



FORGOTTEN PRISONERS

SRI LANKA USES ANTI-TERRORISM LAWS TO DETAIN THOUSANDS

AMNESTY
INTERNATIONAL





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A woman faints during a protest by families of detainees and the disappeared in Colombo, 9 September 2009. Many people detained under the Prevention of Terrorism Act are moved from place to place, leaving families unable to track down the whereabouts of their loved ones.

Cover: A soldier orders a vehicle to stop at a roadside checkpoint in Colombo, Sri Lanka, May 2010. Although the government proposed to soften emergency laws, many provisions remain in use. © AP Photo/Eranga Jayawardena

‘OTHERS GO TO SLEEP AND HAVE NIGHTMARES. I WAKE UP TO ONE ON A DAILY BASIS. A LIGHT WENT OUT IN MY LIFE THREE YEARS AGO WHEN MY HUSBAND WAS ARRESTED AND HELD WITHOUT CHARGES.’

Selvy, wife of detainee held under the Prevention of Terrorism Act since February 2007

Thousands of people are languishing in detention without charge or trial under Sri Lanka’s repressive anti-terrorism laws. Sometimes held in secret prisons, they are vulnerable to a whole range of abuses, including torture or being killed in custody.

Sri Lanka has been under a state of emergency almost continually since 1971. Successive governments have used national security as an excuse to introduce a range of broad and often confusing emergency regulations. This has led to a serious erosion and even suspension of people’s

rights to freedom of thought, conscience and expression, as well as their right to live free from arbitrary arrest and detention. These rights are enshrined in the International Covenant on Civil and Political Rights, which Sri Lanka has ratified and is therefore bound by.

EMERGENCY REGULATIONS

The emergency laws grant state authorities sweeping powers of detention and permit holding people in secret locations, a practice that facilitates human rights

abuses like enforced disappearances, torture and deaths in custody, which constitute crimes under international law. Article 155 of the Constitution authorizes the President to issue emergency regulations “amending or suspending the operation of the provisions of any law, except the provisions of the Constitution”.

Article 155 of the Constitution also makes the Public Security Order (PSO), introduced by the British colonial authorities in 1947, part of Sri Lankan law. Section 5 of the PSO empowers the Executive to, among other things, issue emergency regulations which may:

- authorize detention without charge or trial;
- authorize entry, search and seizure of property;
- amend any law (other than the Constitution) or suspend its operation;
- create special courts to prosecute offenders, including under the emergency regulations themselves.

In addition, the Executive may exempt officials acting under the act “in good faith” from criminal prosecution or civil suits.

MANO

Mano, a 29-year-old man from Badulla has been detained without charge since 2007. Mano was on his way home when he was arrested in March 2007 “on suspicion” of being a member of the Liberation Tigers of Tamil Eelam (LTTE), a charge he denies. He had no access to lawyers for several months and it took eight months before he was brought before a magistrate. While in custody he was tortured and the index finger on his right hand was broken. He was transferred between a number of prisons and detention centres and is currently held in Batticaloa prison. “Prisoners are all mixed up,” he says, “they don’t separate remand prisoners from

convicts. We don’t have good food and there are not enough toilets and wash facilities... many prisoners have bad skin diseases.”

Many political prisoners do not have the financial means to meet the cost of legal assistance. There is also a shortage of lawyers willing to take up Prevention of Terrorism Act cases as lawyers have faced threats for representing “terror suspects”. Mano says he has met dozens of others held without charge in Batticaloa jail, many under the act. “We have not even been charged, we are just left here, forgotten.”



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PREVENTION OF TERRORISM ACT

The Prevention of Terrorism Act was introduced as a temporary law in 1979, and made permanent in 1981. The act allows the suspension of certain rights of criminal procedure, including the right of individuals to be presumed innocent, as a means to prevent terrorism and other unlawful activities.

Under the act, people can be arrested without charge or trial and detained for up to 18 months while police investigate the possibility of their involvement in illegal activity. The act also allows for indefinite detention on order of a magistrate pending trial. In Sri Lanka, where the wheels of justice grind slowly, people can remain in pre-trial detention for years.

The act enables security forces to systematically violate human rights. Like the emergency regulations, provisions in the act allow confessions to police officers above a certain rank as admissible evidence in court.

Interrogating officers, therefore, are given an incentive to obtain confessions by any means, including torture. This is exacerbated by the fact that if a person has been tortured into confessing, the burden of proving this allegation rests with the alleged victim.

Many people detained under the act have been held in official custody for years. While in detention they can be moved from place to place or housed in an unofficial or secret place of detention while being interrogated. Amnesty International has spoken to dozens of family members of detainees who say that the removal of suspects to non-official detention centres makes it very difficult for families to track the whereabouts of their loved ones.

