

**SRI LANKA (47)**

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## **SRI LANKA**

### **Implementation of the Recommendations of the UN Working Group on Enforced or Involuntary Disappearances following their visits to Sri Lanka in 1991 and 1992**

February 1998

SUMMARY

AI INDEX: ASA 37/04/98

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This document examines the extent to which the Government of Sri Lanka has implemented the recommendations made by the Working Group on Enforced or Involuntary Disappearances (WGEID), following their visits to Sri Lanka in 1991 and 1992.

The UN thematic experts or 'mechanisms', such as the WGEID, are appointed by the UN Commission on Human Rights (the Commission) to monitor particular types of human rights violations throughout the world. Their reports to the Commission are a source of facts, objective analysis and recommendations for change and have greatly increased the awareness and understanding of the phenomena they deal with.

Unfortunately, their recommendations, including in their reports after country visits, are too often ignored by the Commission and the governments concerned.

When the WGEID visited Sri Lanka for the first time, "disappearances" and extrajudicial executions in the country had reached tragic proportions. By 1991, the WGEID had transmitted 4,932 cases of "disappearances" to the Government of Sri Lanka and had received reports by various reliable sources of approximately further 9,000 cases that had not yet been processed.

In the reports of their visits, the WGEID made specific and detailed recommendations which Amnesty International believes give useful guidance on how to end "disappearances" in Sri Lanka. The Government of Sri Lanka has taken a number of important measures to implement several of the recommendations. Nevertheless, as this document shows, it has failed to implement essential recommendations that address the underlying structural, institutional or policy issues that have facilitated continuing "disappearances".

At the end of this document, Amnesty International makes recommendations both to Sri Lanka and the Commission regarding the implementation of the WGEID's recommendations. The organization calls on Sri Lanka to tackle the root causes underpinning the continuation of "disappearances": the lingering sense of impunity among the security forces and the sweeping powers of the Emergency Regulations (ERs) and the Prevention of Terrorism Act (PTA) allowing for people to be detained incommunicado for long periods of time.

Amnesty International reiterates its call for the Commission to ensure that the Government of Sri Lanka agrees on a programme of action to be taken in 1998 and 1999 to implement the WGEID's recommendations and to offer the Government of Sri Lanka technical assistance for the suggested review of the country's security legislation and investigative, forensic and prosecutorial expertise to support the clarification of past "disappearances". It also calls on the Commission to establish a regular agenda item to monitor states' cooperation and progress on implementing recommendations made by the Commission and its human rights mechanisms.

**KEYWORDS:** UNI / DISAPPEARANCES / EXTRAJUDICIAL EXECUTIONS / NON-GOVERNMENTAL ENTITIES / INVESTIGATION OF ABUSES / EMERGENCY LEGISLATION /

This report summarizes a 19-page document (7,546 words), SRI LANKA: Implementation of the Recommendations of the UN Working Group on Enforced or Involuntary Disappearances following their visits to Sri Lanka in 1991 and 1992 (AI Index: ASA 37/4/98) issued by Amnesty International in February 1998. Anyone wishing further details or to take action on this issue should consult the full document.

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**Implementation of the Recommendations  
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INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM



## **SRI LANKA**

### **Implementation of the Recommendations of the UN Working Group on Enforced or Involuntary Disappearances following their visits to Sri Lanka in 1991 and 1992**

This document is among several Amnesty International is producing to examine the extent to which governments have implemented recommendations made by United Nations (UN) thematic experts following on-site visits to the country. These thematic experts or 'mechanisms' are established and mandated by the UN Commission on Human Rights (the Commission), to which they report at the Commission's annual session every March/April in Geneva, Switzerland.

#### **Importance of the thematic mechanisms**

Amnesty International believes that the thematic mechanisms of the Commission<sup>1</sup> are extremely important for the promotion and protection of human rights, yet their recommendations are too often ignored by the Commission and individual states. Their analyses of the particular types of human rights violations in their annual reports to the Commission have greatly increased the awareness and understanding of these phenomena and included often incisive recommendations on how to stop these violations.

The thematic mechanisms' reports of country visits are a source of facts, objective analysis and recommendations for change. Yet, the constraints under which they work are considerable. They are unpaid and have meagre staffing and other resources provided by the UN. Many governments fail to respond to their enquiries, or reply with insufficient or inaccurate information. They may only visit a country on the invitation of the government. Many of their requests for invitations are denied or simply ignored, even by countries which are members of the Commission.

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<sup>1</sup> These thematic mechanisms are: Working Group on Enforced and Involuntary Disappearances (established in 1980), Working Group on Arbitrary Detention (1991), Special Rapporteur on extrajudicial, summary or arbitrary executions (1982), Special Rapporteur on torture (1985), Special Rapporteur on human rights and states of emergency (1985), Special Rapporteur on religious intolerance (1986), Special Rapporteur on the sale of children, child prostitution and child pornography (1990), Representative of the UN Secretary General on internally displaced persons (1991), Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (1993), Special Rapporteur on freedom of opinion and expression (1993), Special Rapporteur on violence against women (1994), Special Rapporteur on the independence and impartiality of the judiciary (1994), and Special Rapporteur on toxic waste and dangerous products and waste (1995).

