and Attorney General.

The media reported that according to the petition, on 12 August 2009, the detainee was summoned to the Senior Superintendent of Police's office in Gampaha and arrested by the TID. He was not informed of the reason for his arrest and no arrest receipt was given to his family. The petition states that police officers tortured Cooray, placing books on his head and hitting them with a stone and clubs; police also forced him to lie on a table and beat the soles of his feet using a wooden stick. It says that Cooray, who is six feet one inch tall, was held in a cage-like cell six feet long, three feet wide and eight feet high along with other detainees. The complaint alleges that the police threatened to kill Cooray and to arrest his wife if he did not confess. It says that when Cooray refused to write what police dictated, he was taken into a room and burned on his hands and body with cigarettes.³⁷

DENIAL OF DUE PROCESS

Under international human rights law, including explicitly in the ICCPR (see Article 9, quoted above), whenever a state deprives a person of his or her liberty, it must take certain steps to ensure that the deprivation is not arbitrary. These include arrest and detention in accordance with the law; the right to be immediately informed of the reasons for the arrest and promptly of any charges against him or her; the right to be brought promptly before a judge or other judicial officer, the right to be tried within a reasonable time or be released; the right to request bail from a court (detention pending completion of a trial should not be the rule); the right to take proceedings before a court challenging the lawfulness of detention, and to compensation in the case of unlawful arrest or detention.

Amnesty International and other organizations familiar with detention practices in Sri Lanka have examined numerous accounts of arbitrary detention and reached the same conclusion: detainees in Sri Lanka, particularly those arrested under anti-terrorism laws or otherwise suspected of involvement with armed groups are routinely denied due process.

A December 2011 report by the UK-based organization Freedom from Torture noted that 32 of 35 of the organization's Sri Lankan clients – all torture survivors – who were detained in military detention camps, police stations, prisons and unofficial detention centres had been held arbitrarily: "In all but three cases there was no observation of due process rights: no formal charge or sentencing, no access to legal representation, no trial before a judge, no informing family members of their whereabouts and no access to an independent medical examination."³⁸

The Sri Lankan Human Rights Commission's 2008 Report on a visit to the Boosa Detention

Centre reported that one third of detainees were unaware of the reasons for their arrest at the time of arrest.³⁹

FOUR YEARS IN ISOLATION

“T Ravindran,” whose name has been changed in this report to protect the privacy of his family, has been detained without charge in Colombo and in the TID detention centre at Boosa prison for four years. During much of that time he has been held alone. Ravindran, a citizen of a European country, is of Sri Lankan Tamil descent. He has been detained since 5 September 2007, when he was arrested by TID officers at Bandaranaike International Airport on suspicion of providing assistance to the LTTE. There was no arrest warrant. Ravindran has denied the allegations, maintaining that he was a self-employed businessman and that he had no ties to the LTTE. Ravindran has been relocated several times since his arrest; as of January 2012 he was a remand prisoner in Welikada prison.

Ravindran's family is not sure under what law he is currently being held. His wife told Amnesty International he was initially arrested and detained under the Emergency Regulations and that about two and a half years later the Sri Lankan Defence Ministry issued a detention order under the Prevention of Terrorism Act. She commented to Amnesty International in January that the total length of time her husband has spent in detention now well exceeds the cumulative total of 18 months allowed under a PTA detention order (which is extended in 3 month increments on order of the Minister of Defence) and also the 12 months that were previously permitted under the Emergency Regulations. She said her husband not been charged with an offence. The Sri Lankan government told the UN Working Group on Arbitrary Detention in response to a query in December 2007 that Ravindran had been detained at the TID in Colombo under ER no.19/(2) and that he had been given a copy of the detention order. It claimed he was “in detention at the TID pending arraignment.” To date he has not been arraigned.

Ravindran's family filed a petition asking for a writ of habeas corpus (a court order to detaining officials to produce a prisoner in court for the purposes of ascertaining the legality of his detention.) An initial habeas corpus hearing was held on 23 January 2008. Habeas corpus hearings continued for about 18 months with over 16 hearings taking place, but Ravindran was not produced at any of these hearings. His family eventually withdrew their habeas corpus petition to focus on a bringing a fundamental rights case against the Sri Lankan government in the Supreme Court arguing that he was wrongfully detained. The Supreme Court granted the petitioner leave to proceed with the fundamental rights case, but hearings have been repeatedly postponed. On 3 February, the case was postponed to June 2012.

On 13 June 2008, Ravindran was suddenly relocated from Colombo to Boosa Prison in southern Sri Lanka, where he was held in solitary confinement and was not allowed to exercise. A fellow prisoner familiar with his case speculated that his unwillingness to confess to involvement with the LTTE may be one reason the authorities have treated him so harshly.

“I don't know why but he was kept really isolated. They were really tough on him. Maybe it's because he refused to sign a confession.” (a fellow prisoner)

Ravindran's family was not informed of his transfer by the Sri Lankan authorities; they were eventually alerted by the International Committee of the Red Cross (ICRC). At Boosa, Ravindran reportedly contracted Chickungunya - a mosquito borne illness that causes high fevers and severe joint pain, but he was not permitted to seek medical care. Recurring muscular problems affected his ability to walk and he lost weight. His wife said he stopped taking blood pressure medication because they caused frequent urination and he was

not allowed out of the cell.

In September 2008 the UN Working Group on Arbitrary Detention concluded that the detention was arbitrary and “in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9, 14, and 26 of the International Covenant on Civil and Political Rights.” It reminded the government of Sri Lanka that, according to the recommendations of the UN Human Rights Council, national laws and measures aimed at combating terrorism must comply with all obligations under international law, in particular international human rights law. A second appeal was sent by the Working Group to the Government of Sri Lanka in September 2011 urging his release; no response has been received from the Sri Lankan authorities to date.

Ravindran was eventually transferred back to Welikada Prison in Colombo where in July 2011 he underwent a hernia operation. According to his wife, he was mistreated by prison staff following the surgery, an experience that has left him reluctant to seek further treatment.

In January 2011, a member of the Catholic clergy testifying in Mannar before Sri Lanka's Lessons Learnt and Reconciliation Commission (LLRC), a Commission established by President Rajapaksa in May 2010 to investigate events between the ceasefire of 2002 and the end of armed conflict in May 2009, and seek ways to prevent future ethnic conflict,⁴⁰ noted that:

Almost all Tamils who have been detained were on suspicion of having links to the LTTE and no charges have been brought for one year. Some others have been charged but their trials are going on for years. Some of those who are detained in Omanthai under the Terrorist Investigation Department have been denied access to lawyers, ICRC and National Human Rights Commission and the right to participate in religious services. The relatives face a lot of problems visiting them and are often compelled to talk to them in an inhuman manner through a mesh, 10 at a time in a small congested room. There is no centralized list of detainees in each detention centre that relatives could refer to.⁴¹

The LLRC's response acknowledged how serious the problem of arbitrary detention in Sri Lanka had become. It summarized what it had heard from witnesses in the course of its investigations in its final report:

The Commission heard a number of allegations concerning persons taken into custody without any official record. The Commission therefore recommends that applicable legal provisions should be adhered to by the law enforcement authorities when taking persons into their custody, such as issuing of a formal receipt regarding the arrest and providing details of the place of detention. Such persons should be detained only at formal places of detention declared under the law. Adequate publicity should be given to such authorized places of detention, with access to next of kin ...

... The Commission also heard allegations that a number of persons have been taken into custody and detained under the Emergency Regulations although the facts of some cases do not disclose any offence related to

public security. In this regard, the Commission takes note of the Government's decision to lift the Emergency Regulations as a significant and a positive step towards reconciliation and restoration of normalcy.

Many representations made before the Commission gave a clear impression that with the ending of the LTTE terrorism, the people's preference was that the governance be carried out under the normal laws of the land that will uphold the supremacy of the Rule of Law. The Commission also expresses the hope that the civilian life will receive the fullest benefit of the lifting of the Emergency Regulations and that any further regulations would not impair the full enjoyment of such benefits.

The Commission has observed instances of persons being detained in custody for a long period of time under the Prevention of Terrorism Act (PTA). In this regard, the Commission recommends that an Independent Advisory Committee be appointed to monitor and examine detention and arrest of persons taken into custody under any regulations made under the Public Security Ordinance or the PTA.⁴²

In its final report, the LLRC recommended measures to better protect the rights of detainees, which if implemented would go a considerable way toward complying with Sri Lanka's international legal obligations, in particular under the ICCPR:

- a. An arrested person should be promptly produced before a Magistrate to be dealt with in accordance with the law.
- b. Any change of the place of detention should be promptly notified to the family of the arrested person and the Human Rights Commission of Sri Lanka.
- c. Magistrates should visit the places of detention every month.
- d. Release from detention should be done through courts.

The failure or refusal by the police to record an arrest, detention and transfer or to record complaints of abductions and failure to investigate the same would constitute criminal offence and steps should be taken to prosecute such wrongdoers.⁴³

These are important recommendations that could make a real difference in protecting the due process rights of detainees, but none of them were new ideas. Successive Sri Lankan governments dating back 20 years have vowed to provide these same basic protections, but they have never been consistently adhered to. There has been little indication that the current Sri Lankan government is any more willing than its predecessors to seriously implement these fundamental protections, end reliance on laws and practices that do not comply with international human rights law standards, or importantly, to account for its wrongdoings.

DETAINED FOR TWO YEARS WITHOUT CHARGE AND TORTURED

According to a confidential correspondence with Amnesty International and an account provided to his lawyer, “Roshan” (a pseudonym), a man in his thirties from central Sri Lanka was arrested abduction-style in June 2008 on his way to submit a medical report to join the crew of a ship scheduled to dock at the Colombo Port. He was detained and tortured.

“Roshan” was handcuffed, blindfolded and forced into a van by unknown assailants he later learned were plainclothes police. He was beaten severely before being locked in a room where his captors removed his blindfold and handcuffs. He told his lawyer in Colombo that he realized he was detained somewhere near the harbour because he heard the sound of ship engines and horns. “Roshan” was detained for 28 days without being produced before a Magistrate. The police told him they thought was a member of the LTTE and had links with the LTTE military intelligence wing, accusations he denied. He admitted to having been abducted by the LTTE in 2002, but denied that he had engaged in any subversive activity. He was tortured during interrogation: bags soaked in petrol were put over his head; he was beaten with blunt objects, including on the soles of his feet. He was also tortured with electric shocks and his penis was burned with an electric heater. He suffered from acute spinal trauma, including a crushed tail bone, and severe pain in his feet and ankle.

The ICRC visited the facility during his detention and informed his family of his whereabouts. Thereafter once a week he was brought to the Grandpass police station blindfolded and handcuffed to see his family members and then was again taken back to his place of detention at the harbour. When his family was first permitted to see him on 27 June 2008, he was unable to walk as a result of the torture.

On 22 July 2008, “Roshan” was finally produced before the Colombo Magistrate’s Court and remanded to the Colombo Remand Prison. On 18 November 2008, he was transferred to the Magazine Remand Prison in Colombo. On 13 November 2009, he was among eight Tamil prisoners who were attacked and brutally beaten by a mob of Sinhalese prisoners. He told Amnesty International in a letter that the prison authorities were complicit in this attack; they had read out a list of eight names and handed the prisoners over to the mob of Sinhalese prisoners to be beaten.

“Roshan” filed a successful fundamental rights application to the Supreme Court challenging his detention and the attack inside the Magazine Prison despite pressure from prison authorities to withdraw the case, including threats to his family. On 22 June 2010, he was released from the Magazine Remand Prison after over two years in detention. “Roshan” and his family continued to face threats and harassment from the police and he eventually fled the country.

TORTURED

The prohibition on torture and other ill-treatment is absolute and non-derogable – that is, it applies in all circumstances without exception. Sri Lanka is bound by this prohibition through human rights treaties,⁴⁴ customary international law,⁴⁵ its own Constitution and Sri Lanka’s Convention against Torture Act.⁴⁶

Torture and other ill-treatment in the context of armed conflict are also “grave breaches,” namely universally punishable war crimes, under the Geneva Conventions.⁴⁷ While these Conventions generally apply to international armed conflicts only, Article 3 common to the four Geneva Conventions and applicable in “armed conflict not of an international character,” such as the armed conflict that took place in Sri Lanka, also provides that

detainees "shall in all circumstances be treated humanely," and among other things must never be subjected to "mutilation, cruel treatment and torture... outrages upon personal dignity, in particular, humiliating and degrading treatment."

