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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the International Movement Against All Forms of Discrimination and Racism (IMADR), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2013]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Arbitrary detention in Sri Lanka¹

In 1983, at the outbreak of the civil war in Sri Lanka, the International Commission of Jurists concluded that Sri Lanka's abuses of prisoners constituted a "systematic" and "almost universal" practice;² that year, for example, 53 Tamil inmates were killed by Sinhalese guards at the Welikada high security prison.³ Thirty years later, the system remains unchanged and the systematic abuse of prisoners continues to be the norm; in November 2012 it was reported that 27 inmates were killed at Welikada prison.⁴ Continuing abuses highlight the unchanging nature of Sri Lanka's detention policy and the associated violations of human rights that have resulted in over 11,000 internments since the end of the civil war in 2009.⁵

While States have acknowledged the on-going violations committed by the Government of Sri Lanka, the Government has failed to address these concerns. This intransigence with respect to human rights and the rule of law is evidenced by the recent Universal Periodic Review (UPR), wherein the Sri Lankan government rejected 100 of 210 recommendations, the largest number of outright rejections in the UPR's history.⁶

The systematic practice of arbitrary detention utilised by the Government of Sri Lanka in the repression of civilians requires immediate and sustained attention from the Human Rights Council and the Working Group on Arbitrary Detention.

Sri Lanka's international obligations

Sri Lanka is a party to the International Covenant on Civil and Political Rights, which contains stringent regulations intended to safeguard against abuse in detention. Article 9 prohibits arbitrary detention – including in the context of a legitimate derogation under a state of emergency⁷ – while establishing further protections with respect to an individual's right to a fair trial within a reasonable timeframe, and the right to be informed of any charges.⁸

The civil war: emergency regulations & prevention of terrorism act (PTA)

During the civil war, tens of thousands of individuals were detained under the Prevention of Terrorism Act and the Emergency Regulations.⁹ While the majority of these individuals were ethnic Tamils suspected of association with the Liberation Tigers of Tamil Eelam

¹ The Human Rights Centre Clinic at the University of Essex undertook research and analysis in preparation of this submission.

² International Commission of Jurists Review, "Ethnic Violence in Sri Lanka, 1981-1983: Staff Report of the International Commission of Jurists" (1997).

³ BBC News: Asia, "Sri Lanka's Welikada prison clash leaves 27 dead" (10 November 2012) <www.bbc.co.uk/news/world-asia-20267735>.

⁴ Ibid.

⁵ Human Rights Watch, "World report 2012: Sri Lanka" (2012) <<http://www.hrw.org/world-report-2012/world-report-2012-sri-lanka>>.

⁶ Sri Lanka Campaign, "Sri Lanka 'least constructive nation ever to appear before the UPR' (12 November 2012) <<http://blog.srilankacampaign.org/2012/11/sri-lanka-least-constructive-nation.html>>.

⁷ Human Rights Committee, General Comment 29, 'States of Emergency (Article 4)', UN Doc CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11.

⁸ UN General Assembly, International Covenant on Civil and Political Rights (16 December 1966) UNTS vol. 999, p. 171, Article 9.

⁹ Amnesty International, Locked away: Sri Lanka's security detainees (1st edn, Amnesty International, 2012) [6].

(LTTE), Sinhalese and Muslim civilians were also arrested and subject to ill treatment.¹⁰ For example, Amnesty International reports that two Sinhalese political activists detained on suspicion of assisting the LTTE were subject to particularly severe treatment, coupled with intense media coverage intended to vilify the individuals.¹¹ As of December 2011, one of these Sinhalese activists, arrested in 2006, is still awaiting trial at Bogambara prison.¹² While detention-related abuses disproportionately affect the Tamil community, Sri Lanka's detention policies and practices have serious consequences for the entire population.

