

DECISION No. 1/1996 (SRI LANKA)

Communication addressed to the Government of Sri Lanka on 26 August 1994.

Concerning: 36 persons (whose names are given in para. 5 below), on the one hand and the Socialist Democratic Republic of Sri Lanka, on the other.

1. The Working Group on Arbitrary Detention, in accordance with the revised methods of work adopted by it and in order to carry out its task with discretion, objectivity and independence, forwarded to the Government concerned the above-mentioned communication received by it and found to be admissible, in respect of allegations of arbitrary detention reported to have occurred.
2. The Working Group notes with appreciation the information forwarded by the Government concerned in respect of the cases in question within 90 days of the transmittal of the letter by the Working Group.
3. (Same text as para. 3 of Decision No. 35/1995.)
4. In the light of the allegations made the Working Group welcomes the cooperation of the Government of Sri Lanka. The Working Group transmitted the reply provided by the Government to the source by letter dated 20 September 1995 but, to date, the latter has not provided the Working Group with its comments. The Working Group believes that it is in a position to take a decision on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto.
5. The facts as alleged and the Government reply thereto, are as follows:
 1. Mr. S. Sellathurai, was allegedly arrested at his working place on 5 April 1994 by Sri Lankan Crime Investigation Bureau in Colombo, for inquiry, on suspicion of terrorism. He is still under their custody, without having been brought to any court, being detained at the Prison of Colombo - 12 (known as 4th floor Bureau). He was reportedly arrested without any charge. According to the Government he was produced in the Magistrate Court, Fort, in Case No. B 34032 and discharged on 24 August 1994.
 2. Mr. K.A.J. Arachchige, was reportedly arrested on 11 February 1991 and was brought to the army camp at Panagoda, as a suspect of anti-governmental activities. According to the Government he is charged in High Court, Kalutara Case Nos. 272, 274, 282 and 289/93.
 3. Mr. T.W. Priyantha Vithanachchi, was reportedly arrested at his home on 19 December 1992 by S.C.D. Colombo; he is now reportedly at Boossa detention camp. According to the Government he was produced in the Magistrate Court, Balapitiya, in case Nos. 10 and 11/94 and was released on bail on 6 December 1994.

4. Mr. H.M.P.G. Gunaratne Banda, was allegedly arrested on 3 July 1992, as a suspect of JVP activities, at Pettah by the Pettah Police and was taken to the Ruttota Police on the night of the same day. According to the source, he is now at the Magazine Prison, under the number B-2763. He is allegedly suspected of JVP activities only because he was a student at Kalani University. According to the Government he was discharged in High Court, Kandy, Case No. 95/93, on 21 October 1994.

5. Mr. D.D.T.S. Divadalage, was reportedly arrested on 21 February 1991 at Kalutara by the Kalutara Police S.C.U. According to the Government he is charged in High Court, Colombo, Case No. 5069. The case is pending.

6. Mr. D.P.N. Jayawardena, was allegedly arrested on 7 February 1991 at his working place in Maradhagahamula by the Gampaha Police. According to the source, the authorities did not give any reason for the arrest and for the detention. According to the Government he is charged in High Court, Gampaha, Case No. 57/93. He is on bail.

7. Mr. J.L. De Silva, Sri Lanka Army soldier, was reportedly arrested on 31 October 1989 by the Sri Lanka Army at Z/SLLI Headquarters in Colombo. According to the source, he was brought to Walanwatta army camp on 17 November 1989, day on which he was allegedly severely beaten; on 25 November 1989, he was taken away to Ambalangoda army camp, where he was allegedly hanged and hit with clubs and small arms: he was severely wounded (his right leg was broken) and got no medical treatment. On 11 February 1990, he was allegedly brought to Galle Police and again ill-treated during a questioning about his "anti-governmental activities" which he denied; nevertheless, he was forced to sign a declaration. On 21 February 1990, he was taken away to Boossa detention camp, where he is still being detained. According to the Government he was charged in High Court, Galle, Case No. 13/93 and discharged on 7 July 1994.