Torture and several forms of other ill-treatment are also war crimes and crimes against humanity under the Rome Statute of the International Criminal Court.⁴⁸

Almost every detainee Amnesty International encountered in the course of researching this report described torture or other ill-treatment at the hands of arresting and detaining authorities. Most described systematic beatings and psychological abuse; some, like "Roshan," as well as "Kumar," and "Shanthan" whose cases are described below, were subjected to prolonged torture in a series of detention facilities and by different agencies of the security and intelligence services. This experience is typical of individuals detained by the army as they fled the conflict in 2009. The organization Freedom from Torture also found that torture was routine in the initial stages of detention of persons termed "surrendees"⁴⁹ by the Sri Lankan authorities. In a report released in December 2011 the organization notes:

Of the 16 cases involving surrender to, or round-up by, the Sri Lankan army, all were subsequently taken, usually blindfolded, to secondary (and in some cases further) detention locations where they were tortured. Eleven of these individuals had been 'identified' by others as being associated with the LTTE. Others self-identified themselves as having LTTE connections on the basis that they were told they would then be released. Some were directly apprehended from LTTE military camps and another was simply taken on suspicion of LTTE connections.

Some of those who were 'identified' report that they were paraded in front of hooded or masked individuals who nodded to indicate that the individual was an LTTE supporter / member. Those who bore scars (even if they were incurred during shelling) were told that this was evidence of LTTE membership and were then removed to a separate place of detention. One individual reports being marched past an army truck. When the horn sounded in front of him [possibly signalling that he had been identified by an informer in the truck], he was taken blindfolded to two subsequent detention camps, where he was tortured.⁵⁰

A former detainee who spoke to Amnesty International in January 2012 says he was tortured by TID in Colombo, but that the authorities made sure they had a medical report showing there had been no mistreatment. He alleges that the date of the medical examination was falsified: "They took me on Monday to the JMO [Judicial Medical Officer]; then they brought me back. Next day they took me back to the JMO again. I didn't understand why then...On Thursday they took my confession and they back dated it. My lawyer caught it. The date was in different writing than my signature."⁵¹

Amnesty International has received dozens of accounts like these from former detainees and family members. Together with extensive information from other sources, they indicate that the Sri Lankan authorities engage in systematic torture or other ill-treatment of individuals suspected of LTTE affiliations: unlawful detention, torture and other ill-treatment are

standard tools for intelligence gathering. They have also been meted out as punishment against individuals who resist the Sri Lankan government's offer of "rehabilitation."

TORTURED AT 17

In January 2008 when Kumar (a pseudonym) was 16 years old, he was forcibly recruited by the LTTE. When his LTTE camp was attacked by the Sri Lankan army in April 2009, Kumar, still a minor, escaped in the confusion only to be captured by the Sri Lankan army. He was tortured and held incommunicado by the Sri Lankan army for 18 months in detention camps in northern Sri Lanka before being transferred to Welikada prison in Colombo in October 2010. Kumar was never produced before a magistrate or charged with any offence. A written transcript of Kumar's testimony, recorded in May 2011, was provided to Amnesty International by his lawyer. Extracts appear below:

"Two or three days after my escape [from the LTTE], I was arrested by the army when I entered Pudumathalan which was under army control. During that time there was heavy fighting going on in that area. People were screaming and there was shooting. The army was checking many people entering from the LTTE controlled-area as to whether they were LTTE members or normal civilians. I saw young men like me being stopped and separated from the flow of people."

Kumar also witnessed an extrajudicial execution:

"I saw a man being stopped and questioned by the army. He was asked whether he was with the LTTE and was told that if he told the truth, the army would let him go. He answered that he had been forced by the LTTE to work with them for a period of days. When he said that, he was shot by the soldier in the head and body."

Kumar was separated from others trying to enter the area:

"I was put in front of an army vehicle. Inside the vehicle was a masked person. The army [soldier] spoke to him in Sinhala and he nodded. After that, they tied my arms and blindfolded me. I told them that I was an innocent civilian and that I was not LTTE. They threw me inside the army truck with some other people. I was taken to Rambaikulam army camp which was 4–5 hours drive away. When my blindfold was removed on arrival, I saw some of those that had been transported with me – they were young men like me."

When Kumar arrived at the camp, he was interrogated and tortured:

"I was separated from the others in the van and put in a separate cell on my own. My hands were kept tied. They put me in a cell and questioned me about the LTTE. They asked me how long I had been in the LTTE, who was my leader, what I did with the LTTE and where the other leaders were. They wanted to know in which area those leaders were fighting. They asked me where [LTTE leader] Prabhakaran was, and whether he was still in the Vanni area. They asked which fights I had taken part in. They asked me my full name and date of birth and where my family members were and asked me all their details, such as names, dates of birth and their address. I gave them all the family details, my previous address in [suppressed] and told them that I did not know where my family members were.

They asked me where weapons were hidden. They asked me a lot of questions but I cannot remember any more. Soldiers were beating me when they were asking me the questions. They beat me all over the body. The following days they beat me on the head as well. As a result of the beatings, I told them the names of my family members. I hoped that they would perhaps let me go.

Although I had been kept with the LTTE and knew the names of LTTE leaders and where weapons were kept, I said that I did not know these things. I did this because I thought that if I told them what I knew that they would then shoot me – which is what they did to the other man.”

Kumar said that he was repeatedly tortured over a period of weeks:

“Soldiers came into my cell, sometimes one, sometimes up to three. I was questioned and tortured about three or four times a week, sometimes less. Within about two or three weeks of my arrest, I was shown documents in Sinhala and I was told to sign them. I said that I could not sign it as I did not know the contents. They then beat me severely so I signed. I do not know what was written in the documents. After about one month, they took all my fingerprints on a piece of paper. The document was typed and bore the Sri Lankan symbol at the top of the document. I was then forced to sign it as well as they beat me again.

... I was regularly beaten with an s-lon [plastic] pipe, I was burnt all over my body with cigarettes (over my arm, leg, back and front). I was also kicked all over the body. They kept me in a dark cell with no windows, where I had to sleep on the floor. I was not given water when I asked for it. I was only let out to go to the bathroom or take a shower.”

Kumar was held in solitary confinement and incommunicado:

“I was not allowed to contact anyone outside and never had any visitors. I think there were other detainees in the camp as well, as I would hear people scream and cry every day. I am sure that they were tortured. I heard shooting once or twice.”

Kumar says he was detained at the camp until April 2010:

“Civilians are held in IDP [internally displaced people] camps however I was held in a cell in an army camp. That is entirely different. When I arrived, as well as when I was allowed to use the shower / toilet, I saw many soldiers in the camp. The camp was surrounded by a big wire fence. I did not see any civilians in the camp. During the whole year I was there, apart from soldiers, I saw between five and ten other people who were detained there when I went to have a wash. The washing area was not secluded – it was a big tank with water in an open place. There I saw the others. I could not speak to them as the army was guarding us all the time. Had I tried to speak to them, I would have been beaten. I saw however that they were injured as well and bore bruising on their faces, some of them on their bodies.”

In April 2010 Kumar was transferred to another detention camp near Vavuniya, where he was again interrogated and tortured, this time he was also sexually assaulted by his captors:

“In April 2010, I was moved to Vellikulam camp where I was kept until October. During the transfer I was blindfolded and my arms were tied. I do not know why I was moved. This was an army camp again. On arrival, I was taken to a small cell without a window or lights (there was just a slot in the metal door through which they would pass food.) The day after my arrival, two soldiers came to my room. They asked me similar questions to what I had been asked in the first camp, namely what I did with the LTTE, whether I had any family members who were in the LTTE, where the LTTE leaders were etc. I gave the same answers, I said that I was not with the LTTE, that I was never with them and that I was a civilian. I said that I did not have any more contact with my family members, that they had all been separated. They did not believe me. They said I was a liar and they beat me. They beat me all over my body with their hands. They also burnt me with cigarette

butts. They insulted me. They asked me again about my family details which I gave to them.

I was beaten ... whenever the army wanted to. I was beaten and questioned at least every week by different soldiers. Sometimes I was beaten and they did not ask me any questions. During the end of the period, I was also sexually assaulted by two soldiers on two occasions. The first time, the soldiers entered the room. One tried to remove my shirt and tried to touch my genitals. I pushed him away. Then both beat me and burnt me with cigarette butts. They threw me on the floor and kicked me in the chest. I screamed and they left.

Three weeks later, both came back. The second time they tried to touch my genitals and did so. They tried to rape me. I screamed very loudly. The soldiers became very angry; they beat me again and burnt me with cigarette butts."

Kumar was transferred to Welikada prison in October 2010, where he remained until 25 December 2010. Before he was moved, he was made to sign a handwritten document in Sinhala, which he could not read:

"On my day of arrival, I was asked to confirm my name which was checked against a list. I hence believe that all my details were transferred from the second camp to Welikada prison. I was put in a cell. It was a small room with metal bars. I was detained on my own. On two or three occasions, they put two or three other people in with me but moved them out again within the same day or after a few days."

Kumar says that he was also ill-treated in Welikada prison, but the treatment was not as severe as it had been in the army camps:

"I was beaten about twice a week. I was slapped in the face or on my back with their fists. I was not given proper food. Sometimes we were not given food. We had to use a bucket for the toilet. We had to wash in the cell. I was not let out during the whole time. I was questioned about once a week about whether I fought with the LTTE, I was asked for the names of other LTTE members and leaders. Again, I denied any knowledge and stated that I was not with the LTTE. They again did not believe me and accused me of lying and beat me. I was also asked where my parents were."

A relative contacted by a prison insider eventually bought Kumar's way out of detention and arranged to have him smuggled out of the country in December 2010.

DENIED ACCESS TO FAMILY

Amnesty International has spoken to many family members of detainees who said that removal of prisoners to non-official detention centres, and frequent transfers of suspects from one facility to another or one form of detention to another made it very difficult to track the whereabouts of their loved ones. Sometimes suspects simply got lost in the system, with their family unable to find out where they are being held.

The Hong Kong-based Asian Human Rights Commission (AHRC) provides another example:

Alexander Thayaparan, age 48, originally of Mannar was detained by Sri Lankan Navy officers on 17 April 2009 in Putumattalan in Mullaitivu District. He remained in detention and had not been formally charged or tried as of August 2011. According to AHRC, Thayaparan is disabled; his leg was amputated after he was injured by shelling in 1990 and he uses an artificial limb. Thayaparan worked as a labourer and raised livestock to supplement his income. Thayaparan, his wife and four children were displaced repeatedly by Sri Lankan Army shelling in 2009 and were forced to accompany the LTTE forces as they attempted to evade the army offensive. The family along with many other displaced people fled by sea into government controlled territory in April 2009. Thayaparan's wife and children were taken by the navy to a Jaffna displacement camp; Thayaparan, who was travelling in another boat, was arrested by Navy personnel. He was not told the reason for his arrest. Thayaparan's wife was given no information about her husband's whereabouts until she was released from the displacement camp and managed to contact the ICRC. On 23 December 2009 she visited Thayaparan at Boosa detention centre and he told her that investigations into his case had been completed and he would soon be released. Instead, on 8 October 2010 Thayaparan was produced before the Colombo magistrate, and transferred to the Welikada remand prison; he learned that the police suspect him of aiding and abetting the LTTE, but was not been charged with an offence. In August 2011, AHRC accused the TID officer handling his case of "intentionally delaying the investigation."⁵²

"ABDUCTED" STUDENT FOUND IN TID DETENTION

According to activists familiar with her case, 22-year-old Rasiyah Dwaraka, a student of Peradeniya University's Arts Faculty, was arrested by TID on 12 November 2009; relatives could not locate her for two months. She later reappeared in TID custody at Boosa Detention Centre.

Dwaraka grew up in the northern town of Kilinochchi; she was reportedly athletic and had won prizes for track and field. Dwaraka was reportedly forced into a silver coloured van on the Peradeniya campus on 12 November 2009; Dwaraka's elder sister and her aunt were permitted to visit her on 16 November 2009. Thereafter she disappeared and her relatives were unable to locate her again until January 2010 when she was traced to Boosa prison, where she was detained without charge. Dwaraka was reportedly arrested after she submitted certificates from Kilinochchi bearing the LTTE insignia along with her application to take part in an athletic event, (Many official documents that originated in LTTE controlled areas of northern Sri Lanka bore the LTTE logo). Rasiyah Dwaraka filed a fundamental rights petition challenging her unlawful detention in June 2010. The Court ordered her released on bail and she reportedly returned to the university, but remained under TID surveillance.

Failure to inform relatives when a family member is detained not only violates their right to freedom from arbitrary detention but contradicts a July 2007 Presidential directive ordering

that individuals arrested “should be afforded reasonable means of communicating with a relative or friend.” It also requires an officer making an arrest to: (i) identify himself to the person being arrested or to a relative; (ii) inform the person being arrested of the reason for the arrest; and (iii) to present written documentation to the spouse, parent or relative acknowledging the fact of arrest.⁵³

Like previous directives issued by the Inspector General of Police requiring the issuance of arrest receipts to relatives and other protective devices, implementation of this Presidential directive has been weak, particularly in cases where the person was arrested on suspicion of links to the LTTE.