It is a positive step when a country extends an invitation to one of the Commission's thematic experts to carry out an on-site investigation, because it demonstrates the government's will to identify and tackle human rights violations and to cooperate with the UN mechanism. In far too many cases, however, governments are slow or fail to implement the experts' recommendations and thus lose a valuable opportunity to introduce reforms, in law and in practice, which could halt grievous human rights violations.

Amnesty International has for some years advocated that the Commission should pay more attention to implementation of the mechanisms' recommendations. On several occasions, it has called on the Commission to establish an agenda item to monitor states' cooperation and progress on implementing recommendations made by the Commission and by its human rights mechanisms, in particular after country visits.<sup>2</sup> Such an agenda item would enhance the work of the thematic mechanisms and strengthen their effectiveness. In cases where there is a pattern of violations and where the government persistently delays or obstructs cooperation with one or more of the thematic mechanisms, the latter should transmit the full dossier to the Commission for further action. Where country visits have taken place by thematic rapporteurs or working groups, governments must report back promptly on steps they have taken to implement the recommendations made following the visit. Each recommendation should be addressed and governments should state the time frame for implementation and indicate any difficulties they may experience in implementing the recommendations.

This and other similar Amnesty International reports aim to remind members of the Commission that they have a responsibility to ensure that the recommendations of thematic mechanisms are implemented and the states concerned that it is their major task to put those recommendations into practice.

### **Background to the visits to Sri Lanka**

By the late 1980s, "disappearances" and extrajudicial executions had reached alarming proportions in Sri Lanka, after several years of increasing numbers of people falling victim to these gross human rights violations. By 1991, the Working Group on Enforced or Involuntary Disappearances (WGEID) had transmitted 4,932 cases of "disappearances" to the Government of Sri Lanka and had received reports from various reliable sources about approximately further 9,000 cases that had not yet been processed.<sup>3</sup> The cases occurred in

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<sup>2</sup> See for example Amnesty International, *1998 UN Commission on Human Rights - Building on past achievements* (AI Index: IOR 41/01/98), and Amnesty International, *1997 UN Commission on Human Rights - 50 years old* (AI Index: IOR 41/01/97).

<sup>3</sup> UN document E/CN.4/1992/18/Add.1, para. 95 and para. 99

the context of two major conflicts in the country: the confrontation between government forces and Tamil armed groups, specially the Liberation Tigers of Tamil Eelam (LTTE), fighting for an independent state, "Eelam", in the north and east of the country, and the confrontation between government forces and the *Janatha Vimukthi Peramuna* (JVP, People's Liberation Front), a Sinhalese militant party which derived much of its support from young people in the south of Sri Lanka. The JVP attempted to overthrow the government in the late 1980s.

At the invitation of the then government, three members of the WGEID visited Sri Lanka from 7 to 17 October 1991.<sup>4</sup> Their report was presented to the 48th session of the Commission in February 1992.<sup>5</sup> From 5 to 15 October 1992, the same members of the WGEID undertook a follow-up visit, focussing on changes which had occurred since their first visit. The WGEID reported to the 49th session of the Commission in February 1993.<sup>6</sup>

After both visits, the WGEID emphasized the valuable cooperation it had received from the Government of Sri Lanka.<sup>8</sup> However, in the report on its visit in 1992, it also stated that, even though the government had accepted the WGEID's earlier recommendations and the number of "disappearances" had declined dramatically in the interim period, few of its recommendations had actually been implemented and "disappearances" persisted in Sri Lanka at a level that should be of serious concern to the Commission.<sup>9</sup>

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<sup>4</sup> While this document concentrates on the visits of the WGEID, it is worth noting that other thematic mechanisms have visited Sri Lanka (the Representative of the UN Secretary General on Internally Displaced Persons, Mr. Francis Deng, in 1993, and the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mr. Bacre Waly Ndiaye, in 1997) and that the Special Rapporteur on torture, Mr. Nigel S. Rodley, has included entries on Sri Lanka in his reports.

<sup>5</sup> UN document E/CN.4/1992/18/Add.1

<sup>6</sup> UN document E/CN.4/1993/25/Add.1

<sup>7</sup> The WGEID considers only cases of "disappearances" in which a person is detained against his or her will by officials of a branch or level of government or by an organized group or private individuals allegedly acting on behalf of or with the support, permission or acquiescence of a government. Although the WGEID acknowledged having received information about people who were allegedly "disappeared" by members the JVP and the LTTE, it could not consider them in its reports. (UN documents E/CN.4/1992/18/Add.1, para. 104, and E/CN.4/1993/25/Add.1, para.6)

<sup>8</sup> UN documents E/CN.4/1992/18 Add.1, para.5, and E/CN.4/1993/25/Add.1, para.5

<sup>9</sup> UN document E/CN.4/1993/25/Add.1, para. 126, 128 and 131

### **Developments since 1994**

In August 1994, the People's Alliance (PA), a coalition of parties headed by the Sri Lanka Freedom Party, won the parliamentary elections and formed a government together with the Sri Lanka Muslim Congress party, bringing an end to 17 years of government by the United National Party. The leader of the PA, Chandrika Bandaranaike Kumaratunga, was sworn in as President after winning presidential elections in November 1994. The new government pledged to improve the human rights situation in the country and to investigate past incidents of human rights violations. In late 1994, it set up three Presidential commissions to investigate past human rights violations, including thousands of "disappearances", since 1 January 1988..<sup>10</sup> The government said it would bring to justice the perpetrators of these past violations. It also announced its intention to strengthen the constitutional protection of human rights. In addition, in 1997, it ratified the Optional Protocol to the International Covenant on Civil and Political Rights and established a permanent national Human Rights Commission (HRC) with a mandate to investigate human rights violations, including "disappearances".