8. Mr. L.P.D.M. Kankanamge, was allegedly arrested on 20 July 1991 at Ginimeblagaha by the Baddegama Police. According to the source, he is detained for no fair reason since 26 September 1991 at the Boossa army camp, under the emergency regulations. According to the Government he was charged in High Court, Galle, Case Nos. 1397, 1399 and 1404/94 and was discharged as the charges were withdrawn.

9. Mr. W.P.C. Fonseka, was reportedly arrested on 22 December 1993 at Old Pier, Thalaimannar, by the Pesalai Police. According to the source, he was arrested only on suspicion and has since been detained at the Magazine Jail in Colombo. According to the Government he was produced in Magistrate Court, Mannar, on 31 October 1994 and discharged on the advice of the Attorney General.

10. Mr. K.C.S. Perera, was allegedly arrested on 18 February 1990 in Chandana, by a group of unknown people coming out of a van, who covered his eyes and took him away. He was arrested because of suspected JVP activities. According to the Government he was charged in High Court, Colombo (6), Case No. 47779/91. The case is pending.

11. Mr. D.M. Karunaratne, was reportedly arrested on 17 September 1990 by the Mahakalugolla Police. According to the Government he was released after rehabilitation on 11 July 1992.

12. Mr. D.M. Wijedasa, was allegedly arrested on 5 March 1991 by the police. First, he had been brought to Badulla Police Station, then to Boossa Camp. According to the Government he was discharged in High Court, Badulla, Case No. 180/92 on 22 August 1994.

13. Mr. C.K. Sudda Hewaqa (or Sudasinghe), was reportedly arrested on 10 August 1991 at Gold Nagoda Mapala Gama by the Kalutara Police. He was allegedly arrested as a result of a false petition against him. According to the Government he was charged in High Court, Kalutara, Case No. 240/92. The case is pending.

14. Mr. A.J. Mudiyanalage, was reportedly arrested on 21 February 1992 at Attempitiya by the Bandarawela Police (G.O.C. Branch), accused of murder (which, according to the source, is a groundless accusation). According to the Government he was charged in High Court, Badulla, Case No. 93/92 and discharged on 28 June 1994, due to insufficient evidence.

15. Mr. G.S. Thail, was reportedly arrested on 27 May 1990, probably by the police, in Colombo. According to the Government he was released on 21 September 1994.

16. Mr. E.M.H. Banda, was allegedly arrested on 27 July 1991 by police forces at his house. He was arrested after the villagers had spread the rumour that he was a JVP helper. The authorities reportedly accused him of JVP activism and of murder. According to the Government he was released on 26 November 1991.

17. Mr. B.R. Chandradasa, was allegedly arrested on 2 January 1990 by the Kuliypitiya Police at Kurunagala town, suspected of JVP activities. According to the Government he was charged in High Court, Kuliypitiya, Case No. 154/93 and discharged on 7 June 1993.

(No. 18 same as No. 14)

19. Mr. T.M. Senaviratne Banda, was allegedly arrested on 15 July 1991 at 5.30 pm by the Polonnaruwa S.C.U. and taken to Aralaganwila Police Station. According to the source, he was accompanied the next day to Polonnaruwa S.C.U. where he was allegedly severely assaulted during three days. According to the Government he was charged in High Court, Kalutara, Case No. 264/93 and sentenced to two years rigorous imprisonment, suspended for seven years, on 13 December 1994.

20. Mr. K.P.G. Jayasiri, was allegedly arrested on 5 April 1989 at his home by unknown forces. According to the Government he is charged in High Court, Case No. 626/91. The case is pending. He is presently an inmate of the Angoda Mental Hospital.

21. Mr. A.K. Kankanamage, was allegedly arrested on 14 December 1988 at his home by the C.I.D. on the ground of preventing JVP troubles. According to the Government he is charged in High Court, Colombo, case No. 4509/90. The case is pending. He is in remand.