“We are just left in the dark,” said one mother who contacted Amnesty International to help track down her son.

Sometimes suspects can simply get lost in the system with their family unable to find out where they are being held. This

contradicts a July 2006 Presidential Directive which stipulates that the Sri Lankan Human Rights Commission (SLHRC) must be informed of an arrest and of the place of detention within 48 hours. Under the Directive, families must be allowed to communicate with detainees.

Ethnic Tamils queue at a police registration centre in Colombo, 21 September 2008. Thousands of Sri Lankans who have fled the country's war zones, nearly all Tamils, lined up to register under what police described as an essential security measure to crack down on LTTE militants.



ARRESTS OF MEMBERS OF THE TAMIL COMMUNITY

Each year, hundreds of Tamil people, including scores of possible prisoners of conscience, are arrested, particularly in the north and east of the country and in the capital, Colombo, on suspicion of being members or sympathizers of the Liberation Tigers of Tamil Eelam (LTTE). The LTTE, the main armed opposition group, had been fighting since 1983 for an independent state in the north and east of Sri Lanka and were defeated in May 2009.

The arrests are carried out under the emergency regulations or Prevention of Terrorism Act. Detention orders are supposed to be issued for those held beyond the initial period. Several safeguards have been introduced to guarantee the welfare of detainees, including, for instance, that a detention order can only be issued if the officer in charge of the nearest police station has been notified within 24 hours of the arrest. Breach of this provision is an offence.

However, in practice, legal safeguards are ignored and many of those arrested and detained are tortured in custody.

Eliil, aged 35, has been held in custody without trial for 10 years. He was arrested “on suspicion” while travelling from Jaffna, his home town, to Vavuniya. He is currently held at Welikada Prison in Colombo under the Prevention of Terrorism Act. He told Amnesty International that there are at least 10 other prisoners in Welikada Prison who have been held for more than 10 years without charge. “I have no hope these cases will be dealt with,” he says.

Like the emergency regulations, the Prevention of Terrorism Act grants broad powers to the police to enter and search premises without a warrant, to seize property and arrest individuals “connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity”. The authorities have used the laws to shut down newspapers and printing presses.

The Prevention of Terrorism Act grants extraordinary power to the Minister of Defence to order the detention of an individual suspect for investigation or as a preventative measure. The Minister can determine not only the place and conditions of detention, but also impose continued restrictions or prohibitions on a person’s basic freedoms, including freedom of expression, association and movement, even after he or she is released from official custody.

Moreover, the press cannot write about a case without permission. After individuals are released from detention, even if no charges are brought against them, they may face continued restrictions on their freedom of movement, association, expression and political participation, all determined by the Minister of Defence.

Welikada Prison, Colombo, where the majority of prisoners arrested under the Prevention of Terrorism Act are held. Although built to hold 1,500 inmates, the prison has more than three times that number.



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SILENCING DISSSENT

Beyond concerns about the nature of legislation and the government’s failure to rectify shortcomings, are the added concerns that the security forces have used the general threat of their wide-ranging powers under the emergency laws to intimidate people.

Because they provide for vaguely and broadly defined offences such as “terrorism” the emergency laws have been used to restrict freedom of expression and association, increase pressure on human rights activists, journalists, trade unionists and others holding dissenting views.

“Even though the war is over we haven’t seen the state roll back the emergency laws,” says lawyer Sudarshana Gunawardena. “The same Prevention of Terrorism Act is in operation... the regime can use these laws selectively against any media or dissenting voices.”

JUSTICE DELAYED IS JUSTICE DENIED

Since the war with the LTTE ended in May 2009, Sri Lankan legislators have continued to extend the state of emergency on a monthly basis. In early May 2010, the government announced it would relax some provisions of the emergency regulations, including those that apply to holding meetings and gatherings, imposing curfews, printing certain literature, providing householders’ names to the police, and permitting security personnel to enter private properties without warrants for search operations. But the government has said the military would retain emergency police powers to deal with “ongoing investigations into terrorist activities”.

Moreover, it announced that the draconian Prevention of Terrorism Act would remain in effect despite renewed calls for its repeal by domestic and international human rights organizations.

The authorities continue to carry out arrests under the act and detain suspects for questioning. Official statements confirm that

over 1,900 people already arrested and detained under the act will remain in custody pending investigations.

However, one lawyer told Amnesty International: “We in the legal profession don’t even know how many prisoners are on remand for crimes they didn’t commit. Sometimes prisoners end up pleading guilty out of desperation just so they can put an end to the feeling of being in limbo. Sometimes people can wait for three or four years before they come to trial... we see lots of examples where cases are repeatedly postponed denying our clients a right to a speedy trial.”