Many family members who testified before the LLRC did not know the name and rank of soldiers who arrested relatives at the end of Sri Lanka's armed conflict in 2009, and some had no idea where individuals had been taken after their arrest.

A man from Mullaitivu told Amnesty International in January 2012 that his younger brother, a medic, had been detained by CID in Vavuniya after he fled the Vanni in May 2009: “I'm not sure exactly where he was held. It was a school. My relatives say he was tortured – beaten severely – and that he was brought unconscious to the hospital. They only came to know that he had been arrested because he was hospitalized. He was in the hospital for three days and a friend, a Vavuniya resident who worked in the hospital, saw him there. CID never informed my family about his detention or his hospitalization”⁵⁴

Witness testimony before the Sri Lankan Lessons Learnt and Reconciliation Commission (LLRC) illustrated how vast the problem really was: thousands of people came forward when the LLRC was established in May 2010 seeking information about the whereabouts of missing relatives they believed had been taken into official custody. Others knew where loved ones were being held but complained that they were allowed only very restricted access. In its final report, the LLRC stated:

The next of kin have the right of access to detainees. Therefore, any practices that violate this principle should be removed. The Commission has observed that some next of kin are only provided information verbally. Moreover, having travelled very far, some family members have not been allowed to see the detainees in person. The Commission recommends that the relevant authorities in cooperation with the ICRC and voluntary organizations enhance current facilities for the transportation of the next of kin to visit their family members at the places of detention.⁵⁵

“When my father was moved to Colombo my family was only allowed to see him for five minutes on Saturdays. Imagine, they have to travel all the way from Vavuniya and can only see him for five minutes once a week.”

The need for a central registry of detainees has been a long standing demand of human rights organizations, and was supported by the LLRC in its interim report to President Rajapaksa in September 2010 and reiterated in its final report of November 2011:

The next of kin of the detainees have the fundamental right to know the whereabouts of their family members who are in detention. Therefore there is a need for a centralized comprehensive database containing a list of detainees, which should be made available to the next of kin with names, place of detention as well as record of transfers so that families have access to such information.⁵⁶

In 2004, in its second periodic report to the UN Committee against Torture, the government of Sri Lanka claimed that a central registry of detainees and a public hotline had already been established and that the public had been notified of its existence.⁵⁷ But there was no such registry and no functioning hotline. In May 2011, the TID – responding to the LLRC's call for a central registry in its September interim report – established three centres where immediate family members could seek information about missing loved ones, but the agency made clear that it could only provide information on individuals under TID detention. According to a Sri Lankan media report, In June 2011, of the hundreds of people who sought information from the Vavuniya centre in the first days of operation only a small percentage successfully located a missing relative.⁵⁸

DENIED ACCESS TO LEGAL COUNSEL

Access to legal counsel is often obstructed by police – particularly for security detainees – and is never permitted during initial police interrogation, which could last days or weeks. Former prisoners in TID detention in Boosa prison, even those who had been detained for many months, complained to Amnesty International that their access to legal counsel had been denied or restricted.

Article 14(3)(b) of the ICCPR provides that among the “minimum guarantees” that everyone is entitled to “in the determination of any criminal charge against him” is the right “To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.”

Before (or in the absence of) criminal proceedings, access to a lawyer is just as vital. Lawyers play a crucial role in defending prisoners' rights to freedom from arbitrary detention, for instance by initiating proceedings challenging the legality of the detention before a court (as provided in Article 9(4) of the ICCPR). Access to an independent lawyer is also a safeguard against torture and other cruel, inhuman or degrading treatment or punishment. Where a detention is arbitrary or ill-treatment occurs, lawyers may help to ensure redress. Hence UN standards on the treatment of detainees and prisoners provide for their rights to meet counsels as well as for the confidentiality of communications with counsel.⁵⁹

“Lawyers can't go to Boosa. I didn't get a lawyer for one year... Independent lawyers should have access to detainees in Boosa at least once a month.”⁶⁰

Sri Lankan lawyers say that they are often barred from seeing clients in detention and that when visits are permitted, they are not allowed to speak to their clients in private. The PTA does not address a detainee's right to access a lawyer and prohibits legal challenges to

detention orders issued by the Ministry of Defence. The Emergency Regulations imposed in 2005 contained similar provisions and gave discretion over “visits and correspondence” with detainees to the Inspector General of Police.⁶¹

Those under administrative detention do not enjoy the same rights as those awaiting trials. At the Boosa Detention Centre a lawyer cannot meet those detained without police presence. Lawyers can only meet clients after applying for permission from TID and ... the TID grants permission at their discretion.⁶²

Lawyers tell Amnesty International that Sri Lanka's Ministry of Defence (MOD) has ultimate say over access to security detainees and that the TID only grants permission for lawyers to meet with their clients in Boosa after the MOD clears the request – a process that can delay access.

Even in ordinary prisons direct access by lawyers to remand prisoners and convicted prisoners seeking to appeal their sentences is difficult. “It is actually very difficult for anyone but the prisoner's family to make direct contact [with the prisoner]. The lawyer and friends of the prisoner are thus entirely reliant on a prisoner's family to help in the legal process. A person with no family contacts is thus at a severe loss and has significant difficulties in navigating the justice system while incarcerated.”⁶³

In 2004 Sri Lankan authorities told the UN Committee Against Torture that the Police Department did not “object” to lawyers representing the rights of suspects detained at police stations prior to their being produced before a magistrate. But they noted that “owing to the need to ensure that police investigators are able to conduct the initial investigation and interview suspects in an unhindered manner,” they do not allow access to counsel before the police have recorded the suspect's statement. “Prevailing practice,” [as this is not regulated] is that the police will permit legal counsel representing arrested suspects to interview the officer-in-charge of the relevant police station to determine the basis of allegations against the suspect and the date, time and location of the magisterial hearing.⁶⁴

In its conclusions and recommendations, the UN Committee against Torture expressed concern over the lack of access to a lawyer, both in law and in practice.⁶⁵ Following his visit to Sri Lanka in 2008, the UN Special Rapporteur on Torture similarly recommended that the authorities “Ensure that detainees are given access to legal counsel within 24 hours of arrest, including persons arrested under the Emergency Regulations”.⁶⁶

Preventing an arrested person from having a lawyer present during questioning and forcing legal counsel to rely on the police for information regarding the arrest and detention of a client skews the proceedings against the accused and leaves the way open for abuse, including torture to occur in the initial period after arrest – when most forced “confessions” are extracted.

Section 257 of Sri Lanka's Code of Criminal Procedure Act (No. 15 of 1979) recognizes the right of accused persons to be defended in court and to be represented in court by a lawyer, but does not address the right of pre trial detainees to legal counsel or access to counsel during questioning by the police. The Presidential Directives of 2007 say nothing about

access to counsel.

Sri Lanka's Code of Criminal Procedure (Special Provisions) Act. No. 42 of 2007 specified that any person arrested and detained for an extended period beyond the 24 hours mandated by ordinary law shall be afforded an opportunity to consult an Attorney-at-Law of his or her choice and to communicate with any relative or friend of his choice during the period of such detention.⁶⁷ As noted above, this law expired in 2009, but elements were reportedly still being applied in 2011. The Sri Lankan government issued regulations permitting police to continue to hold detainees for 48 hours before bringing them in front of a magistrate. It is unclear whether a detainee's right to access a lawyer was also extended.⁶⁸

DETAINED INCOMMUNICADO / ENFORCED DISAPPEARANCE

"On the third or fourth day after I was arrested by TID the ICRC came. They [the police] hid me in a broken down bus. They made me crouch down so I couldn't be seen and handcuffed me to a seat."⁶⁹

Incommunicado detention, that is, detention without contact with the outside world, and in particular a lawyer, family, an independent doctor and an impartial court, have long been condemned by the international community as a human rights violation.

The UN General Assembly has stated that "prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment,"⁷⁰ The UN Human Rights Committee has stated that provisions should be made against the use of incommunicado detention,⁷¹ and the UN Committee against Torture has consistently called for its elimination.⁷² The UN Special Rapporteur on Torture, recognising that "torture is most frequently practised during incommunicado detention", has also called for such detention to be made illegal.⁷³

Incommunicado detention in a secret location constitutes enforced disappearance. Enforced disappearance is defined as:

...the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.⁷⁴

Acts of enforced disappearances violate a range of human rights, including freedom from arbitrary detention, the right to recognition as a person before the law, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.⁷⁵ International human rights bodies have held that enforced disappearances themselves constitute ill-treatment or torture, in view of the considerable suffering experienced by people detained without contact with the outside world, and without knowing when or even if they will ever be freed or allowed to see their families again.⁷⁶ The same is true regarding the suffering caused to family members of "disappeared" persons. In a number of cases, international human rights bodies have held that the authorities' denial of their right to know

what has happened to their relatives for months and years violated the prohibition of torture and other ill-treatment.⁷⁷ In addition, enforced disappearance is explicitly prohibited in several international instruments, and may in certain circumstances constitute crimes against humanity. Thus the Rome Statute of the International Criminal Court includes a crime against humanity⁷⁸ of “enforced disappearance.”⁷⁹

Incommunicado detention of suspects and enforced disappearance through the use of irregular places of detention, meaning places other than police stations, officially designated and gazetted (published) detention centres or prisons has been a persistent practice in Sri Lanka associated with torture, extrajudicial killings and enforced disappearances.

Section 9 of the PTA grants extraordinary power to the Minister of Defence to order the detention of individuals for investigation or as a preventative measure, “in such place and subject to such conditions as may be determined by the Minister”; the Ministry is not required to make that information publicly available. Section 7(3)(a) of the PTA also allows police officers investigating individuals arrested to take them “during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation.”

This legislation comes very close to constituting official approval and legalising of enforced disappearance, which as noted is a crime under international law. Amnesty International calls upon the authorities to repeal these powers as soon as is possible, and not to use them pending such repeal.

“I was not allowed to contact anyone outside and never had any visitors. I think there were other detainees in the camp as well, as I would hear people scream and cry every day. I am sure that they were tortured. I heard shooting once or twice.”

The Sri Lankan military and paramilitary affiliates have also been accused of maintaining secret detention facilities where prisoners are interrogated, tortured and sometimes killed.⁸⁰ The Sri Lankan government denies the existence of such facilities but eyewitness accounts say otherwise. The lack of access to these facilities by organizations with protection mandates (including human rights NGOs, the Sri Lankan Human Rights Commission and international organizations including the ICRC) makes it difficult or impossible to independently verify the reports, but the growing evidence is compelling, and the gravity of the allegations demands urgent and independent investigation.

- Testimony on file with Amnesty International by a witness with intimate knowledge of special units sometimes referred to as “death squads” operating in Sri Lanka indicates that an elite team deployed by the Sri Lankan ministry have used government buildings in and around Colombo as secret detention facilities where they would interrogate, torture and kill individuals they had abducted. Most of the victims were Tamil, but members of other communities were also allegedly picked up by this group. Some detainees were held for more than a month and subjected to repeated torture.

- A former LTTE member detained and tortured by Naval Intelligence for information, and eventually deployed by them as an informant, alleges that the Navy

Intelligence detained, tortured and killed prisoners they suspected of ties to the LTTE – including civilians who he said had no LTTE associations. At least two of the victims he knows to have been killed were minors, 15 and 17 years old. He accused the Navy Intelligence in Trincomalee of operating a secret detention facility within the Navy dockyards – a secured area that includes the ruins of British and Dutch fortifications.

- A copy of a letter smuggled out of a detention camp dated 1 February 2010 indicated that the writer was being held incommunicado and in a secret location and that detainees were beaten for attempting to communicate with the outside world. The letter, which was addressed to the detainee's family, urged them not to try to locate him as he and fellow detainees were being kept hidden.⁸¹

- In August 2009, a confidential source with links to Sri Lankan military intelligence provided Amnesty International with details of several places where enforced disappearances, torture, and extrajudicial killings were alleged. These included camps where the Sri Lankan authorities acknowledged holding alleged LTTE detainees as well as facilities used principally for interrogation including the 211 Brigade Headquarters in Vavuniya, and the paramilitary organization PLOTE's detention centre in Vavuniya, which the source said contained a small torture chamber.⁸²

- A 45-year-old widow from Kalmunai with four children testified before the LLRC on 27 March 2011 that in 2007 she was arrested by the police in Batticaloa and was later abducted and tortured by members of a government-aligned armed Tamil group. According to a friend who contacted Amnesty International, the witness was held for 14 days before she managed to escape. There were other people held with her and five reportedly died during her stay. No one else she knew had come out alive. The witness told the LLRC that her sister had also been arrested by the police in April 2009 and remained missing. In November 2011 she was reportedly summoned by police from the CID to give them an account of her testimony to the LLRC, prompting fears of possible official retaliation for her outspokenness.