22. Mr. C.S.R. Pathirenehalage, was reportedly arrested on 10 August 1990 by the Gampana Police. According to the source, he was detained at the Pelawatta camp, then at the Magazine Prison and is now being detained at Boossa Camp. He is allegedly accused of JVP activism, but the source denies these allegations. According to the Government he was charged in High Court, Gampana, Case No. 57/91 and sentenced to three years rigorous imprisonment 1 February 1994.

23. Mr. P.B. Gampola, was reportedly arrested on 11 October 1989 at his home by the O.I.C. and the Talangama Police. According to the Government he was charged in High Court, Colombo, case Nos. 5020/92 and 5100/92 and was acquitted in both cases.

24. Mr. R.D.A. Rajapakse, was allegedly arrested on 10 October 1992 by the Kirulapana Police. According to the Government Magistrate Court, Fort, case No. 71162 is pending against him. He is on bail.

25. Mr. Ruchiratne Ratnayake Mudiyansele, was reportedly arrested on 2 January 1991 at Mahawatta, Narahenpita, by the Narahenpita Police. According to the Government High Court, Badulla, Case No. 70/93 is pending against him. He is on bail from 14 September 1994.

26. Mr. S.W.R. Asama Ajith Bandara, was allegedly arrested on 1 November 1989 in Ehiligoda town. According to the Government he was charged in High Court, Ratnapura, case No. 142/93 and discharged on 21 November 1994.

27. Mr. Premathilaka Gardiahewage, was reportedly arrested on 27 May 1990 in Colombo-Kandana by the Colombo Divisional Security Coordination Office. According to the Government he was charged in High Court, Badulla, Case Nos. 226/93 and 351/93. He was discharged on 21 September 1994 due to insufficient evidence.

28. Mr. D.W. Weerasinghe, was allegedly arrested on 5 March 1989 next to the boutique of the village. According to the Government he was charged in High Court, Badulla, Case No. 120/92. The case is pending. He is on bail.

29. Mr. M.J.S. Hameed, was reportedly arrested on 14 September 1992 by the Maradana Police. According to the Government Magistrate Court, Mt. Lavinia, Case No. 836/8 is pending against him. He is detained at the Mahara Prison.

30. Mr. Chandrapala alias Siripala Ambepitiyage Don, was allegedly arrested on 13 March 1992 at #274/3 Makola South, Makola, by the police. According to the Government High Court, Colombo, case Nos. 6626 and 6629 are pending against him.

31. Mr. Poojyasoma Perera Moraherage, was reportedly arrested on 17 August 1992 by the police, at his home. According to the Government he is charged in High Court, Colombo, Case No. 6629. The case is pending.

32. Mr. Gunasena Geemunige, was reportedly arrested on 2 March 1994 at Thundula by the Meegahatenna Police. He is allegedly suspected of JVP activities. According to the Government he was produced in Magistrate Court, Mathugama, Case No. BR 378/94. The case is pending.

33. Mr. L.M. Udayaruwan, was reportedly arrested on 10 May 1993 as he was presenting himself before the Military Police. He is allegedly charged under the emergency law because of a petition made by enemies. According to the Government that person, a member of the security forces, has been discharged from the Sri Lankan army, but no prosecution has been initiated against him by the authorities.

34. Mr. K.D.J. Wijeratne, was reportedly arrested on 22 August 1988 at Waththegama by the Kandy Police. He was allegedly arrested as a suspect in connection with the robbery of the People Bank of Digana. According to the Government he is indicted in High Court, Colombo No. 4, Case No. 4091/89 in connection with the above-mentioned robbery.

35. Mr. M. Sunil Mendis, was reportedly arrested on 11 March 1990 at Nayakolawatte, Yahalabedde, Haputale, by the Haputale Police, accused of involvement in JVP poster propaganda. He was allegedly charged with murder: the case is pending before the Supreme Court. According to the source the charges against him are false and baseless. According to the Government he was charged in High Court, Badulla, Case No. 240/93 and was discharged on 21 September 1994.

36. Mrs. S. Ponnammah, was reportedly arrested on 2 December 1989 by the Sri Lankan army at Dambattenne Estate, Bandara Eliya Division, Dambattenne R.O., Via Haputale, on suspicion of JVP activities. According to the Government this person was not arrested by the security forces or the police.