Despite these measures taken in relation to past "disappearances" and the institution building measures as described above, "disappearances" continued to be reported at high levels, particularly after the armed conflict between the security forces and the LTTE resumed in April 1995. In 1995, 55 cases of "disappearances" were reported, particularly from the east of the country and from the capital, Colombo. In 1996, after the army regained control over the northern Jaffna peninsula from the LTTE, an estimated 600 "disappearances" were reported from that area of the country. During 1997, approximately 100 cases of "disappearances" were reported, mainly from Jaffna, Batticaloa, Mannar and Kilinochchi.

Sri Lanka is at a crucial juncture in dealing with its experience of "disappearances" in the past and putting an end once and for all to this pernicious and persistent violation that has for so long wracked the lives of so many people. The current Sri Lankan Government has taken some positive steps since coming to power in 1994 to provide redress and prevent "disappearances" occurring in the first place. But, as indicated by the approximately 600 cases of "disappearances" reported from Jaffna during 1996, which represents the highest level of "disappearances" reported since 1991, the country is still prone to upsurges of widespread human rights violations, particularly "disappearances". The government must tackle the root causes underpinning the continuation of these violations: the lingering sense of impunity among the security forces and the sweeping powers of the Emergency

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<sup>10</sup> The three commission had identical mandates but were responsible for the investigation of "disappearances" in three different geographical areas.

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Regulations (ERs) and the Prevention of Terrorism Act (PTA) allowing for people to be detained incommunicado for long periods of time.

### The WGEID's Recommendations

In both its reports, the WGEID issued a series of recommendations, concerning past cases of "disappearances" and measures to prevent "disappearances" in the future. In particular, the WGEID made it clear in its second report, that "[a]ll recommendations submitted in the report on the previous mission remain valid".<sup>11</sup>

Below are reproduced the recommendations made by the WGEID (in bold) and Amnesty International's assessment of their implementation to date.

#### 1. Action recommended to deal with past cases

**1.1 The government should establish a mechanism with the principal task of clarifying the fate and whereabouts of the more than 12,000 outstanding cases of "disappearance" reported to the WGEID (1991 visit report, paragraph 204 k, and 1992 visit report, paragraph 133).**

X Prior to the first WGEID visit the then government had set up a Presidential Commission of Inquiry into the Involuntary Removal of Persons (PCIIRP) to investigate violations which occurred on or after the date of its establishment (11 January 1991). Despite numerous appeals from the WGEID, Amnesty International and others, the mandate of this presidential commission was never extended to include the thousands of cases reported prior to its establishment. In its 1991 visit report, the WGEID made recommendations to expedite the consideration of cases by the PCIIRP. Subsequently more speedy procedures along the lines of those recommended by the WGEID were adopted.<sup>12</sup> This resulted in 56 reports containing results of investigations into individual cases being submitted to the President by 31 March 1994. At least six of them had been submitted as far back as early 1992. In late 1992, Amnesty International was informed that the then President had authorized publication of these six case reports in the form of Parliamentary Sessional Papers.

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<sup>11</sup> UN document E/CN.4/1993/25/Add.1, para. 146

<sup>12</sup> UN document E/CN.4/1992/18/Add.1, para. 146 (k)

Following the change of government in 1994 and the establishment of the three Presidential commissions mandated to investigate past "disappearances" from 1 January 1988 (see above and below), the PCIIRP was instructed to conclude its investigations. In November 1995, its final report was submitted to the President. To date, the individual case reports and the final report of the PCIIRP have not been publicised either as sessional papers or otherwise.

The three Presidential commissions started their work in early 1995. They recorded evidence of thousands of cases of "disappearances" from relatives and witnesses and submitted interim reports of their findings to President Chandrika Bandaranaike Kumaratunga. Their final reports, including recommendations for the prevention of "disappearances", were submitted to the President on 3 September 1997. According to a press release issued by the Presidential Secretariat at the time, the commissions found evidence of "disappearance" in 16,742 cases. At least 6,000 other cases submitted to the commissions reportedly remained to be investigated. The latter include, for instance, complaints of "disappearances" alleged to have occurred in areas which were difficult to access, such as the "Vanni", a part of the northern province where the fighting between the security forces and the LTTE has been intense. The government announced that the interim and final reports of the three commissions would be made public. It also said that prosecutions would be initiated in those cases where the commissions found *prima facie* evidence and that a new commission would be established to examine the 6,000-odd complaints which the three commissions were not able to investigate.

Around late January - early February 1998, the media were informed that the reports were available from the Government Publications Bureau and some articles subsequently appeared in the local press drawing on their content. However, to Amnesty International's knowledge, the individual relatives of the "disappeared" whose cases were investigated by the commissions have to date not been officially informed of their findings, nor have the reports been widely distributed via local libraries or other appropriate channels. At the time of writing, the members of a new commission to examine the complaints which the three Presidential commissions were not able to investigate had not as yet been appointed.