- According to the Asian Human Rights Commission, when R.D Wickramasinghe, a teacher and former army captain was arrested abduction-style in Dambulla on 26 June 2006 he believed his assailants to be members of a paramilitary group. They did not wear uniforms and did not identify themselves. They forced him into a white van and took him to the basement of an old building where he was reportedly kept blindfolded with his hands tied for two days before he was moved to another unknown location. Wickramasinghe was held incommunicado and in an unknown place of detention for 11 days before his captors finally handed him over to CID. Wickramasinghe's captors denied him proper food and threatened to kill him; they pretended they were going to shoot him. They forced him to translate a letter written in Tamil and write it again in Sinhala. The letter, according to him, was about five policemen; Wickramasinghe believed they were planning to fabricate charges against him. As of late December 2011, Wickramasinghe remained in detention in Bogambara prison.⁸³

In November 2011 the UN Committee Against Torture concluded that:

Notwithstanding the statement of the Sri Lankan delegation categorically denying all allegations about the existence of unacknowledged detention facilities in its territory, the Committee is seriously concerned about reports received from non-governmental sources regarding secret detention centres run by the Sri Lankan military intelligence and paramilitary groups where enforced disappearances, torture and extrajudicial killings have allegedly been perpetrated (art. 2 and 11).

The State party should ensure that no one is detained in any secret detention centres, as these facilities are per se a breach of the Convention. The State party should investigate and disclose the existence of any such facilities and the authority under which any of them has been established. The State party should also ensure that the results of the investigation are made public. It should abolish any such facilities and any perpetrators found responsible should be held accountable⁸⁴

Amnesty International recommends that the Sri Lankan government ensure an independent, and impartial and effective investigation into the existence and use of secret detention sites and acts of torture and other ill treatment that may have taken place with a view to holding any persons involved, including those with command responsibility, accountable for any offences committed, and providing effective redress for victims of such violations and informing the public.

THREATENED

Police often use threats against detainees, former detainees and families to extract confessions or intelligence, to extort money from them or force detainees to implicate or denounce others.

“Roshan”, whose case was cited above, reported that even after he was released from detention on a court order, police in Colombo continued to pursue him until he was forced to go into hiding. They then harassed and threatened his family, telling them they would be arrested if they did not reveal his whereabouts. Altogether the police made 18 visits to his family members between June and November 2010. Unidentified groups of men in plainclothes also visited relatives, threatening to “take them away” if they did not cooperate with the authorities:

Despite being legally released, the TID refuse to accept that I am innocent and insist that I be produced for further inquiry to the CID in Colombo. ...my family has been placed under intense surveillance and pressure to reveal details of my whereabouts.... the CID has visited my parent's home ... and my mother's relatives...on numerous occasions and inquired about my whereabouts.

The police threatened to arrest my mother and take her to the fourth floor (which is the interrogation wing, from which many incidents of torture have been reported) of the CID headquarters and detain her if

she did not give details of my whereabouts.

[T]hree CID officers visited my parent's home [in October 2010] and asked my mother to report to the police station.... At the police station, my parents were interrogated by four officers, who asked them for details regarding my release from prison. They accused my parents of bribing high level officials in order to secure my release and insisted that I was associated with the LTTE and was needed for further questioning. The TID have clearly kept their investigations on me open despite my legal release from prison. They questioned my parents for over four hours and pressed them for information regarding my whereabouts and contacts. My mother was asked to return the following day ...⁸⁵

In November 2010 “Roshan's” parents were again visited by CID officers who threatened and abused his parent's. “The officers tried to assault my father and threatened to arrest and detain him if I was not produced. My father, who was extremely shaken by the incident, suffered a heart attack.”

“Roshan's” family also received visits from groups of men who refused to identify themselves.

... my parents were visited by a group of men in civilian clothes in a white van who entered the house and demanded details of my whereabouts. The men refused to identify themselves but said repeatedly that I was needed for questioning in Colombo and that they were prepared to take my parent's away if they refused to cooperate with their inquiries. My mother begged the men not to move my father who was still recovering from the heart attack in November last year. The men said that in light of my father's condition, that they will not take any action on this occasion but promised to return on 4 March and take away the entire family including my younger brother, if I was not produced by then.⁸⁶

Another former detainee released in 2010, spoke with Amnesty International in January 2012. He said that police tortured him but that it was really their threats to arrest his wife that finally forced him to sign a false confession: “For me Boosa was a punishment. We were kept alone in our cells, only allowed one hour out. They told me, ‘if you confess we'll send you to Colombo.’ I refused. DIG [Deputy Inspector General] said ‘confess and we'll release you.’ One evening they took me to Colombo, to headquarters. They said ‘confess or we'll charge your wife.’ So I signed a confession. They gave me a piece of paper and said write your life story in Tamil. Tell us everything that happened since 2005. They dictated.”⁸⁷

PRESSED TO DENOUNCE CRITICS

According to testimony provided to Amnesty International in a confidential interview in 2012, S. Radhika and her husband were married in 2006. They were displaced from Kilinochchi in 2008, moving from place to place, she said, “one week here, five days there” always pushed forward by shelling. In October 2008 they moved to Mullivaikal. They fled the conflict along with thousands of others on 18 May 2009.

The army separated the couple. Radhika was sent to Zone four in Manik Farm displacement camp; her husband was arrested as a suspected LTTE member. He was detained first in a school building in Vavuniya where he was interrogated and according to his wife, tortured, and then eventually sent to Boosa Detention Centre.

Like many detainees who ended up in TID custody at Boosa instead of in a “rehabilitation” camp at the end of the war, Radhika’s husband had maintained his innocence when he was arrested by the army in 2009: “He told the army he was not involved with the LTTE; he was a coordinator for an NGO that provided water and sanitation for displaced people.” Radhika’s husband spent 20 months in TID custody before he was released, and is still required to report weekly to police headquarters. In recent months Radhika says, the police have put pressure on her husband to publicly denounce people who alleged violations by the Sri Lankan military:

“Every time there is a new interview [in the international media] the police try to pressurize.” Radhika said she knew of another detainee who was promised he would be released if he denounced someone else, “but even though he denounced her he didn’t get released.”

Five Tamil doctors who provided critical medical care in the conflict zone at the end of Sri Lanka’s armed conflict as well as crucial information to the outside world about the conditions faced by civilians caught in that conflict, were detained by the army in May 2009. In July, after two months in detention, Dr. T. Sathiyamoorthy, Dr. T.Varatharaja, Dr V. Shanmugaraja, Dr. Illancheliyan Pallavan and Dr. S. Sivapalan were compelled to participate in a government-organized and televised press conference where they recanted earlier statements about civilian casualties, apparently in return for their release from detention.

DEMANDS FOR BRIBES

The lack of transparency and the secrecy that surround many detention practices in Sri Lanka create an environment conducive to demands for bribes and extortion. Both army and police personnel have reportedly sought bribes from family members in exchange for the release of security detainees. Many individuals would still be languishing in administrative detention if their families did not have the resources to buy their freedom. Others are presumably still in prison for that same reason.

Freedom From Torture found that of 35 cases analysed in its December 2011 report, every individual had escaped from detention by bribing officials:

...Individuals in all the cases without exception report escaping from detention only when family members were somehow able to discover their whereabouts and arrange to bribe the relevant officials to secure their release. This of course raises the question of what happens to those who do not have the contacts or money to have bribes paid on their behalf or whose family members are unable to learn of their place of detention. Such people, without the due process of law to protect their rights while in detention, risk not only prolonged detention but also ongoing exposure to the risk of torture.⁸⁸

Amnesty International has heard many similar accounts. A man interviewed in early 2012 told an Amnesty International researcher that his family had paid a CID officer in Vavuniya

the equivalent of \$10,000 Canadian (USD \$9,400 or over 1,000,000 Sri Lankan rupees) to release his younger brother. "CID were threatening to transfer him so we paid them money to prevent the transfer. We paid \$10,000 and he was released. He was held for a total of six months. It took us about three months to negotiate his release. He is now in France."⁸⁹

5. “REHABILITATED”?

When the Sri Lankan government defeated the LTTE militarily in May 2009 the government's response to the displacement of some 300,000 Tamils from the war zones was to arbitrarily detain them *en masse* in closed camps guarded by the Sri Lankan Army. People were arbitrarily detained in these camps for more than seven months. Out of this large group, about 12,000 men, women and children were rounded up and detained separately on suspicion of having links to the LTTE. Many surrendered to the army as they fled the Vanni, others were picked up by the army out of displacement camps; some children who had been forcibly recruited by the LTTE as child soldiers were turned over to the authorities by their parents, who believed it was their only hope.

According to many witnesses the army made repeated announcements calling on anyone who had spent “even a day” with the LTTE to surrender.⁹⁰ The Army led people to believe that if they surrendered they would be treated leniently, provided with a short course of vocational training or even released. Instead they were indefinitely detained.

The LLRC wrote in its final report:

A detainee at Omanthai made representations before the Commission stating that he was not a member of the LTTE but a paid labourer and when he had been at the Ananda Coomaraswamy Camp there had been an announcement asking people who were or had any connections with the LTTE movement to register. So he had told them of his problems and had been asked to board a bus after being told that he would be given some vocational training. He alleged that he had been in detention for 1 year and 4 months despite not having any connection with the movement other than being employed as a labourer.⁹¹

UN Special Envoy of the Special Representative for Children Affected by Armed Conflict Patrick Cammaert noted that “... many children's families, fearing reprisals, encouraged their children to report themselves, even if they only had spent a few hours in the custody of the LTTE in the final days of the fighting. Many children reported themselves and were either picked up straight away or were later visited by various Sri Lankan Government agents including by the Criminal Investigation Division (CID). Most were officially handed over to an adult “surrendee” centre and were later moved to a child protection and rehabilitation centre.”⁹²

Detainees were not charged with offences; they were not brought before magistrates; they were not allowed to challenge their detention. The Sri Lankan authorities referred to them as “surrendees,” claiming that their incarceration was “voluntary”, and described their detentions as opportunities for “rehabilitation”. In November 2011 Sri Lanka provided this explanation to the Committee Against Torture:

[Emergency] Regulation 22 ... provides for rehabilitation on the following two grounds:

- On the basis of a written statement by the person that he / she is “surrendering voluntarily”
- In terms of a Court Order that a person convicted of offence mentioned in Regulation 22 should undergo rehabilitation

In case of a voluntary surrender (the first scenario mentioned above), access to lawyer does not arise. The person is entitled to legal protection under judicial supervision (in the second scenario above).⁹³

In reality, as is evident from the testimony of former detainees, the “rehabilitation” process was anything but voluntary. Detainees either did not know they had a choice about rehabilitation or were led to believe that the choice was rehabilitation or a lengthy prison term. They were tortured in custody, and punished if they tried to escape.

Calleigh McRaith, a member of a team of students from University of Virginia Law School who visited Sri Lanka in January 2012 to study the current human rights situation interviewed 12 Sri Lankans who had been detained for rehabilitation. She found that none of the individuals she spoke with considered their detention to be voluntary:

Despite the government’s claims that the surrendees were grateful for the rehabilitation, the surrendees’ descriptions of that time show little differentiation between the rehabilitation setting and formal detention. First, no surrendee that I spoke with was aware that they had any choice about being in rehabilitation, discrediting the government’s claims that everyone who entered rehabilitation did so voluntarily. While the government assured me that every surrendee had signed the proper consent forms, no one that I spoke with remembers signing anything. The surrendees reported that several people had tried to escape the rehabilitation centres, but that these were either removed (presumably to a formal detention setting) or beaten.⁹⁴

Many of the 12,000 detainees were reluctant recruits to the LTTE (which practiced forced recruitment) and most were released in batches after months or years in custody. As of January 2012 about 1,000 “surrendees” remain in rehabilitation camps awaiting release. Hundreds of others – assessed by the Sri Lankan authorities to be “hard core” members of the LTTE – were acknowledged to be held in administrative detention under the PTA in the custody of TID at Boosa Prison.

Chairman of the Prisons Visitors’ Board, former Sri Lankan diplomat Kalyananda Godage, testifying before the LLRC in 2010 raised his concerns over detention practices and conditions:

Now I must tell you of a very, very sad situation, particularly bad and dangerous situation. We have in our prisons over 2000 young Tamil men.

There are 500 here in the Remand Prisons at Welikada. Then we have 700 in the TID (Terrorism Investigation Division), and another 600, I believe or little more, at Boosa. Some of them in the Remand Prisons have been taken on suspicion. Just picked up and taken ... They are produced before Magistrates, and then the Police say 'we have not finished the inquiry' and they are locked up again.⁹⁵

According to Major General Chandana Rajaguru, Commissioner General of Rehabilitation, the authorities maintained the option of transferring the "surrendees" to rehabilitation camps for further detention "from time to time." Other branches of the security forces and intelligence services are also known to hold detainees, but their numbers, whereabouts and legal status remain unclear. As Major General Rajaguru stated in October 2011:

Last week we reintegrated 1,800 ex-combatants. The people who had come from Putumattalan started their rehabilitation in October 2009. If we go by the regulations, their rehabilitation program should end by September 30, 2011. With that, we have cleared all those people whose maximum rehabilitation period is two years.

