



Tamil Information Centre

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Committed to Human Rights and Community Development

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Appeal to the UN Working Group on Arbitrary Detention

Working Group on Arbitrary Detention
c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14, avenue de la Paix
1211 Geneva 10, Switzerland

Subject: Arbitrary Detention in Sri Lanka
Appeal made by: Tamil Information Centre
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The Tamil Information Centre (TIC), established in 1981, is a non-profit community organisation based in London, UK. The TIC works to address the challenges that face the Tamil speaking community in Sri Lanka to ensure that their rights are protected and promoted and their freedoms are recognised and respected. TIC's mission is to empower people, particularly those suffering persecution and subjected to human rights abuses, by valuing the distinct identities and differences among them and improving the quality of life through access to knowledge.

The TIC assists victims, mobilizes public opinion, supports initiatives to assist the victims, brings pressure on perpetrators to stop violations and seeks improved standards and obligations to provide care and protection to the people. It also promotes people's institution-building and management and helps to strengthen advocacy and lobbying.

Methodology

Through its extensive network of contacts, both individuals and organizations, within and outside Sri Lanka, the TIC compiles information. The TIC is in regular contact with them. The TIC has special procedures to ensure authenticity of information. In the preparation of this appeal, the TIC interviewed or consulted many individuals and organizations within Sri Lanka and outside. The TIC has received first-hand information on the matters referred to in the appeal.

Appeal to the UN Working Group on Arbitrary Detention

1. Arbitrary Detention in Sri Lanka

1.1 The government of Sri Lanka currently holds a large number of Tamils in detention for long periods without charges or trial, thus arbitrarily depriving them of their liberty. The detentions continue despite President Mahinda Rajapaksa's public declaration in May 2009 that the Liberation Tigers of Tamil Eelam (LTTE) has been destroyed and normalcy restored throughout the island. The removal of the Emergency in August 2011 confirms the government assessment that the security threat no longer exists.

1.2 The Sri Lankan Constitution guarantees presumption of innocence until proved guilty and that arrest and detention would be only according to procedures established by law (Article 13). However, every law, including the Constitution, in relation to arrest and detention have been flouted by the Sri Lankan authorities and the security forces. The arrests and detention are also contrary to the relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other relevant international instruments ratified by the Sri Lankan State.

2. The Prevention of Terrorism Act

2.1 Notwithstanding public declaration of restoration of normalcy, the government introduced new regulations extending the detention of people held under the Emergency Regulations. Emergency, which had been declared under Section 2 of the Public Security Ordinance, was allowed to lapse on 31 August 2011. But on 29 August 2011, new regulations had been promulgated under the Prevention of Terrorism Act (PTA), enabling the government to continue to detain suspects previously held under the Emergency Regulations without charge or trial [*Prevention of Terrorism Act Detainees and Remandees*) Regulation No. 4 of 2011]. The PTA regulations allow the continuation of several provisions of the Emergency Regulations notwithstanding the lapse of the Emergency. Although the government pledged that the detainees will be dealt with under the provisions of the Criminal Procedure Code and they would be released if they were not brought before a Magistrate within a month unless a detention order is issued under the PTA, these promises have not been kept, and many of the detainees continue to languish in prisons.

2.2 A number of the detainees arrested under the PTA are also in detention. The PTA provides for long periods of detention without access or charge and allows the security forces to search places and carry out arrests without warrant. The draconian law disallows legal challenges to detention orders made by the Minister.

2.3 Lawyers in Sri Lanka inform the TIC that judges in remote areas are still unaware of the lapse of Emergency. Security force personal arrest and take persons to such areas and these judges continue to apply the Emergency Regulations and detain them.

3. The number of detainees

3.1 The TIC understands that more than 1,500 Tamils are currently held in prisons and detention centres throughout the island. According to TIC sources 810 Tamil prisoners are held in Sri Lankan prisons, including two women with their children (3 and 5 years old). Many are held in police stations, detention centres belonging to Sri Lankan intelligence services and makeshift detention centres in unknown locations. Many Tamils have also been arrested and detained since May 2009 in southern Sri Lanka. In addition, the Commissioner of Rehabilitation said in 2009 that 12,000 LTTE cadre who surrendered or were forced to surrender during the final phase of the war had been detained. In January 2011, however, the government said that 11,696 cadres were detained in rehabilitation centres in 2009, and claimed that since then 5,586 had been released. Many such government claims before 2009 about detainee releases have been proved to be false. Torture, death and disappearance have followed detention in the past 30 years.

3.2 The detainees were held under Regulation 22 of the Emergency Regulations which permitted the detention for the rehabilitation of persons who surrendered [*Emergency (Miscellaneous Provisions and Powers) Regulations 2005*, as amended by *Emergency Regulation 1462/8*, 2006]. Since then, only a few people of this category are known to have been released. Although the government publicly announced the release of the detainees, in fact many of the detainees had been simply transferred from a detention centre to a rehabilitation centre.

3.3 When the TIC raised the issue of detainees with British Foreign Office Minister Alistair Burt at a meeting in London in 2011, he revealed that he took up the matter while on a visit to the island and urged the Sri Lankan government to publish a list of detainees. The Sri Lankan authorities gave flimsy excuses and told him that they could not reveal the names of the detainees because of data protection concerns.

3.4 The Sri Lankan government announced on 13 May 2012 that "a round the clock mechanism has been established by the Terrorist Investigation Division to provide details of the detainees and those who are already released". However, no details of the detainees have been released and many relatives have not been provided information on the whereabouts and conditions of the detainees.