In November 1996, a Board of Investigation was set up within the Ministry of Defence to inquire into approximately 600 cases of "disappearances" reported from Jaffna district in 1996. Towards the end of 1997, this unit was instructed to wind up its activities. Its final report to the Secretary, Ministry of Defence had not yet been submitted by mid-February 1998.

The HRC, a permanent statutory body set up in March 1997 (see page 4 above), is reported to be investigating 274 cases of "disappearances" reported from Jaffna. In addition, soon after a meeting in late December 1997 between President Chandrika

Bandaranaike Kumaratunga and some relatives of the people who “disappeared” in Jaffna in 1996, there were reports that a Presidential commission of inquiry will be appointed to investigate these “disappearances” reported from Jaffna. To date, to Amnesty International’s knowledge, this commission has not been constituted.

The work of the various commissions outlined above has gone some way towards clarifying the fate or whereabouts of the thousands of “disappearances” reported from Sri Lanka. The follow-up given by the government to the findings of the commissions, in particular the findings of the three Presidential commissions of inquiry that submitted their reports recently, will be a key factor in the overall assessment of the implementation of this WGEID recommendation. In particular, the way in which relatives of the “disappeared” whose cases were examined will be informed of the findings will be important in the overall assessment of this recommendation.

**1.2 The Government should pursue the clarification of “disappearances” even more vigorously. Human rights groups should be brought more closely into the search for missing persons, specifically as regards the identification of bodies discovered (1991 visit report , paragraph 204 c). The Government may wish to consider attracting forensic expertise from abroad, through the UN, for the purpose of identifying possible victims of “disappearances” in particularly egregious cases, such as in regard to the mass grave discovered in connection with the Embilipitiya case (1991 visit report , paragraph 204 c, and 1192 visit report , paragraph 146 c).**

X Despite some initial encouraging attempts at strengthening the forensic expertise in the country after the government came to power, to date, this area remains under-resourced. In particular, there remains a need for the government to strengthen the investigative resources within the specialist police units entrusted with the investigation of past human rights violations such as “disappearances”. Currently, investigations into approximately 100 cases investigated by the PCIIRP and some of the cases of “disappearances” identified by the three Presidential commissions of inquiry as cases with *prima facie* evidence, have already been initiated by a special police team. However, many others are still awaiting investigation by the police in order to establish whether there is enough evidence to prosecute those suspected of being responsible.

In addition, investigation of the approximately 600 “disappearances” that were reported from the Jaffna peninsula during 1996 also probably needs anthropological and forensic expertise. Amnesty International has gathered reliable evidence to suggest that

some bodies of the people who “disappeared” in 1996 have been disposed of in lavatory pits, disused wells and shallow graves throughout the area.<sup>13</sup>

Individual officials including the Attorney General, the Inspector General of Police and a Deputy Inspector General of Police in charge of a specialist unit responsible for the investigation of serious human rights violations have informed Amnesty International that they would welcome technical assistance in the area of investigative and prosecutorial expertise. The Minister of Justice and Constitutional Affairs, who jointly has responsibility for judicial medical experts with the Ministry of Health, stated in a meeting with an Amnesty International delegation visiting Sri Lanka in August 1997 that the government had no objection in principle to inviting forensic experts from abroad to assist local experts to strengthen available expertise in the country. He said that the main obstacle was a lack of resources available at that point in time.

***1.3 The Government should prosecute more rigorously those responsible for “disappearances” and require severe disciplinary punishment for government officials who have failed to take adequate measures to prevent “disappearances”. In particular, disregard for the requirements of registration of detainees as well as intimidation or reprisal against witnesses or relatives of “disappeared” persons should be rigorously punished (1991 visit report , paragraph 204 g).***

X As the WGEID has repeatedly stated, “perhaps the single most important factor contributing to the phenomenon of disappearances is that of impunity”<sup>14</sup>. After its second visit to Sri Lanka, it felt “compelled to express its disappointment concerning the follow-up of a number of important cases” of “disappearances” in the country.<sup>15</sup>

Even though a “disappearance” as such does not constitute a crime under Sri Lankan law, prosecutions may initiated on the basis of acts which form the constituent elements of a “disappearance” and for which persons can be held criminally liable, such as arbitrary arrest, unlawful detention and failure to produce before a court. But virtually no one allegedly responsible for “disappearances” is persecuted, even where investigations were carried out and those allegedly responsible identified.

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<sup>13</sup> See Amnesty International document *Sri Lanka: Government's response to widespread “disappearances” in Jaffna*, of November 1997 (AI Index: ASA 37/24/97).

<sup>14</sup> UN document E/CN.4/1993/25/Add.1, para.87

<sup>15</sup> UN document E/CN.4/1993/25/Add.1, para.97

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The trial of those charged in connection with the "disappearance" of 32 schoolboys at Embilipitiya in late 1989 - early 1990 is expected to reach conclusion soon. This will be the first ever judgment in a trial relating to "disappearances" in the country.