There is another category of people who had been produced before Courts and had received rehabilitation as the verdict. They are with us, and are around 1,000 in number. We intend to keep them only for one year ... In Boosa, there are about 1,000 people under detention and they come to these [rehabilitation] centres from time to time.⁹⁶

The Commissioner explained the process in an interview with the state-owned *Sunday Observer* newspaper.⁹⁷ He said that his Bureau had been established in 2006 under the Justice Ministry:

So, we had this skeleton arrangement at the time, in May 2009, soon after the death of LTTE leader Vellupillai Prabhakaran, hundreds of thousands of people moved in. So there was an option for those involved in LTTE activities to surrender. Even people who had the slightest involvement with the LTTE were asked to surrender. So 12,000 of them volunteered to surrender. They were separately housed....

He told the *Observer* that the Bureau initially housed people who "surrendered" in 24 centres and began "profiling and taking notes" on them. TID also interrogated surrendees.

We did not want to get involved in other things such as checking their involvement with the LTTE. That was done by the Terrorist Investigation Division (TID). They sent their officers and interviewed the people who even had the slightest involvement.

Those who had been heavily involved in LTTE activities volunteered to surrender, fearing that others would divulge their information as they were among the public. On that basis we categorised them. Those who were fully involved with the LTTE were removed to Boosa [TID Detention Centre] and there was a fair amount of such people.

They were held on a different basis under the Prevention of Terrorism Act; there was the possibility of keeping them on detention order.

According to Rajaguru, TID categorised the detainees and “took away” those they placed in categories A,B,C: “LTTE leaders, strict followers, and those who were assigned to recover things and arrest others.” He said categories D, E and F – who were presumably left in rehabilitation – included the LTTE’s political cadre, supporters and those who had provided labour for the LTTE: “It was based on ongoing investigations and even later on, people who had more commitment to the LTTE were arrested.”

He said that under the 2006 Emergency Regulation, the minimum period of rehabilitation was one year which could be extended for another year in three-month intervals with authorization from the Secretary of Defence: “Whenever we felt that certain people had to be kept for longer, if they were not properly de-radicalised, they were kept for a further period with the consent of the Ministry of Defence (MOD).”⁹⁸

“SURRENDERED”

Amnesty International interviewed “Shanthan” a foreign citizen of Sri Lankan Tamil descent in October 2011. Shanthan was born in Jaffna District near Point Pedro. He returned to Sri Lanka in February 2005 to volunteer at an orphanage after the tsunami. He was recruited by the LTTE and trained to be a commander. He served as a fighter until he was injured in March 2009. “Shanthan” surrendered in May 2009. He was held in a number of camps and tortured in custody. As he had a foreign passport his embassy finally pressured for him to be brought to Colombo. Shanthan faced charges of “training with weapons.” The embassy paid for a lawyer and he was freed on 6 April 2010 by the Colombo High Court. On 11 April he left Sri Lanka accompanied by embassy staff:

“On 18 May I was at Nandikadal Lagoon. There were many children there and old people... many people dead. Some people died just because they couldn’t swim... to run away from firing they were trying to swim across. I surrendered with the civilians...”

“Shanthan” was first detained by military police from what he thinks were the 57th Division. He was interrogated, but bribed his way out:

“ I was beaten with a baton. I was hit with wire cutters. The main purpose was interrogation. They wanted to know “Where is the LTTE leader. Who are the main leaders. Where have they escaped. What position did you have?...”

... When I got to Omanthai some people recognised me and said he is with the LTTE so I was... taken to an interrogation place.

It was a small building. I think four rooms. I was interviewed by military intelligence. They had pistols they liked to use. First they put a loaded pistol in my mouth ready to shoot. They also had small blades. They used those blades to cut at my hands. They also said they would cut my dick off.

I was held for a few days and asked the same kind of questions. After a few days I was sent to a school in

Omanthai. I think 15 other Tiger fighters were there... It was an old school building. There were about 3,000 people held there. There were lots of problems. We had to sit in lines. Then the military would start hitting us... They had red uniforms. I can't tell you who was in charge they kept changing their supervisor. In the school we used to be taken away by military intelligence after 10pm and taken to a kind of torture place. My hands were bound to a chair then I was hit in different places... sometimes with hands sometimes with a baton. They were saying bad things.

I was tortured every day for two weeks then after the ICRC visit they used to take me once a week. The torturers were often drunk I could smell it on their breath and I could smell ganja. There were lots of people inside who faced similar threats. Actually these situations made us act alone. I had a very good friend in intelligence he was terribly injured by torture... he came back one day full of blood and was a different person. We ignored him because we had to survive. Each of us just wanted to live in that moment.

It was a very sad place. We had 60 people staying in one classroom. Just one food packet for three people... it was old food... we had no mats or beds just slept on a bare floor...

After a while I was sent to another camp, Vavuniya Maha Vidyalaya. In here there were about 600 cadres. It was known as a 'rehabilitation camp'. It was a little better. Here we could make our own food but we only had vegetables. Still there were problems with water and toilets. We had five litres of water per person twice a week and that was for everything... for washing, toilet, cooking and drinking.

In the morning we would have a bath. Then we'd have to get in a line. The military wanted to check everyone. We would get hit if anyone was missing. Then we would be forced by soldiers to go in the yard and raise the Sri Lanka flag and sing the song. Then we just sat in the classroom all day. We didn't have any books or anything.

We still had some torture. We got asked questions about the LTTE. What was very bad was that at night when we were sleeping the soldiers came in and kicked people. After about four months I finally got a visit...

Finally some [embassy] officials visited me. They brought me a newspaper... I was still tortured with hitting but I was strictly ordered by the M.I [military intelligence] to say nothing [about the torture] or I would be killed. [They] would have visited me earlier but GR [Gothabaya Rajapaksa, Sri Lankan Defence Minister] did not give the permission.

My mother also came... to visit me. Her time was restricted to 10 minute visits. She had been waiting round the school to visit me.

I was so happy to see her after such a long time. I hadn't seen her for so long. She didn't know if I was alive or dead. I had to shield her from the truth of what was happening to me. I am the oldest son and she is already weak so I couldn't burden her with these bad things."

On 17 March 2010 Shanthan was transferred to CID custody and the notorious 4th Floor:

"This move to Colombo this was the worst... this was the worst... this was total torture... there they had an electric chair... I can't think about it... you know they have some sayings... the 2nd floor that is inquiry... 4th floor hard inquiry with torture... if you go to 6th floor torture... you don't come back.

I was here for a few days luckily then the... embassy came. The government had not informed the embassy

that I had been transferred to Colombo. I only got a few minutes with them. The embassy came to know I was there as I passed a message through other Tamil visitors to the place.

The embassy paid for a lawyer. I had a Court case. It just lasted two days. On 6 April I was freed by the Colombo High Court.”

Shanthan left the country four days later.

6. CONCLUSIONS

Arbitrary and unlawful arrest and detention have been longstanding problems in Sri Lanka, where authorities have grown used to cutting procedural corners where arrests and detention are concerned. Impunity thrives in this atmosphere; human rights violations of all types go uninvestigated and unpunished, innocent individuals are denied justice and people who may be guilty of crimes are not held to account. This includes people who may be guilty of grave crimes, such as those that Amnesty International has documented were perpetrated by the LTTE against civilians such as killings, torture, forced recruitment of child soldiers and the use of civilians as human shields:

Many people in Sri Lanka have been detained without any evidence of wrongdoing and should be charged or released; others who face credible charges should be prosecuted.

Regardless of their guilt or innocence, the individuals whose cases are described in this report and thousands like them have been the victims of grave human rights violations. They, or the loved ones they left behind, deserve redress.

While the Sri Lankan government has the right and the duty to take lawful measures necessary to protect the rights of the country's population, including their security, it must never do this in violation of their human rights. The right to liberty, including freedom from arbitrary deprivation of liberty, is a key human right, provided in international treaties binding on Sri Lanka, as well as its own Constitution. Despite this, arrests and detentions under the PTA and previously under the Emergency Regulations constituted arbitrary detention without charge or trial, or where prosecutions did take place with no guarantees of a fair trial. Sri Lanka must end its reliance on the PTA and abolish the system of administrative detention. The damage done to Sri Lanka's criminal justice system by decades of unlawful arrest and detention practices is immeasurable.

Such arbitrary detentions have all too often been accompanied by other human rights violations, in particular incommunicado detention, torture and other cruel, inhuman or degrading treatment or punishment, extrajudicial executions and enforced disappearances. Irrespective of steps to end arbitrary detentions, the authorities must urgently take measures to root out these violations.

If the Sri Lankan government is serious about upholding its international obligations to end human rights violations and impunity and ensure accountability, and committed to reconciling communities torn apart by armed conflict, then justice and human rights must be part of that equation.

RECOMMENDATIONS

Amnesty International calls upon the authorities of Sri Lanka to:

- Repeal the Prevention of Terrorism Act, and abolish the system of administrative detention in Sri Lanka;
- Release all individuals who have been arrested under emergency or anti-terrorism laws, unless they are charged with recognizable criminal offences and remanded by an independent, regularly constituted court. Any trials must be held promptly and in regularly constituted courts with all internationally recognized safeguards provided;
- Implement all court rulings (such as Supreme Court decisions in fundamental rights cases and writs of habeas corpus) ordering release of detainees without delay;
- Immediately and unconditionally release all detainees deprived of liberty solely for the peaceful exercise of their rights of freedom of thought, conscience, religion or belief, opinion or expression;
- Immediately end all use of incommunicado detention;
- Immediately close all unofficial and secret places of detention and enact legislation making it illegal to detain anyone in any place other than an officially recognized detention facility, acknowledged by and accessible to families, lawyers and courts, as well as independent civilian monitors;
- Carry out independent, impartial and effective investigations into all allegations of human rights violations against detainees and their families, including torture and other ill-treatment, enforced disappearances and extrajudicial executions. Reports from such investigations should be made publicly available. Those suspected of involvement in human rights-related crimes, including persons with command or other superior responsibility, should be prosecuted in proceedings which meet international standards of fairness;
- Ensure that all persons arrested are informed upon arrest of the suspicions against them, and their rights to contact their families and engage legal counsel. The names and ranks of the arresting officers should be clearly visible and available in writing upon request;
- Ensure that officers carrying out the initial arrest inform the families in writing of the place where the detainee is held;
- Ensure that the families of those detained are informed in writing of all subsequent transfers to other places of detention without delay;
- Ensure that all detainees (including “surrendees”) are promptly brought before a judicial magistrate and that the magistrate is empowered to nullify the arrest or detention and release the detainee if he or she deems the detention unlawful;

- Ensure that all detainees have prompt and thereafter regular access to their families, to legal counsel of the detainee's choosing and independent medical care at all stages;
- Guarantee access of all detainees – including those detained for “rehabilitation” to an international and independent humanitarian agency such as the ICRC;
- Guarantee the right of all detainees to challenge the lawfulness of their detention before an independent civilian judge or similar competent authority;
- Amend current regulations to ensure that all detainees are permitted to have legal counsel present during interrogations;
- Ensure that all detainees are able to exercise their right to be examined by an independent physician as soon as they are arrested and after each period of questioning, and monitor the quality of medical reporting;
- Establish and maintain a centralized register of all detainees, including those detained for “rehabilitation” available for public access, detailing the date of order of arrest and detention, authority issuing such orders and all transfer, release and revocation orders.
- Take immediate steps to improve conditions in prisons, lock-ups and detention centres, ending overcrowding and providing adequate standards of treatment, including adequate food, hygiene and medical care, at least in line with the UN Standard Minimum Rules for the Treatment of Prisoners and in accordance with the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- Ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish National Preventive Mechanisms in accordance with it, to ensure independent monitoring of all places where people are deprived of their liberty without exception;
- Ensure all victims of human rights violations have access to reparations in accordance with international standards;
- Invite and facilitate the visits of UN special procedures including particularly the UN Special Rapporteur on Torture and the Working Group on Arbitrary Detention; the UN Working Group on Enforced Disappearances; the UN Special Rapporteur on Freedom of Expression; and the UN Special Rapporteur on the Independence of Judges and Lawyers. Consider the conclusions and recommendations of these and other UN mechanisms seriously, with a view to their implementation;
- Ratify the Rome Statute of the International Criminal Court and the International Convention for the Protection of All Persons from Enforced Disappearance, and ensure that all human rights-related treaties are incorporated into domestic legislation and implemented in law, policy and practice;
- Establish an effective witness protection program to ensure the safety of individuals who wish to speak up in Court or public spheres and their families.