Post-civil war: The 'emergency' is lifted, but the PTA continues

In August 2011, Sri Lanka lifted the declared state of emergency.¹³ However, the Government of Sri Lanka has continued to keep the Prevention of Terrorism Act in force, elements of which violate international obligations under Article 9 of the International Covenant on Civil and Political Rights, as discussed below. The Government has also introduced supplementary provisions in order to detain LTTE suspects without charge or trial, some of which have been deemed unconstitutional by leading Sri Lankan constitutional lawyers.¹⁴

Detention without charge

Under Section 9(1) of the Prevention of Terrorism Act, individuals may be arrested without charge and detained for up to 18 months by a detention order. While detainees must be brought before a magistrate within 72 hours of their arrest, the magistrate "shall order the remand of [the individual] until the conclusion of the trial".¹⁵ This order cannot be challenged in court.¹⁶ As an example of this practice, it is reported that as of December 2011, 42 of the 65 Tamil detainees held in Anuradhapura prison have yet to be charged, after two to six years in prison.¹⁷ Evidence also indicates that where protections are afforded, such as an individual's right to be informed of the reasons for their arrest, such protections have been consistently violated in practice.¹⁸

Arbitrary detention

The Working Group on Arbitrary Detention considers a deprivation of liberty to be arbitrary when "the total or partial non-observance of the international norms relating to the

¹⁰ At least 25 Sinhalese Sri Lankans were arrested due to suspected links with the LTTE. Eleven of these individuals were released without charge. BBCSinhala.com, "Court releases 'Sinhala Tigers'" (13 February 2009) <http://www.bbc.co.uk/sinhala/news/story/2009/02/090213_sinhala_tigers.shtml>; Amnesty International, *Locked away: Sri Lanka's security detainees* (1st edn, Amnesty International, 2012), fn. 33.

¹¹ See case studies in Amnesty International, *Locked away: Sri Lanka's security detainees* (1st edn, Amnesty International, 2012) at pp. 16-17, 33.

¹² *Ibid.*, at p. 33.

¹³ Human Rights Watch, "Sri Lanka: 'Bait and switch' on emergency law" (2011) <<http://www.hrw.org/news/2011/09/07/sri-lanka-bait-and-switch-emergency-law>>.

¹⁴ Groundviews, "Lifting of Emergency: Exposing the sham exercise" (16 September 2011) <<http://groundviews.org/2011/09/16/lifting-of-emergency-exposing-the-sham-exercise/>>.

¹⁵ Parliament of the Democratic Socialist Republic of Sri Lanka, *Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979*. <http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention_of_terrorism.htm> Section 7(2).

¹⁶ *Supra* note 8, p. 14.

¹⁷ Ranga Jayasuriya, "Were detainees sadistically beaten at A'pura?" (Ceylon, 4 December 2011) <<http://ceylon-ananda.blogspot.co.uk/2011/12/were-detainees-sadistically-beaten-at.html>>; Amnesty International, *Locked away: Sri Lanka's security detainees* (1st edn, Amnesty International, 2012) [14].

¹⁸ *Supra* note 8, p. 15.

right to a fair trial... is of such gravity as to give the deprivation of liberty an arbitrary character".¹⁹ The length of detention in waiting for a trial can last years, often without charges ever being brought; these policies suggest that the Government of Sri Lanka is systematically carrying out arbitrary detention. Individuals being held without these protections amounts to a violation of the right to be informed of charges against an individual as well as the right to trial within a reasonable timeframe, guaranteed under Articles 9(2) and 9(3) of the International Covenant on Civil and Political Rights.

The use of emergency laws and the Prevention of Terrorism Act in Sri Lanka has resulted in a culture of impunity wherein arbitrary detentions and widespread torture and ill treatment has become the norm.²⁰ Further, the UN Committee against Torture recently stated that it was "seriously concerned" regarding the "widespread use of torture... in police custody."²¹ Between 1998 and 2011, the Asian Human Rights Commission documented 1,500 cases of police torture in Sri Lanka,²² which indicates a pattern of arbitrary detention resulting in an environment whereby detainees are more susceptible to torture and other forms of ill treatment.²³

A number of individual issues will now be addressed.

Detention for political beliefs

The Government of Sri Lanka claims that there are 318 political prisoners currently incarcerated.²⁴ However, documentation by Sri Lankan activists indicates that up to 810 detainees are currently in detention for their political beliefs, many of whom have been awaiting charge for at least five years.²⁵

Transfers and access to information regarding detainees

Several prisoners' families interviewed by the Sri Lanka Campaign for Peace and Justice in late 2012 stated that their relatives have been transferred between at least three prisons during their detention – often to delay their release – without any prior information or reasons for transfers given. According to Section 7(3) of the Prevention of Terrorism Act, police have the power to transfer a detainee without judicial permission or supervision.²⁶ With no central registry in place, these unsupervised transfers can result in an individual

¹⁹ Human Rights Council, Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27-31 August 2012, No. 26/2012 (Sri Lanka), A/HRC/WGAD/2012/26.