The few cases in which action against those responsible for "disappearances" was taken have shown how such action can deter "disappearances". When nine members of the security forces were arrested after the detention and subsequent "disappearance" of 18-year old schoolgirl Krishanthi Kumarasamy, two members of her family and a neighbour in Jaffna on 7 September 1996, this appears to have been one of the major factors which contributed to a curb in the number of "disappearances" reported from the peninsula.<sup>16</sup> A trial-at-bar of eight soldiers and one police officer charged with the abduction, rape and murder of Krishanthi Kumarasamy and the abduction and murder of her mother, 16-year-old brother and neighbour started in November 1997 and was continuing at the time of writing.

***1.4 Acts found to involve grave violations of human rights, such as "disappearances", should not benefit from indemnity legislation (1991 visit report, paragraph 204 h).***

X The Indemnity (Amendment) Act, 1988 which provides immunity from prosecution to all members of the security forces, members of the government and government servants involved in enforcing law and order between 1 August 1977 and 16 December 1988, provided that their actions were carried out "in good faith" and in the public interest, remains on the statute book. Although it has not been used to date, it has, as the WGEID declared, "further stimulated" a sense of impunity.<sup>17</sup> Furthermore, it cannot be excluded that in some of the cases of "disappearances" reported during 1988 which may be brought to court as a result of the investigations of the three Presidential commissions of inquiry, one or more of the accused may invoke the provisions of the Indemnity (Amendment) Act when charged.

In addition, Section 26 of the Prevention of Terrorism Act (PTA) which provides for immunity from prosecution for "any officer or person for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any order made or direction given under this Act" remains in force. A similar provisions in the then ERs was repealed in June 1993.

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<sup>16</sup> For further information on the case see Amnesty International document *Sri Lanka: Government's response to widespread "disappearances" in Jaffna*, of November 1997 (AI Index: ASA 37/24/97).

<sup>17</sup> UN document E/CN.4/1992/18/Add.1, para.199

**1.5 The Government should take more effective measures to protect witnesses and relatives of "disappeared" persons against any form of intimidation or reprisal and to prevent such incidents (1991 visit report , paragraph 204 n).**

X The WGEID was informed about cases of reprisals reportedly directed at families of "disappeared" persons for the purpose of intimidation.<sup>18</sup> This pattern continues, as is shown by the case of Krishanthi Kumarasamy, whose mother, brother and neighbour "disappeared" after having been taken into custody at the same army checkpoint where Krishanthi had been arrested before and where they had inquired about her whereabouts.<sup>19</sup>

According to one of the interim reports of the Presidential Commission of Inquiry into "disappearances" in the central region of the country submitted to President Chandrika Bandaranaike Kumaratunga on 18 October 1996, the commission had recommended that an assistant superintendent of police who had been named as being responsible for "disappearances" in the Anamaduwa area and who had been implicated in attempts to intimidate witnesses testifying against him before the commission should be sent on compulsory leave. To Amnesty International's knowledge, to date this has not happened. The same police officer is reportedly currently attached to the Bambalapitiya police station, Colombo.

## **2. Recommendations to prevent future cases**

**2.1 In view of the magnitude of the problem of "disappearances" in Sri Lanka, the Government should encourage more official condemnation of this practice and give greater publicity to such condemnation (1991 visit report , paragraph 204 b).**

X Although the President and other officials have repeatedly publicly stated the government's determination not to allow human rights violations, the President, as head of state, has not issued a clear and public condemnation of the practice of "disappearances" as such. The publication of the final reports of the three Presidential commissions of inquiry and their tabling in Parliament present opportunities for the government to officially condemn these human rights violations. In addition, the government should give the reports the widest possible dissemination, including to relatives of the "disappeared", and back this up with an unequivocal public commitment to take action against those responsible for the "disappearances".

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<sup>18</sup> UN document E/CN.4/1992/18/Add.1, para. 145

<sup>19</sup> See Amnesty International document *Sri Lanka: Government response to widespread "disappearances" in Jaffna*, of November 1997 (AI Index ASA 37/24/97).

**2.2 The Government of Sri Lanka should take more effective measures to prevent "disappearances" (1991 visit report, paragraph 204 a).**

X Sri Lanka has taken several steps to prevent "disappearances". These have included the setting up of a Human Rights Task Force (HRTF) in 1991 with a mandate to monitor the welfare of detainees held under the PTA and ERs, particularly through regular visits to places of detention by officers of the HRTF in regional offices around the country. Throughout 1996, amid alarming reports of widespread "disappearances" in Jaffna peninsula, local and international human rights organizations campaigned for an office of the HRTF to be opened in this area. However, apart from a two-day visit to Jaffna in mid-November 1996, the HRTF was not able to carry out its mandate in the Jaffna peninsula. Amnesty International believes that the lack of monitoring of the welfare of detainees throughout this period contributed to the high number of "disappearances" reported at the time. As of 1 July 1997, the HRTF's functions were subsumed into the newly-established HRC. The HRC regional office in Jaffna was opened in January 1998; another office is reported to be in the process of being set up in Mannar.

In 1995, Presidential directives were issued to all members of the security forces to report all arrests to the HRTF forthwith and in any case not later than 48 hours from the time of arrest or detention. In addition, "arrest receipts" had to be issued to relatives of detainees and the latter had to be informed of arrests and detentions, HRTF officers had to be given access to places of detention at any time, statements of detainees had to be recorded in a language of their choice, and specific protective measures had to be taken when arresting children and women. In late July 1997, the security forces were instructed to provide the same cooperation to the HRC.