The alleged violations that occurred in Sri Lanka in the context of its final armed conflict against the LTTE are so grave and of such a magnitude that they pose serious challenges to international justice and require not just domestic but international remedies as well, particularly given Sri Lanka's long history of impunity. In the words of UN Secretary General Ban Ki-moon's Panel of Experts on Accountability in Sri Lanka, "the conduct of the war represented a grave assault on the entire regime of international law designed to protect individual dignity during both war and peace."⁹⁹ The UN must act to counter this dangerous precedent by supporting an independent international investigation.

Amnesty International calls upon the UN to:

- Support the establishment of an independent international mechanism by the Secretary-General to pursue accountability for alleged violations of international human rights and humanitarian law in Sri Lanka.

7. ANNEX

PRESIDENTIAL DIRECTIVES ON PROTECTING FUNDAMENTAL RIGHTS OF PERSONS ARRESTED AND / OR DETAINED

Presidential Directives issued in July 2006 and re-circulated to the security forces in April 2007 aimed at protecting the rights of detainees provide certain safeguards and restrictions on executive power. However, they are insufficient and have never been consistently implemented or enforced. These Directives were aimed at the military (Army, Navy and Air Force) and police and ordered them (i) to "assist" the Sri Lankan Human Rights Commission and (ii) warned against improper or illegal arrest and detention under the Emergency Regulations or PTA.

The directives reinforce an individual's right to contact friends or family upon arrest to inform them of their whereabouts, but do not guarantee access to legal counsel. The directives also provide that:

3. The person making the arrest or detention should identify himself by name and rank, to the person or relative or friend of the person to be arrested. The person to be arrested should be informed of the reason for the arrest. All details of the arrest should be documented in the manner specified by the Ministry of Defence. The person being arrested should be allowed to make contact with family or friends to inform them of his whereabouts.

4. When a child under 18 years or a woman is being arrested or detained, a person of their choice should be allowed to accompany them to the place of questioning. As far as possible, any such child or woman arrested or detained should be placed in the custody of a Women's Unit of the Armed Forces or Police or in the custody of another woman military or police officer.

5. The person arrested or detained should be allowed to make a statement in the language of his choice and then asked to sign the statement. If he wishes to make a statement in his own handwriting it should be permitted.

6. Members of the Human Rights Commission (HRC) or anyone authorised by it must be given access to the arrested or detained person and should be permitted to enter at any time, any place of detention, police station or any other place in which such a person is confined. Further, the HRC must be informed within 48 hours of any arrest or detention and the place the person is being detained.

19 AUGUST 2011 REGULATIONS UNDER THE PREVENTION OF TERRORISM ACT

THE PREVENTION OF TERRORISM (TEMPORARY PROVISIONS) ACT, No. 48 OF 1979 REGULATION, made by the President under section 27 of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 read with paragraph (2) of Article 44 of the Constitution, MAHINDA RAJAPAKSA, President, Colombo, 29th August, 2011.

2. (1) Any person who has been detained in terms of the provisions of any emergency regulation which was in operation on the day immediately prior to the date on which these regulations came into operation, shall forthwith on the coming into operation of these regulations, be produced before the relevant Magistrate, who shall take steps to detain such person in terms of the provisions of the Criminal Procedure Code Act, No. 15 of 1979.

(2) Any person who has — a) been remanded by a Magistrate in connection with the commission of an offence in terms of the provisions of any emergency regulation which was in operation on the day immediately prior to the date on which these regulations came into operation; or (b) been connected with or concerned in, or who is reasonably suspected of being connected with or concerned in the commission of any unlawful activity within the meaning of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979, shall with effect from the date of the coming into operation of these regulations, be deemed to have been remanded under the provisions of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979. The provisions of the said Act relating to custody of persons and the grant of bail shall thereupon be applicable in relation to such person.

3. Notwithstanding the fact that the state of emergency declared by Proclamation in terms of section 2 of the Public Security Ordinance (Chapter 40) has lapsed and any regulation made under section 5 of the Public Security Ordinance (Chapter 40) has with effect from August 30, 2011 ceased to be valid and effectual, no person detained in such custody other than judicial custody in terms of any such regulations, shall be released until the expiry of thirty days from August 30, 2011.

Provided however, if no Detention Order in terms of Part III of the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 is issued prior to the expiration of the period of Thirty days in respect of such person, such person shall forthwith be released from custody by the person in whose custody he is held, unless such person has been produced before a Magistrate and remanded under the provisions of Part II of the said Act, or any other law for the time being in force.

Ref: TG ASA 37.2011.005

Major General V.R Silva
 Department of Prisons
 No.150
 Baseline Road
 Colombo 09

12 May 2011

Dear Major General V.R.Silva, Commissioner General of Prisons,

DETENTION IN SRI LANKA

I am writing to request your kind assistance to gather information on the number and location of individuals that have been detained under the Prevention of Terrorism Act (PTA) or measures under the Public Security Ordinance, including emergency regulations, and in particular those detained without charge or trial.

In a public sitting of the Commission of Inquiry on Lessons Learnt and Reconciliation on 15 September 2010, Mr K Godage, Chairman of the Prison Visitors' Committee mentioned prison conditions. He referred to over 2000 Tamil men currently imprisoned in Sri Lanka, including 500 who are held in the Remand Prisons at Welikada, stating that some of these individuals have been arrested on suspicion and have not been formally charged with any criminal offences. Mr Godage also recommended that a special mechanism be established to look into such cases and make a recommendation as to whether detainees should be charged or released.

Amnesty International shares the LLRC's and the Ministry of Rehabilitation and Prison Reforms' commitment to promoting the rule of law in Sri Lanka. We believe that continued reliance on extraordinary measures like the PTA and emergency regulations invites abuse, allowing for arbitrary arrest and detention and creating an environment where enforced disappearances and torture and other ill-treatment can occur.

To further our efforts to promote human rights, we seek up-to-date information on the scale of detentions under these laws. We hope that the Department of Prisons can help us. In particular we are seeking information on the following:

- How many individuals are currently detained under the Prevention of Terrorism Act and emergency regulations?
- How many individuals currently detained under the PTA are being held under suspicion or pending investigation (have not yet been charged with an offence)?
- How many individuals have been convicted under the PTA and are currently serving sentences?
- In which prisons/locations are those held under the PTA detained?

- Do you have a breakdown of PTA and emergency regulation detainees by location, length of time in detention, reason for detention, age, gender and status (convicted/not convicted)?
- For future reference, who should Amnesty contact for information regarding these detentions?

Regionally specific data on the management of prisons in Sri Lanka and the detention of prisoners under the above legislation would also be extremely useful.

For more on Amnesty International's concern over the use of Anti-Terrorism Laws, please find enclosed copies of Amnesty International's latest report 'Forgotten Prisoners'.

Yours Sincerely

Madhu Malhotra
Deputy Program Director
Asia Pacific
Amnesty International

8. ENDNOTES

¹ "Six migrants detained under PTA," *BBC Sinhala.com*, 14 September 2011 http://www.bbc.co.uk/sinhala/news/story/2011/09/printable/110914_boatpeople.shtml, accessed 19 February 2012:

The Magistrates Court in Colombo remanded a group of migrants who were fleeing Sri Lanka. A boat carrying forty four Tamil migrants were arrested in the Eastern Seas of Kalmunei by the Sri Lankan Navy. They were handed to the police and detained under the anti terror laws. On the request of Criminal Investigation Bureau (CID), Colombo magistrate remanded six people under the prevention of terrorism act (PTA) and thirty six under the immigration and emigration laws. According to the CID there are credible evidence against that six people had connections with LTTE. CID stated that these people will be detained and questioned in Boossa Detention Centre. The Sri Lankan Navy said that the boat they arrested was carrying migrants heading towards Australia. Children and women were among the migrants arrested. Two children were granted bail on humanitarian and compassionate grounds.

² In 1993 Amnesty International reported an estimated 2,000 or more people in LTTE custody and noted that "The LTTE has not informed relatives of the whereabouts or fate of many of its prisoners, some of whom have reportedly been tortured and killed." The LTTE also conducted abductions for ransom. See, Amnesty International, *Sri Lanka: "An assessment of the human rights situation"* (Index: ASA 37/001/1993) <http://www.amnesty.org/en/library/info/ASA37/001/1993/en>. See also, Amnesty International, *Sri Lanka: "A Climate of Fear in the East"* (ASA 37/001/2006) <http://www.amnesty.org/en/library/asset/ASA37/001/2006/en/2ad73d22-d46f-11dd-8743-d305bea2b2c7/asa370012006en.pdf>.

³ International law does permit governments to place limited restrictions on the right to liberty but only in extreme circumstances where a public emergency "threatens the life of a nation" and such derogations must be of "an exceptional and temporary nature." UN Human Rights Committee, "*General Comment 29, States of Emergency (article 4)*," U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

⁴ Amnesty International, *Sri Lanka: "An assessment of the human rights situation"* (Index: ASA 37/001/1993) <http://www.amnesty.org/en/library/info/ASA37/001/1993/en>

⁵ Prevention of Terrorism Act, No. 48 of 1979.

⁶ Public Security Ordinance No. 25 of 1947 (PSO), 16 June 1947.

⁷ For example, in the years immediately preceding the 2002 cease-fire, it was estimated that at any one time 1,500 to 2,000 people were in detention under the PTA and Emergency Regulations; most were released relatively quickly – usually in a matter of days. The Sri Lankan press reported over 13,000 such arrests under the Emergency Regulations and PTA in the year 2000 alone. In mid 2009 nearly 12,000 people suspected of links with the LTTE were detained as surrendees in rehabilitation camps under the Emergency Regulations; it is estimated that another 2,000 people were detained without charge under

the ER or PTA or other laws in police lock-ups, detention centres or remand prisons.

⁸ Over the course of four decades Sri Lankans never experienced a period of non-emergency rule that lasted for more than five years. Sri Lanka was under a state of emergency from March 1971 to February 1977; from August 1981 to January 1982; from 30 July 1982 to 30 August 1982; from 20 October 1982 to January 20 1983; and from 18 May 1983 to 11 January 1989; from 20 June 1989 to 4 September 1994; from 4 August 1998 to 4 July 2001; from 5 November 2003 to 6 November 2003 and from 12 August 2005 to 30 August 2011.

⁹ The PTA overlaps extensively with the provisions of the lapsed Emergency Regulations in its definitions of offences and penalties, treatment of confessions, powers of search and arrest, detention and restriction orders and prohibition against publications.

¹⁰ Prevention of Terrorism (Detainees and Remandees) Regulations No. 4 of 2011.

¹¹ "Almost three [years] since the end of the civil war, the northern peninsula has one soldier for every 11 civilians, that is 40 – 50,000 troops out of a population of 600,000," Melani Manel Pereram "*Tamil refugees and war widows in militarised Jaffna*," 14 December 2011, <http://www.asianews.it/news-en/Tamil-refugees-and-war-widows-in-militarised-Jaffna-23440.html>, accessed 19 February 2012.

¹² Sri Lankan Public Security Ordinance, No.25 of 1947, PART III, SPECIAL POWERS OF THE PRIME MINISTER:

12. (1) Where circumstances endangering the public security in any area have arisen or are imminent and the Prime Minister is of the opinion that the police are inadequate to deal with such situation in that area, he may, by order published in the Gazette, call out all or any of the members of all or any of the armed forces for the maintenance of public order in that area. (2) The members of any of the armed forces who are called out by Order made under subsection (1) for the purpose of maintaining public order in any area shall for such purpose have the powers, including the powers of search and arrest, conferred on police officers by any provision of this Part or of any other written law, other than the powers specified in Chapter XII of the Criminal Procedure Code: Provided that the power conferred on police officers by subsection (1) of section 14 shall not be exercised by any member of the armed forces called out as aforesaid who is of a rank below that of Sergeant of the Ceylon Army or Royal Ceylon Air Force or Petty Officer of the Royal Ceylon Navy. (3) In any area in respect of which an Order is made under subsection (1), section 99 of the Criminal Procedure Code shall have effect as if the expression "peace officer" occurring therein includes any member of the armed forces who is called out by such Order and who is of a rank not below that of Sergeant of the Ceylon Army or Royal Ceylon Air Force or of Petty Officer of the Royal Ceylon Navy.