37. Mr. Rohana Gallage, was allegedly arrested on 9 September 1993 at his home. According to the Government he is charged in High Court, Balapitiya, Case No. 15/94. The case is pending.

6. It appears from the above information that 22 persons among those concerned are no longer being detained, either since they were discharged, acquitted, finished serving their sentence, or released on bail pending their trial. They are the following:

S. Sellathurai, T.W. Priyantha Vithanachchi, H.M.P.G. Gunaratne Banda, D.P.N. Jayawardena, J.L. De Silva, L.P.D.M. Kankanamge, W.P.C. Fonseka, D.M. Karunaratne, D.M. Wijedasa, A.J. Mudiynasalage, G.S. Thail, E.M.H. Banda, B.R. Chandradasa, T.M. Senaviratne Banda, P.B. Gampola, R.D.A. Rajapakse, Ruchiraratne Ratnayake Mudiyanseleage, S.W.R. Asama Ajith Bandara, Premathilaka Gardiahewage, D.W. Weerasinghe, L.M. Udayaruwan and M. Sunil Mendis.

7. Since the above-mentioned persons are said by the Government not to be in detention, and since that affirmation was not challenged by the source, the Working Group considers that it may apply to them the rule set up by paragraph 14.1 (a) of its revised methods of work and file their cases.

8. Mr. C.S.R. Pathirenehalage (No. 22 in the above list) was sentenced on 1 February 1994 to three years' rigorous imprisonment. Since he was arrested on 10 August 1990, the Working Group presumes that at present he is no longer under detention, and his case is therefore also filed in keeping with paragraph 14.1 (a).

9. According to the Government Mrs. S. Ponnammah (No. 36 in the list), has never been detained. This has not been refuted by the source. Her case is therefore also filed.

10. Eleven persons among those concerned have been charged, but neither the source nor the Government indicated the facts motivating their imprisonment; on the other hand no violations to their right to fair trial have been indicated to the Working Group, that would have conferred on their deprivation of freedom an arbitrary character. The persons concerned are the following:

K.A.J. Arachchige, D.D.T.S. Divadalage, K.C.S. Perera, C.K. Sudasinghe, K.P.G. Jayasiri, A.K. Kankanamage (since 1998), M.J.S. Hameed, Chandrapala alias Siripala Ambepitiyage Don, Poojyasoma Perera Moraharage, Gunasena Geemunige and Rohana Gallage.

11. In the light of the above the Working Group decides:

(a) Having examined the available information and without prejudging the nature of the detention, the Working Group decides to file the cases of S. Sellathurai, T.W. Priyantha Vithanachchi, H.M.P.G. Gunaratne Banda, D.P.N. Jayawardena, J.L. De Silva, L.P.D.M. Kankanamge, W.P.C. Fonseka, D.M. Karunaratne, D.M. Wijedasa, A.J. Mudiynasalage, G.S. Thail, E.M.H. Banda, B.R. Chandradasa, T.M. Senaviratne Banda, P.B. Gampola, R.D.A. Rajapakse, Ruchiraratne Ratnayake Mudiyansele, S.W.R. Asama Ajith Bandara, Premathilaka Gardiahewage, D.W. Weerasinghe, L.M. Udayaruwan, M. Sunil Mendis, C.S.R. Pathirenehalage and Mrs. S. Ponnammah, in terms of paragraph 14.1 (a) of its revised methods of work.

(b) The cases of K.A.J. Arachchige, D.D.T.S. Divadalage, K.C.S. Perera, C.K. Sudasinghe, K.P.G. Jayasiri, A.K. Kankanamage (since 1998), M.J.S. Hameed, Chandrapala alias Siripala Ambepitiyage Don, Poojyasoma Perera Moraharage, Gunasena Geemunige and Rohana Gallage are maintained pending for further information, in terms of paragraph 14.1 (c) of the revised methods of work of the Working Group.

Adopted on 23 May 1996.