While welcoming these measures aimed at preventing further "disappearances", the fact remains that throughout this period, "disappearances" have continued to occur at a high rate. This shows, among other things, that there are still problems in implementing these safeguards. Although failure to implement them is an offence under the ERs, to date no member of the security forces is known to have been charged under these provisions.

One example of the lack of implementation of the safeguards relates to the issuing of "arrest receipts". The Secretary, Ministry of Defence, despite being nominated in the presidential directives as the person responsible for designing "arrest receipts", did not issue model "arrest receipts" until mid-1997. However, the model "arrest receipt" only provided for the rank of an arresting officer to be included on the form and not the name, number and unit, the time of arrest and the place of detention, as required by the presidential directives. In addition, there was confusion about when and how the receipts were to be issued and whether different formats were in use.

The General Officer Commanding of the 51st Division of the army in Jaffna had modified the model "arrest receipt" to include details of the arresting officer's name, unit and number as required under the Presidential directives. Despite this, the "receipts" are still not being systematically issued in Jaffna, or other parts of the country.

Another serious failure of safeguards to prevent "disappearances" is continuing reports that detainees are held in secret places of detention especially in the Jaffna peninsula, Colombo and Vavuniya. This is despite the requirement that detainees can only be held in officially gazetted places of detention.

In Vavuniya, members of the People's Liberation Organization of Tamil Eelam (PLOTE), an armed group fighting alongside the security forces, run at least three illegal places of detention. In Colombo, a tower behind the Indian High Commission and the American Information Center along Galle Road in the heart of the city, continues to be used as a "safe house" by members of the army. This place had been identified as a secret place of detention by Amnesty International as far back as early 1994. In mid-1997, Amnesty International found that at least three detainees were held there for several days during early 1997 before being handed over to the Crime Detection Bureau, a specialist police unit operating in Colombo.

Keeping a detainee in a place not authorized as a place of detention was made a specific offence under the ERs. To date, to Amnesty International's knowledge, no member of the security forces has been charged under these provisions.

The new ERs requiring detainees to be held in specifically authorized places of detention is a welcome step. However, because many of the authorized places are nevertheless under the control of the security forces, Amnesty International remains concerned that the government has not yet separated responsibility for custody from responsibility for investigation, one of the fundamental safeguards against torture and "disappearances".

*2.3 In order to facilitate the search for missing persons, all government authorities in charge of temporary or permanent places of detention (such as army or police headquarters, barracks, camps, outposts, prisons) should be required to provide to the competent civilian authorities periodically updated listings of detainees under their custody. Registers of detainees should be kept, including a central register of detention. Adequate provision should be made for registration of transfers of detainees from one place of detention to another. Detention registers should be accessible to interested parties (1991 visit report, paragraph 204 d).*

X The WGEID stressed that the measures proposed “might contribute significantly to the prevention of disappearances”, but “found registration procedures in the field to be cumbersome and often defective, particularly as regards detention centres operated by the military”.<sup>20</sup>

Since then, the establishment of the HRC and the issuing of Presidential directives to the security forces to ensure the welfare of detainees are a welcome step. This has contributed to a reduction of “disappearances” in several parts of the country, including Colombo and Trincomalee, where the HRC (and before it, the HRTF) were and are able to function. However, as pointed out above, the full implementation of these safeguards, especially in regions such as Jaffna where a regional office of the HRC only opened in January 1998, remains a serious problem.

According to the HRC of Sri Lanka Act, all transfers and releases must be reported to the HRC. To Amnesty International’s knowledge, this is not happening in a systematic way.

The ERs of November 1994 currently in force also provide that officers in charge of any authorized place of detention must provide to the local magistrate every 14 days a list of all persons detained at such place, and that the magistrate has to display these lists on the court’s notice board. In addition, the ERs require the magistrates to visit such places of detention at least once a month, and that all detainees shall be produced before the magistrate by the officer in charge during the visit. To Amnesty International’s knowledge, this is not being implemented.

*2.4 Present legislation, especially the Prevention of Terrorism Act (PTA) and the Emergency Regulations (ERs) currently in force, should be brought into line with accepted international standards regarding due process and the treatment of prisoners. Grounds for and powers of arrest, as well as grounds for the transfer of detainees, should be clearly circumscribed. Time limits for bringing a person before a judge following their arrest should be drastically shortened, as the present time limits appear excessive (1992 visit report, paragraph 204 e). The government should undertake a general overhaul of its emergency legislation relating to arrest and detention with a view to ensuring that it conforms to Sri Lanka’s international obligations (1992 visit report, paragraph 146 a).*

X To date, the government has not made any amendments to the PTA, which continues to allow for up to 18 months’ detention on administrative order, under three-monthly renewable detention orders.

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<sup>20</sup> 1992 visit report, UN document E/CN.4/1993/25/Add.1, para.142

Reviews of the ERs undertaken in the last few years seem to have largely been confined to the geographical application of the ERs rather than to addressing some of the fundamental aspects of their provisions for arrest and detention which have been identified as falling short of international standards by the UN Human Rights Committee, as well as having been the subject of criticism by the Supreme Court of Sri Lanka. The provisions of the ERs which were changed include the reduction of the maximum period of detention for investigative purposes in areas outside the north and east to 21 days, and to 60 days in the north and east. The provisions of preventive detention were changed to incorporate a judicial review after one year, but indefinite preventive detention remains possible.