¹³ Amnesty International has documented STF involvement in human rights violations dating back to 1985, when it sent a letter to Sri Lanka's President Junius Jayawardene raising concerns regarding the enforced disappearance of 63 young Tamil men by the STF in May of that year (Letter from Amnesty International's Secretary General to His Excellency President J.R Jayawardene, 7 June 1985.) Amnesty International documented eight alleged enforced disappearances by the STF in eastern Sri Lanka between April 1995 and May 1996. STF members were arrested in connection with the 1995 killing of

21 young Tamil men whose bodies found floating in Bolgoda lake and other waterways near Colombo but the case was later dismissed when the prosecution failed to appear in court. STF members are believed to be responsible for the execution style killings of five students in Trincomalee in January 2006. Witnesses who testified to Sri Lanka's Lessons Learnt and Reconciliation Commission in Eravur and Kumunai Districts in 2010 and 2011 accused the STF of forcibly disappearing family members in 2008; On 9 October 2010 Witness eight from Batticaloa District was able to provide the full name of an officer with the STF stationed at the Madapalam STF camp who witnesses told her was responsible for her husband's enforced disappearance from a paddy field where he was working on 19 February 2009.

¹⁴ Centre for Human Rights and Development, "*Arrest and abduction of Stephen Sunthararaj - No progress in investigations*," <http://www.chrdsrilanka.org/PAGES/newsUpdates6.html>, accessed 27 February 2012.

¹⁵ Amnesty International, *Sri Lanka: "Fears for missing Sri Lankan activists"* (Index: ASA 37/018/2011) <http://www.amnesty.org/en/library/asset/ASA37/018/2011/en/523cd9d9-a12b-4013-a31a-5e368272d22e/asa370182011en.pdf>.

Amnesty International, *Sri Lanka: "Concern Grows for Sri Lankan Activists"* (ASA 37/019/2011) <http://www.amnesty.org/en/library/asset/ASA37/019/2011/en/8a2e72bb-1951-4202-8ceb-27e001422dc9/asa370192011en.html>.

¹⁶ Regulation 22 of the Emergency (Miscellaneous Provisions and Powers) Regulations 2005 (EMPPR 2005), as amended by Emergency Regulation 1462/8, 2006, defined a "surrenderer" and "[a]ny person who surrenders ... in connection with any offence under the Explosives Act, the Offensive Weapons Act, No. 18 of 1966, the Firearms Ordinance, the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979 or under Chapter VI ["Offences Against the State"] Chapter VII ["Offences Relating to the Army, Navy, and Air Force] or Chapter VIII ["Offences Against the Public Tranquillity"] of the Penal Code or under any emergency regulation, or through fear of terrorist activities to any police officer, or any member of the armed forces, or to any public officer or any other person or body of persons authorized by the President by order." ER 22 required that any such person, "shall be required to give a written statement to the officer or person authorized to the effect that he is surrendering voluntarily." In May 2009 the authorities used the regulation to detain some 12,000 alleged LTTE members who in the Sri Lankan government's words "either surrendered or forced to surrender" in the last stages of the conflict.

¹⁷ Bureau of the Commissioner General of Rehabilitation Website, History, <http://bcgr.gov.lk/history.php>, accessed 19 February 2012.

¹⁸ Sri Lankan Government "*Responses to List of issues to be considered during the examination of Sri Lanka's 3rd and 4th combined periodic reports on the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*", pages 6–7, http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.LKA.Q.3-4.Add.1_en.pdf, accessed 19 February 2012.

¹⁹ Emergency Regulation 22, promulgated on 12 September 2006 under Section 5 of the Public Security Ordinance.

²⁰ "Court 'cannot decide' on rehabilitation," *BBC Sinhala.com*, 06 January 2012 http://www.bbc.co.uk/sinhala/news/story/2012/01/120106_court_rehabilitation.shtml.

²¹ Kishali Pinto-Jayawardena, "*Rule of Law in Decline*", The Rehabilitation and Research Centre for Torture Victims (RCT), p 12, <http://www.ruleoflawsrilanka.org/resources/THE-RULE-OF-LAW-OF->

[DECLINE.pdf/view](#), accessed 27 February 2012.

²² Section 29 of the PTA limited its operation to a period of three years from the date of its commencement, but this provision was repealed in 1982, transforming the PTA into a permanent statute. See, Section 4 of Act No. 10 of 1982.

²³ Section 16(2) of the PTA states that "The burden of proving that any statement referred to in subsection (1) is irrelevant under section 24 of the Evidence Ordinance [which deems confessions extracted "by inducement, threat or promise" to be irrelevant] shall be on the person asserting it to be irrelevant."

²⁴ Section 7(3), Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 states that "A police officer conducting an investigation ... shall have the right of access to [persons arrested under the act] and to take such person during reasonable hours to any place for the purpose of interrogation and from place to place for the purposes of investigation."

²⁵ PTA Sections 9(1) and 11(1).

²⁶ PTA Section 10.

²⁷ PTA Section 7.(1) [Under Part II, Investigation of Offences]

Any person arrested under subsection(1) of section 6 may be kept in custody for a period not exceeding seventy-two hours and shall, unless a detention order under section 9 has been made in respect of such person, be produced before a Magistrate before the expiry of such period and the Magistrate shall, on an application made in writing in that behalf by a police officer not below the rank of Superintendent, make order that such person be remanded until the conclusion of the trial of such person: Provided that, where the Attorney-General consents to the release of such person before custody before the conclusion of the trial, the Magistrate shall release such person from custody.

PTA Section 7(2) stipulates that anyone "reasonably suspected to be connected with or concerned in the commission of any offence under the PTA" who appears or is produced before any court other than in the manner referred to in subsection (1), such court shall order the remand of such person until the conclusion of the trial: unless the police make a request to hold the suspect in police custody for a further 72 hours, in which case the remand is suspended for that period.

²⁸ Ranga Jayasuriya, "Were detainees sadistically beaten at A'pura?" *Lakbima*, 4 December 2011, http://www.lakbimanews.lk/index.php?option=com_content&view=article&id=3748:were-detainees-sadistically-beaten-at-apura&catid=35:news-features&Itemid=37m, accessed 19 February 2012.

²⁹ See above.

³⁰ *Maxilan Anthonypillai Robert et al v Sri Lanka*, Working Group on Arbitrary Detention, U.N. Doc. E/CN.4/2006/7/Add.1 at 33 (2005). OPINION No. 8/2005 (SRI LANKA), Communication addressed to the Government on 22 June 2004.

³¹ Senior Superintendent Of Police - C N Wakishta (TID Director), *Business Today*, April 2009, http://businesstoday.lk/cover_page.php?article=205&issue=206, accessed 19 February 2012.

³² Confidential interview, January 2012.

³³ See, for example, the highly publicized arrests in 2007 of Sinhalese activists accused of links to the LTTE. Videotaped “confessions” of three trade unionists, Lalith Senaviratne, Sisira Priyankara and Nihal Serasinghe (allegedly extracted under torture), were shown to journalists as proof that the men were terrorists and featured prominently in local media. (See, “Detention of three leftists by Sri Lankan government signals new round of state repression,” Statement by the Socialist Equality Party (Sri Lanka) 13 March 2007. In September 2011 the three remained in custody under indictment in the Jaffna and Colombo High Courts. In all at least 25 Sinhalese Sri Lankans; journalists, trade union activists and railway workers were arrested by the police in 2007 on suspicion of LTTE links; in February 2009 11 of them were released without charge and March 2009 the Sri Lankan Supreme Court ordered the authorities to charge or release the remaining 14. (“Court releases ‘Sinhala Tigers’” *BBC Sinhala.com*, 13 February 2009, http://www.bbc.co.uk/sinhala/news/story/2009/02/090213_sinhala_tigers.shtml, accessed 27 February 2012.

³⁴ Senior Superintendent Of Police - C N Wakishta (TID Director), *Business Today*, April 2009, http://businesstoday.lk/cover_page.php?article=205&issue=206, accessed 19 February 2012. “During the year 2006, we were given a large responsibility. At that moment we all became one team. The CID, TID, Military Intelligence units and the Police Intelligence units - all became one. Defence Secretary, Gotabaya Rajapaksa took the initiative ... I have been involved in terrorist investigations since 1981, but this is the first time I have seen a Defence Secretary who has such dedication to the task at hand. He works with us as one. If we miss something, he looks into it.”

³⁵ See above.

³⁶ Confidential interview, May 2011.

³⁷ See, “My client had no terror connections: Defence,” *Daily Mirror*, 26 April 2011. See also, “Sri Lanka: SC allows rights petition of SP who bemoans languishing in detention on fabricated charges,” *Asian Tribune*, 21 July 2011.

³⁸ Pettitt, Jo, “*Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka 2009–2011*”, Freedom From Torture, December 2011, <http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture%20Final%20Nov%2007%202011.pdf>, accessed 10 February 2012.

³⁹ Annual Report 2008 Human Rights Commission of Sri Lanka, p.12 at 1.2.2.

⁴⁰ The LLRC was established by President Mahinda Rajapaksa in May 2010 after UN Secretary-General Ban Ki-moon announced that he would appoint a Panel of Experts to advise him on accountability issues in Sri Lanka – a move opposed by the Sri Lankan government. The Secretary-General appointed the Panel in response to widespread and credible allegations that crimes under international law including possible war crimes and crimes against humanity may have been committed by both the LTTE and Sri Lankan forces in the final stages of the armed conflict that ended in May 2009. See, Amnesty International, *Sri Lanka: “When will they get justice? Failures of Sri Lanka’s Lessons Learnt and Reconciliation Commission”*, 7 (Index: ASA 37/008/2011) <http://www.amnesty.org/en/library/info/ASA37/008/2011/en>.

The Sri Lankan government promoted the LLRC as an effective national accountability mechanism with which to respond to these allegations and has used the LLRC as its primary tool in lobbying against an independent international criminal investigation as recommended by the Panel of Experts in April 2011.

⁴¹ Representations made by a member of the clergy before the LLRC at Mannar on 8 January 2011 – Transcript No. LLRC/FV/08-01-11/01.

⁴² LLRC Final Report, P. 164,
http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf,
accessed 19 February 2012.

⁴³ LLRC Final Report, P. 165,
http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf

⁴⁴ Including ICCPR Art. 7 (which, under Article 4 is non-derogable), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and several others.

⁴⁵ See for instance Nigel S Rodley and Matt Pollard, *“The Treatment of Prisoners under International Law”*, Oxford University Press, 2009, p. 81.

⁴⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994 (CAT Act). But As Sri Lankan lawyer Kishali Pinto-Jayawardena noted in 2009, “the deterrent effect of the criminalisation of torture in the CAT Act is minimal;” There were only three convictions in the first 15 years of operation of the law, and more than 17 acquittals. See, Kishali Pinto-Jayawardena, *“The Rule of Law in Decline; Study on Prevalence, Determinants and Causes of Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka”*, Published by The Rehabilitation and Research Centre for Torture Victims, May 2009.

⁴⁷ See e.g. Geneva Convention III, Art 130, Geneva Convention IV, Art 147.

⁴⁸ Rome Statute of the International Criminal Court, Arts 7(1)(f) (torture) and 7(1)(k) (other inhumane acts—both as crimes against humanity), Art 8(1)(ii) (‘Torture or inhuman treatment’ as war crimes),
<http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>.

⁴⁹ Regulation 22 of the Emergency (Miscellaneous Provisions and Powers) Regulations 2005 (EMPPR 2005), as amended by Emergency Regulation 1462/8, 2006, provided for administrative detention of up to two years without charge or trial for purposes of the “rehabilitation” of ‘surrendees’ The term “surrendee” is defined differently in the 2005 regulation, but the Sri Lankan government has used it to refer also to individuals formerly associated with armed groups who it claims voluntarily surrendered to the authorities, though in fact in 2009 many were forcibly captured by the army.

⁵⁰ Pettitt, Jo, *“Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka 2009–2011”*, Freedom From Torture, December 2011,
http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf, accessed 10 February 2012.

⁵¹ Confidential interview, January 2012.

⁵² See, *“Sri Lanka: disabled man illegally and arbitrarily detained for over two years,”* Asian Human Rights Commission, 16 August 2011, <http://www.humanrights.asia/news/urgent-appeals/ahrc-uac-143-2011>, accessed 16 February 2012.

⁵³ *“Secretary Defence re-circulates Presidential Directives on Protecting Fundamental Rights of Persons Arrested and / or Detained,”* Ministry of Foreign Affairs, Colombo 24 April 2007, Ministry of Defence and Urban Development Website, April 25 2007, http://www.defence.lk/new.asp?fname=20070425_02,

accessed, 16 February 2012.

⁵⁴ Confidential interview, January 2012.

⁵⁵ LLRC Final Report, p.171,
http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf,
accessed, 16 February 2012.

⁵⁶ LLRC Final Report, p. 171,
http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf,
accessed, 16 February 2012.

⁵⁷ Committee Against Torture, "*Consideration of reports submitted by States Parties under article 19 of the Convention, Sri Lanka*", U.N. Doc. CAT/C/48/Add.2 6 August 2004, pages 7–8, paras 30 and 31,
[http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/763efd6dc17f7d10c1256f350053fe3f/\\$FILE/G0442277.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/763efd6dc17f7d10c1256f350053fe3f/$FILE/G0442277.pdf), accessed 15 February 2012.