²⁰ International Commission of Jurists, Authority without accountability: The crisis of impunity in Sri Lanka (1st edn, International Commission of Jurists, 2012) [4].

²¹ UN Committee Against Torture, Consideration of reports submitted by States parties under article 19 of the Convention - Sri Lanka (8 December 2011) CAT/C/LKA/CO/3-4, p. 2, Section C.

²² Asian Human Rights Commission, "Sri Lanka: Cases of torture and ill treatment recorded from 2006-2010" (not dated) <http://www.humanrights.asia/countries/sri-lanka/resources/special-reports/AHRC-SPR-001-2011/view>.

²³ F.J. Hampson, "The relationship between international humanitarian law and human rights law from the perspective of a human rights treaty body" (2008) 90(871) IRRC 549 at 563; International Commission of Jurists, Sri Lanka: Briefing paper – Emergency laws and international standards (1st edn, International Commission of Jurists, 2009) [13].

²⁴ ColomboPage, "Sri Lanka Tamil party calls for the release of political prisoners in the country" (29 November 2012) <http://www.colombopage.com/archive_12B/Nov29_1354165165JR.php>.

²⁵ Ibid.

²⁶ Parliament of the Democratic Socialist Republic of Sri Lanka, Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979. <http://www.satp.org/satporgtp/countries/shrilanka/document/actsandordinance/prevention_of_terrorism.htm> Section 7(3).

effectively becoming lost in the system, with a substantial risk for abuses of this policy, such as torture and disappearances.²⁷

Thousands of families have also had limited access to their relatives, and are often denied all access.²⁸ This issue is exacerbated because families typically received little to no information from the authorities regarding the whereabouts or health of detainees, implicating the right to respect for family life.²⁹

The following case study is illustrative with respect to a number of the human rights issues addressed above.

Case study: Vavuniya prison

According to a study by the Sri Lanka Campaign for Peace and Justice, in June 2012, following a riot at Vavuniya prison, 205 prisoners were transferred to Anuradhapura prison. Twenty-eight of these detainees were allegedly tortured with the involvement of up to 250 prison guards, resulting in two deaths.³⁰ One of the most critical cases involved Mariadas Delroxan. On a visit prior to the riot, Delroxan's father remembers Delroxan saying to him, "If they don't release us [from prison], we will die." Delroxan's father next saw his son in the hospital, with a large bandage on his head and injuries indicating broken bones. The guards would not allow him to see the lower half of Delroxan's body. After many hours in a coma, Delroxan died as a direct result of the injuries sustained during his detention. The authorities did not inform Delroxan's family about his involvement in the riot or the injuries he sustained; his father learned of the riot from neighbours.

Recommendations

Prisoners are being held in captivity for extended periods of time without charge or trial. We therefore call upon the Government of Sri Lanka:

- To immediately end all forms of arbitrary detention;
- To immediately release all political prisoners or to bring charges against them by a specified date, while complying with the requirements of international human rights law;
- To invite the Working Group on Arbitrary Detention and the Special Rapporteur on Torture to visit Sri Lanka on an official mission to ensure transparency and accountability regarding detention policies;
- To allow an independent investigation into the Vavuniya prison riot of June 2012;
- To provide clear justification for the transfer of prisoners with adequate notification to families;
- To make public the list of detainees as pledged by the Government of Sri Lanka during the UPR 2009 and 2012.

²⁷ The International Commission of Jurists has recognised the link between practices in Sri Lanka and the increased risk of torture and ill treatment. See International Commission of Jurists, Sri Lanka: Briefing paper – Emergency laws and international standards (1st edn, International Commission of Jurists, 2009) [13].

²⁸ Freedom From Torture, "Out of the silence: New evidence of ongoing torture on Sri Lanka" (2009-2010) <http://www.freedomfromtorture.org/sites/default/files/documents/Sri%20Lanka%20Ongoing%20Torture_Freedom%20from%20Torture_Final%20Nov_07_2011.pdf> p. 4.

²⁹ Supra note 8, p. 27.

³⁰ Tamil News Network, "Another Vavuniya prisoner dies" (8 August 2012) <www.tamilnewsnetwork.com/2012/08/08/another-vavuniya-prisoner-dies/>.