In addition, procedures laid down in the ERs for post mortem and inquests into deaths resulting from actions of security forces personnel continue to facilitate extrajudicial executions by the security forces.<sup>21</sup>

***2.5 The Government should initiate a thorough overhaul of both the law and the practice of habeas corpus in order to expedite the present procedure and make it more accessible and generally more effective (1991 visit report, paragraph 204 f).***

X The WGEID has described *habeas corpus* as the single most important tool for preventing a case of arbitrary detention turning into a case of "disappearance".<sup>22</sup>

In December 1994, the Court of Appeal in *habeas corpus* cases filed before it for the first time granted Rupees 100,000 (\$1,600) as exemplary costs to relatives of people who the court concluded had "disappeared" in the custody of the security forces. Amnesty International has welcomed this.

However, major problems remain in the current law and practice of *habeas corpus*. In areas outside Colombo, the local High Courts have the power to hear *habeas corpus* petitions, but in practice have not heard any such cases. This is so even in the east, where the High Court is functioning and "disappearances" continue to be reported. In Jaffna, where recently most cases of "disappearances" have been reported, no High Court has been functioning. The only option for relatives of people who have "disappeared" in Jaffna is to travel to Colombo to file petitions before the Court of Appeal. Travel from Colombo to Jaffna, however, is at the moment only possible by air or sea and difficult, expensive and slow. Those wanting to travel have to obtain permission from the security forces and have to state the purpose of their visit to Colombo.

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<sup>21</sup> For further information, see Amnesty International document: *Sri Lanka: Security measures violate human rights*, of July 1995 (AI Index: ASA 37/12/95), page 11-12.

<sup>22</sup> Report on 1992-visit, E/CN.4/1993/25/Add.1, para.144

Furthermore, while petitions filed before the Court of Appeal in Colombo are reportedly dealt with more speedily than in the past, delays are still considerable. It takes on average approximately 2 1/2 years from the filing of a petition to it being considered by the court.

***2.6 Human rights records of members of the armed forces and the police should be taken into account in the consideration of promotions; members of these forces under investigation for involvement in cases of disappearance should be suspended from active duty until inquiries are completed. The introduction of training courses on human rights and humanitarian law for army and police personnel should be considered (1991 visit report, paragraph 204 i).***

X The government keeps assuring observers that alleged involvement in human rights violations is taken into account when considering promotions of members of the security forces. It has been difficult to verify this because of a lack of transparency and the very small number of alleged perpetrators who are brought to justice.

In early 1996, President Chandrika Bandaranaike Kumaratunga reportedly directed the then Commander of the Army to send some 200 army officers found to have been involved in "disappearances" by one of the presidential commissions of inquiry on compulsory leave. To Amnesty International's knowledge, to date this order has not been implemented.

Throughout their trial, eight army officers charged together with a school principal in relation to the "disappearances" of 32 school children in Embilipitiya (see above) have continued to be on active duty. Twenty two members of the Special Task Force (a paramilitary arm of the police) who had been arrested and detained in 1995 on suspicion of murdering 23 young Tamil men were released on bail and reportedly resumed their police functions in February 1996. At the time of writing, the case against them had not come to trial.

Training courses on human rights and humanitarian law have been initiated with the help of the International Committee of the Red Cross for members of the security forces. A program of training for police officers is reportedly in the process of being set up with the assistance of the Government of United Kingdom.

***2.7 Legal counsel should be empowered to inspect police records (1991 visit report , paragraph 204 l).***

X At the time of writing, Amnesty International had not received information on the implementation of this recommendation. Its implementation is in part assessed in the review

of the implementation of the other recommendations, particularly those recommending that periodically updated lists of detainees should be provided to competent civilian authorities and that detention registers should be accessible to interested parties (see above, page 12) and the recommendation that more effective measures should be taken to prevent "disappearances" (see above, page 11). The WGEID itself has not reported on its assessment of the implementation of this specific recommendation.

***2.8 Civil defence units should only be formed on a purely voluntary basis, under the control of civil authorities and under stricter control in terms of command structure, operations and supply of arms and ammunition (1991 visit report, paragraph 204 m).***

X While the practice of civilian defence units in plain clothes arresting people at will is no longer a dominant pattern of human rights violations in Sri Lanka, there remains concern about Home Guards and members of armed Tamil groups working alongside the security forces being responsible for human rights violations, including "disappearances". Several such cases were reported to the WGEID in 1996, particularly from Batticaloa and Vavuniya.

***2.9 The Government may wish to consider becoming a party to Protocols I and II Additional to the Geneva Conventions of 12 August 1949 relating to the laws of war (1992 visit report, paragraph 146 d).***

X Sri Lanka ratified the UN Convention against Torture in 1994 and the (first) Optional Protocol to the International Covenant on Civil and Political Rights in 1997.

The Minister of Foreign Affairs indicated in a meeting with Amnesty International in August 1997 that he would like to receive information about countries which have recently acceded to the Second Additional Protocol to the Geneva Conventions. No further indication has been received about any steps taken by the government towards ratification of the Additional Protocols to the Geneva Conventions.