⁵⁸ "Missing persons: Only 7% Gets Info" *Daily Mirror*, 24 June 2011,
<http://www.dailymirror.lk/news/12099-only-seven-per-cent-get-information-on-detainees.html>.

⁵⁹ See for instance Principle 18 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988; Standard 93 of the Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁶⁰ Confidential interview, January 2012.

⁶¹ See, PTA Section 11(5), see also, ER 19 (10), Gregory Norton, "*The Emergency Regulations 2005*,"
<http://www.unhcr.org/refworld/pdfid/471712342.pdf>, accessed 19 February 2012.

⁶² "*Joint Alternative Report from the Sri Lankan NGO Collective to the Committee Against Torture*," 14 October 2011, p.12, http://www2.ohchr.org/english/bodies/cat/docs/ngos/NGOCollective_SriLanka47.pdf,
accessed 15 February 2012.

⁶³ Harshi C. Perera, "*Justice Maker Study on Women Pre-trial Detainees in Sri Lanka*," p. 8,
<http://www.scribd.com/doc/66525603/JusticeMaker-2010-Study-on-Women-Pre-trial-Detainees-in-Sri-Lanka>, accessed 19 February 2012.

⁶⁴ Committee Against Torture, "*Consideration of reports submitted by States Parties under article 19 of the Convention, Sri Lanka*," U.N. Doc. CAT/C/48/Add.2, 6 August 2004, page 9, para 38,
[http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/763efd6dc17f7d10c1256f350053fe3f/\\$FILE/G0442277.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/763efd6dc17f7d10c1256f350053fe3f/$FILE/G0442277.pdf), accessed 15 February 2012.

⁶⁵ Committee Against Torture, "*Conclusions and recommendations of the Committee against Torture: Sri Lanka*," UN Doc. CAT/C/LKA/CO/3-4, 8 December 2011, para. 7.

⁶⁶ "*Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Sri Lanka*," UN Doc. A/HRC/7/3/Add.6, 26 February 2008, para. 94(b).

⁶⁷ Code of Criminal Procedure (Special Provisions) Act, No. 42 of 2007.

⁶⁸ Kelum Bandara, "Police can still detain suspects for 48 hrs; Minister says it's allowed under present regulations" *Daily Mirror*, 19 September 2011, page 1, <http://print.dailymirror.lk/news/front-page-news/56639.html>, accessed 17 February 2012.

⁶⁹ Confidential interview, January 2012.

⁷⁰ UN General Assembly resolution 62/148, 17 December 2007, para 15; UNGA res. 63/166, 12 December 2008, para 20; UNGA res. A/RES/66/150 19 December 2011, para 22.

⁷¹ UN Human Rights Committee, "General Comment 20, Article 7 (Forty-fourth session, 1992); *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*," UN Doc. HRI\GEN\1\Rev.1 at 30 (1994), para 11.

⁷² See for instance Report of the Committee against Torture, UN Doc. A/52/44 (1997), paras 121(d) (re Georgia); 146 (re Ukraine); UN Doc. 44(A/55/44) (2000), para 61(b) (re Peru); UN Doc. A/58/44 (2003), para 42(h) (re Egypt); UN Doc. A/59/44 (2004), para 146(d) (re Yemen).

⁷³ UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

⁷⁴ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by UN General Assembly Res. 61/177, 20 December 2006, entered into force 23 December 2010, Art. 2. The widespread or systematic use of enforced disappearance is defined as a crime against humanity in Article 6.

⁷⁵ See for instance reports of the Committee against Torture, UN Doc. A/52/44 (concerning Namibia), para 247; UN Doc. A/57/44 (2001-2); para 93(a) (concerning the Russian Federation); UN Doc. A/59/44 (2003-4), para 56(l) (concerning Chile); and UN Doc. A/61/44 (2005-6), paras 29(24) (concerning Nepal) and 30(12) (concerning Sri Lanka).

⁷⁶ See for instance UN Human Rights Committee, *El-Megreisi v Libyan Arab Jamahiriya*, Communication No. 440/1990, UN Doc. CCPR/C/50/D/440/1990 (1994); *Rafael Mojica v. Dominican Republic*, Communication No. 449/1991, UN Doc. CCPR/C/51/D/449/1991 (1994).

⁷⁷ See above.

⁷⁸ Under the Statute, a crime against humanity takes place when certain acts, including enforced disappearance, are "committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack" – Rome Statute of the International Criminal Court, adopted on 17 July 1998 (A/CONF.183/9), entered into force 1 July 2002, Art. 7(2)(a).

⁷⁹ The Statute defines this as "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time." Art. 7(2)(i).

⁸⁰ Allegations that Sri Lankan government forces employ safe houses to interrogate detainees date back many years. In January 2002, Sunday Times defence correspondent Iqbal Athas reporting on a police raid on what turned out to be a secret Army safe house wrote: "...Safehouses. A plethora of them existed under the Police and the security forces when they combated the violence of the then outlawed Janatha Vimukthi Peramuna (JVP) in the late 1980s. Suspects were arrested and grilled at these Safe Houses not to mention the complaints it drew from human rights group of torture. In the later years, major state

intelligence agencies had their Safe Houses to detain and question Tiger guerrilla suspects.” “The Great Betrayal,” Situation Report, *Sunday Times*, 10 January 2002, <http://sundaytimes.lk/020120/sitrep.html>, accessed 19 February 2012.

⁸¹ A copy of the original letter is on file with Amnesty International.

⁸² Allegations of torture at this facility, a camp referred to as Mallar Maligai, and other camps in Vavuniya run by paramilitary organizations, date back more than a decade and have been documented previously by Amnesty International, see in particular, Amnesty International, *Sri Lanka: “Possible Disappearance / Fear Of Torture,”* (Index: ASA 37/009/2001) <http://www.amnesty.org/fr/library/asset/ASA37/009/2001/fr/7cd01fd2-fb2c-11dd-9486-a1064e51935d/asa370092001en.pdf>; Amnesty International. *Sri Lanka: “Torture in Custody”* (Index: ASA 37/010/1999) <http://www.amnesty.org/en/library/asset/ASA37/010/1999/en/ea0ed8ee-e1d8-11dd-a03a-6b5b1e49bce3/asa370101999en.pdf>; Amnesty International, *Sri Lanka: “Amnesty International Appeals for an Immediate Halt to Use of Unauthorized Places of Detention”*, News Service 171/98, (Index: ASA 37/23/98) <https://www.amnesty.org/en/library/asset/ASA37/023/1998/en/6fbb2f6d-b506-4a0a-be35-27b42a80c32d/asa370231998en.pdf>.

⁸³ “SRI LANKA: Senior army officer arbitrarily arrested, tortured, and detained without trial,” Asian Human Rights Commission, December 22 2011, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-212-2011>, accessed 27 February 2012.

⁸⁴ Committee Against Torture, “*Sri Lanka, Concluding Observations of the Committee against Torture,*” UN Doc. CAT/C/LKA/CO/3-4, 8 December 2011, para 8, http://www2.ohchr.org/english/bodies/cat/docs/co/CAT.C.LKA.CO.3-4_en.pdf, accessed 19 February 2012.

⁸⁵ Confidential correspondence, May 2011.

⁸⁶ See above.

⁸⁷ Confidential interview, January 2012.

⁸⁸ Pettitt, Jo, “*Out of the Silence: New Evidence of Ongoing Torture in Sri Lanka 2009–2011*”, Freedom From Torture, December 2011, http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture%20Final%20Nov_07_2011.pdf, accessed 10 February 2012.

⁸⁹ Confidential interview, 2012.

⁹⁰ See for example, “Testimony of Witness 3, *Proceedings of the Commission of Inquiry on Lessons Learnt and Reconciliation,*” Divisional Secretariat Nedunkerny, 15 August 2010, <http://www.llrc.lk/images/stories/docs/August2010/Nedunkerni.pdf>; See also, Visit to Sri Lanka of Major General (ret.) Patrick Cammaert, Special Representative for Children Affected by Armed Conflict, 05–11 December 2009, http://www.reliefweb.int/sites/reliefweb.int/files/resources/90A1C4379684850A492576F2000BA481-Full_Report.pdf, accessed 19 February 2012.

⁹¹ LLRC final report, footnote 290.

⁹² Visit to Sri Lanka of Major General (ret.) Patrick Cammaert, Special Representative for Children Affected by Armed Conflict, 05–11 December 2009,

http://www.reliefweb.int/sites/reliefweb.int/files/resources/90A1C4379684850A492576F2000BA481-Full_Report.pdf, accessed 19 February 2012.

⁹³ Sri Lankan Government "Responses to List of issues to be considered during the examination of Sri Lanka's 3rd and 4th combined periodic reports on the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment," page 35, http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.LKA.Q.3-4.Add.1_en.pdf, accessed 19 February 2012.

⁹⁴ Calleigh McRaith, "Arbitrary Detention in Sri Lanka: Internment, Rehabilitation, and Surrenderes in the Prison System," 14 Feb, 2012, <http://groundviews.org/2012/02/14/arbitrary-detention-in-sri-lanka-internment-rehabilitation-and-surrenderes-in-the-prison-system/>, accessed 27 February 2012.

⁹⁵ Representations done by Mr K. Godage, "Proceedings of public sittings of the Commission of Inquiry on Lessons Learnt and Reconciliation appointed by His Excellency the President in terms of Section 2 of the Commissions of Inquiry Act," Lakshman Kadirgamar Institute of International Relations and Strategic Studies, 15 September, 2010, <http://www.llrc.lk/images/stories/docs/Sep2010/K%20Godage.pdf>.

⁹⁶ "Rehabilitation, resettlement of ex-LTTEers, a success," *Bureau of The Commissioner General of Rehabilitation, Ministry of Rehabilitation And Prison Reforms*, <http://www.bcgr.gov.lk/news.php?id=108>, reprinted from the *Sunday Observer*, 9 October 2011, accessed 19 February 2012.

⁹⁷ See above.

⁹⁸ See above.

⁹⁹ "Report of the Secretary-General's Panel of Experts on Accountability in Sri Lanka," 31 May 2011, Pages ii and 71, http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf, accessed 19 February 2012.



**I WANT
TO HELP**

WHETHER IN A HIGH-PROFILE CONFLICT OR A FORGOTTEN CORNER OF THE GLOBE, **AMNESTY INTERNATIONAL** CAMPAIGNS FOR JUSTICE, FREEDOM AND DIGNITY FOR ALL AND SEEKS TO GALVANIZE PUBLIC SUPPORT TO BUILD A BETTER WORLD

WHAT CAN YOU DO?

Activists around the world have shown that it is possible to resist the dangerous forces that are undermining human rights. Be part of this movement. Combat those who peddle fear and hate.

- Join Amnesty International and become part of a worldwide movement campaigning for an end to human rights violations. Help us make a difference.
- Make a donation to support Amnesty International's work.

Together we can make our voices heard.

I am interested in receiving further information on becoming a member of Amnesty International

name

address

country

email

I wish to make a donation to Amnesty International (donations will be taken in UK£, US\$ or €)

amount

please debit my

Visa

Mastercard

number

expiry date

signature

Please return this form to the Amnesty International office in your country.

For Amnesty International offices worldwide: www.amnesty.org/en/worldwide-sites
If there is not an Amnesty International office in your country, please return this form to:

Amnesty International, International Secretariat, Peter Benenson House,
1 Easton Street, London WC1X 0DW, United Kingdom

www.amnesty.org



LOCKED AWAY

SRI LANKA'S SECURITY DETAINEES

Sri Lanka's long war with the Liberation Tigers of Tamil Eelam (LTTE) ended in 2009, but its legacy of unlawful detention continues.

Thousands of people have been arbitrarily detained under repressive anti-terrorism laws that have allowed the authorities to arrest suspects without evidence or warrants, and to hold them without charge for long periods.

Detainees under investigation have been shuttled from one authority and place of detention to another. Some have been held incommunicado and tortured in unofficial places of detention, including private homes, re-purposed schools and warehouses. Few detainees have faced proper trials for the LTTE's many serious violations of human rights and the laws of war.

Sri Lanka's Constitution contains provisions that are meant to prevent arbitrary detention and ensure that suspects are tried in fair proceedings. But these have been eroded over the past decades by security legislation geared to serve perceived military expediency rather than protect human rights and the rule of law.

This report exposes unlawful detention practices in Sri Lanka as part of an ongoing pattern of human rights violations that has persisted long after the armed conflict ended. The authorities must stop these practices, investigate and prosecute reported human rights violations against detainees, and repeal or amend laws that do not conform to international human rights standards.

amnesty.org

Index: ASA 37/003/2012
March 2012

AMNESTY
INTERNATIONAL