4. Arbitrary detention

4.1 Many of the detentions are arbitrary and flout Sri Lankan law and do not conform to international law, which the government has continually pledged to uphold in its responses to the UN and other agencies. The Sri Lankan Constitution guarantees that 'no person shall be arrested except according to with the law' and that any person arrested shall be informed of the reasons for the arrest [Article 13 (1)]. But many detentions have been carried out without evidence of breach of any law, and most detainees have not been provided information on the reasons for their arrest. In most cases, families of detainees are also not provided any information about the arrest or about the place of detention.

4.2 The Sri Lankan Constitution allows application to the Supreme Court in case of infringement of fundamental rights (Articles 17 and 126), but many of the detainees are poor and have no resources to file fundamental rights applications or have anyone to file applications on their behalf. There are also a number of people who are languishing in prisons, unable to pay fines imposed on them by courts.

5. Access and legal representation

5.1 Lawyers in Sri Lanka inform the TIC that a number of persons are also held in isolation without access. Legal representation for the detainees has been denied in many cases, although the Constitution guarantees access to lawyers and a fair trial. Many detainees, particularly those without any family contacts, have no access to legal representation. The authorities in charge of detention centres and prisons deny access to these detainees and make it impossible for any legal challenge against the detentions. In other cases, legal representatives are required to obtain permission from intelligence authorities to meet detainees, but often permission is denied.

5.2 In many instances, police and intelligence officers have obtained large sums of money from the family members, falsely promising release of detainees. Some legal representatives have also joined the racket, demanding and obtaining money from families, maintaining that they need it to bribe the officials for the release of detainees.

6. Conditions in prisons and detention centres

6.1 The Tamil prisoners are held in very poor conditions and suffer discrimination. They are not provided the facilities that are provided to Sinhalese prisoners. They are not provided proper and adequate food and basic materials for sanitation. Tamil political prisoners, including women, are detained together with persons who had committed serious criminal offences. The use of drugs and alcohol by these prisoners is common and they regularly abuse, harass or assault the Tamils.

6.2 The language used in prisons and detention centres is usually Sinhalese and the Tamil prisoners often do not understand what the officers say and face punishment for disregarding instructions.

7. Torture in custody

7.1 Detainees are regularly subjected to torture in detention centres and police stations. Wire, plastic pipes, cricket wickets and bicycle chains are used for beating, and sharp weapons and pins for piercing the skin. The TIC has been made aware that the following are among the torture methods used by the security forces:

- Inserting a tooth brush into the rectum and turning it rapidly;
- Hitting on the head with boards with protruding nails;
- Forcing to kneel and attacking the inside of legs using iron bars;
- Hanging by the legs during interrogation;
- Wrapping a petrol-soaked clothe around the eyes, often impairing the eye-sight.

7.2 Many detainees, including a number of women, have suffered physically and mentally due to torture; such as injuries, swelling of hands, legs and other body parts, continuous headache, inability to walk properly, trauma and other psychological problems.

8. Deaths and disappearance in custody

8.1 Relatives of many detainees continue to express fear and extreme anxiety over their safety, particularly following the Vavuniya remand prison attack on 29 June 2012. After the inmates of the prison seized three guards in an effort to create public awareness about their unreasonable detention and inhumane treatment at the hands of prison guards and officials, a 500-strong Sri Lankan Special Military Commando unit and the police Special Task Force (STF) attacked the prisoners, leaving 40 prisoners and others injured, some of them critically. Ganesan Nirmalaruban (age 28) and Mariadas Navis Dilrukshan (age 34) were seriously wounded in the attack and died later in hospital.

8.2 This is reminiscent of earlier prison attacks. Fifty two Tamil prisoners were massacred in Colombo's maximum security Welikada prison in July 1983. No proper enquiry was held and the offenders were not brought to book. On 25 October 2000, 27 Tamils in the Bindunuwewa rehabilitation centre were killed by mobs while the police and the army stood by encouraging the attackers. Ninety six Tamil political prisoners have been murdered and 152 have been wounded in Sri Lankan prisons since 1983. No one has been punished for these killings. There have also been a large number of disappearances from detention centres and prisons.

8.3 Around 200 LTTE cadre who surrendered on 18 May 2009 in northern Sri Lanka were massacred by the army. LTTE commander Colonel Ramesh (Thuraijasingham Thambirajah) was arrested and interrogated on 22 May 2009. Evidence has emerged that he was then murdered in custody. Other senior LTTE cadre may have suffered the same fate.

9. The Tamil Information Centre appeals to the UN Working Group on Arbitrary Detention to

a) conduct a country visit to Sri Lanka and investigate

- i) arbitrary arrest and detention;
- ii) Killings in government custody;
- iii) torture in government custody; and
- iv) disappearance in government custody; and
- v) conditions in prisons, detention centres and rehabilitation centres; and

b) urge the Sri Lankan government to

- i) respect the rule of law and abide by the provisions of international law and the constitution of Sri Lanka, and respect the Sri Lankan people's right to freedom from arbitrary detention;
- ii) remove all the current impediments to the Sri Lankan people in the enjoyment of legitimate rights and freedoms, including the repeal of the Prevention of Terrorism Act and the regulations under the Act and guarantee the right to challenge detentions in a court of law;
- iii) observe the requirements of due process as demanded by the Sri Lankan Constitution and international law in cases of arrest and detention;
- iv) release a full list of detainees and their places of detention, including those held under the PTA, and a full list of the LTTE cadre who surrendered;
- v) ensure that detainees have adequate food, medical care and facilities and materials for hygiene;
- vi) ensure that all detainees have regular access to their families;
- vii) ensure that all detainees have legal representation and legal assistance and access to their lawyers; and
- viii) release all the people currently held in custody without trial, or charge them in courts.