Prisoners themselves are unhappy with the criminal trial backlog. In January 2010, hundreds of Tamil political prisoners went on hunger strike demanding that the government release them or, failing that, allow them to answer accusations against

Relatives protest in front of Welikada Prison, demanding the release of political prisoners, Colombo, Sri Lanka, 22 January 2010.



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them in fair trials. The prisoners who took part included those detained in Anuradhapura, Batticaloa, Colombo, Jaffna and Trincomalee. They suspended their fast on the eighth day after President Mahinda Rajapaksa pledged to look into the prisoners' demands within two months, however, their demands remained largely unmet.

Many arrests under the Prevention of Terrorism Act constitute arbitrary arrests with no guarantees of a fair trial. While the government has the right to carry out security measures, it must never do this in violation of basic rights.

One lawyer told Amnesty International: "You have to remember that the long history of repressive emergency laws in Sri Lanka has allowed the security forces to operate beyond the bounds of the ordinary criminal justice system. We live in a society where the Defence Secretary can pick up the phone and order the arrest of someone with a critical voice. You can see the way in which emergency laws undermine the rule of law by the fact that you have non

uniformed people picking up 'suspects' and holding people without producing them before a magistrate... normally you would have to produce a warrant to arrest someone but emergency laws allow the security forces to hold people without charges... many prisoners are on remand in prisons for long periods of time with no prospect of a trial."

The consistent lack of clarity over procedures for arrest is disturbing; there is currently no central register of detainees. In April 2000, the UN Working Group on Enforced or Involuntary Disappearances urged the Sri Lankan government in April 2000 to abolish the Prevention of Terrorism Act and emergency regulations or bring them into line with international standards. Amnesty International reminds the Sri Lankan authorities that any arrest and/or detention must be in strict compliance with the state's obligations under international human rights law, and in particular, the International Covenant on Civil and Political Rights, to which Sri Lanka is a state party.

VETTIVEL AND VALARMATHI JASIKARAN

On 6 March 2008, the police Terrorist Investigation Division (TID) arrested Vettivel Jasikaran (*pictured in handcuffs, above left, being led to a Magistrate's Court in June 2008*) on suspicion of "terrorism-related activities", and his wife Valarmathi Jasikaran (*pictured right*) as an accessory, under emergency regulations. Vettivel Jasikaran is a writer, publisher and manager of the news website *Outreach Sri Lanka*. On 8 June 2008, Vettivel and Valarmathi Jasikaran filed a fundamental rights case with the Supreme Court, stating that their arrest and detention were illegal and that Vettivel had been tortured in TID custody. The Ministry of Defence extended their detention under emergency regulations on 30 June 2008.

After nearly six months' detention without charge, Vettivel Jasikaran was indicted on 27 August 2008 for "inciting communal disharmony" by printing, publishing and distributing the magazine *North Eastern Monthly*. Valarmathi was charged with aiding and abetting her husband.

On 26 October 2009, almost a year after their trial began, the Supreme Court acquitted them of all charges.

CHANDANA SIRIMALWATTE



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On 29 January 2010, officers with the police Criminal Investigation Department (CID) broke into the premises of the *Lanka Irida* newspaper and arrested its Chief Editor, Chandana Sirimalwatte. They reportedly forced him to hand over files that contain sensitive information. The newspaper is allied with the Janatha Vimukthi Peramuna (JVP), a left-wing political party which campaigned for presidential opposition candidate Sarath Fonseka. Amnesty International was informed that CID officers also attempted to search Chandana Sirimalwatte's home, but his wife

refused them entry because the officers failed to produce a valid search warrant. CID officers raided the *Lanka Irida* newspaper office for a second time on the morning of 30 January, after sealing off the premises to visitors. The officers questioned staff members extensively. *Lanka Irida* was previously raided by police in September and October 2009 after it had published stories critical of the Rajapaksa family.

Chandana Sirimalwatte (pictured left, being questioned by CID officers at his office, and

right, following his release) was detained in CID custody for three weeks before a Colombo court ordered his release in February, citing lack of evidence of wrongdoing.

The court order came after substantial international campaigning on Chandana Sirimalwatte's behalf, and immediately after the Sri Lankan press reported that President Rajapaksa had "instructed" the CID to "assist" in his release. While the release was welcome, the evident executive interference in the case is troubling.

ACT NOW

Write to the President of Sri Lanka calling on him to:

- immediately release those arrested, unless they are charged with recognizably criminal offences and remanded in custody by a civilian court;
- repeal the emergency regulations and the Prevention of Terrorism Act to bring them

into line with international human rights law and standards;

- adhere to the 2006 Presidential Directive by registering detainees, and informing their families and the Sri Lankan Human Rights Commission of the place of arrest.

Send appeals to:

His Excellency
President Mahinda Rajapaksa
Presidential Secretariat
Colombo 1
Sri Lanka

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Amnesty International is a global movement of 2.8 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.

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