## Conclusion

Amnesty International welcomes the steps taken by the Government of Sri Lanka to implement the WGEID recommendations. Several measures go a long way towards full implementation of some of the recommendations, especially the establishment of mechanisms to investigate past "disappearances", the registration of arrests and detentions and the control over civil defence units.

Other recommendations, however, particularly those relating to underlying structural, institutional or policy issues remain to be implemented. These factors have contributed to the continuing high levels of "disappearances". To prevent any grave deterioration in the human rights situation in Sri Lanka, as occurred in Jaffna in 1996, the government needs to address these underlying issues.

● **Further action by the Government of Sri Lanka**

- ▶ Amnesty International believes that the government, building on the measures it has already taken, should fully implement the WGEID's recommendations.
- ▶ It is crucial that the president makes a clear and public statement condemning the practice of "disappearances". A message that they will not be tolerated is important for the victims, their relatives, those groups in society especially at risk of "disappearance" and to past and possible future perpetrators.
- ▶ The commission of a "disappearance" should be made a criminal offence, punishable by penalties commensurate with the gravity of the practice.
- ▶ To further the clarification of past and present cases of "disappearances", the government should inform the WGEID of the findings of the three Presidential commissions of inquiry, the Board of Investigation in the Ministry of Defence, the Human Rights Commission and others in relation to the up to 12,000 cases currently under consideration by the WGEID.
- ▶ A thorough review of the ERs and PTA should be carried out, taking into account the comments of the Human Rights Committee and the Supreme Court of Sri Lanka.
- ▶ Immediate action should be taken to bring to justice the perpetrators against whom the Presidential commissions of inquiry found *prima facie* evidence of involvement in "disappearances".
- ▶ Given that most cases of "disappearances" in Sri Lanka occur in the context of the ongoing armed conflict between the Government of Sri Lanka and armed opposition groups, Amnesty International recommends that the government should implement the WGEID's recommendation to become a party to Protocols I and II Additional to the Geneva Conventions of 12 August 1949 relating to the laws of war.<sup>23</sup> Protocol

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<sup>23</sup> UN document E/CN.4/1993/25/Add.1, para 146 d

It is especially important under the given circumstances, because it provides protection for victims of non-international armed conflicts such as civil wars.<sup>24</sup>

● **Action by the UN Commission of Human Rights**

Since the reports of the WGEID were submitted to the Commission in 1992 and 1993, the Commission has dealt with the situation of human rights in Sri Lanka through three statements from the Chairperson. In 1992, the Chairperson expressed the Commission's acknowledgement of "the measures taken by the Government of Sri Lanka to address the human rights situation throughout the country" and noted that the Commission remained, "however, seriously concerned over the human rights situation in Sri Lanka".<sup>25</sup> In 1993 and 1994, the Chairperson *inter alia* explained the "programme of work the Government of Sri Lanka ha[d] outlined which [was] to be implemented in the course of the [respective] coming year".<sup>26</sup>

However, the statements by the Chairperson in 1993 and 1994 contain no concrete reference to the actual human rights situation in Sri Lanka. Furthermore, despite continuing reports of "disappearances" in Sri Lanka, the Commission did not follow-up to what extent the measures announced by the government were actually carried out and whether the recommendations made by the WGEID were implemented.<sup>27</sup> The Commission has neglected its duty to effectively monitor the human rights situation in Sri Lanka.

- ▶ Amnesty International calls on the 1998 session of the Commission to ensure that the Government of Sri Lanka agrees on a program of action to be taken in 1998 and 1999 to implement the WGEID's recommendations.
- ▶ To facilitate the implementation of the WGEID recommendations, the Commission, in consultation with the Office of the High Commissioner for Human Rights, should offer

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<sup>24</sup> The Protocol II Additional provides, *inter alia*, for the humane treatment of "all persons who do not take a direct part or who have ceased to take part in hostilities" (Article 4) and for "federal protections" of the civilian population and individual civilians "against the dangers arising from military operations (Article 13 (1)). It binds both the armed forces and armed opposition forces.

<sup>25</sup> UN document E/1992/22 - E/CN.4/1992/84, paragraph 416

<sup>26</sup> See for 1993 UN document E/1993/23 - E/CN.4/1993/122, para. 563 - 564, and for 1994 UN document E/1994/24 - E/CN.4/1994/132, para. 481

<sup>27</sup> See for example the reports of the WGEID to the Commission from 1994 to 1997 (E/CN.4/1994/26, para. 433-456; E/CN.4/1995/36, para. 354-369; E/CN.4/1996/38, para. 383-399; E/CN.4/1997/34, para. 317-328)

the Government of Sri Lanka technical assistance for the suggested review of the country's security legislation and offer investigative, forensic and prosecutorial expertise to support the clarification of past "disappearances" and the prosecution of those responsible for "disappearances".

- ▶ The Commission should establish a regular agenda item to monitor the states' cooperation and progress on implementing the recommendations made by the Commission and its human rights mechanisms. This would enhance the work and strengthen the efficiency of the thematic mechanisms and ensure that states are held accountable for human rights violations.

**For further information on the incidence of "disappearances" in Sri Lanka, see:**

*Sri Lanka: Time for truth and justice*, April 1995 (AI Index ASA 37/04/95)

*Sri Lanka: Government's response to widespread "disappearances" in Jaffna*, November 1997 (AI Index: ASA 37/24/97 )

