

OPINION No. 24/2001 (SRI LANKA)

Communication addressed to the Government on 20 July 2000

Concerning: Edward Anton Amaradas, and 13 other citizens of Sri Lanka

The State has ratified the International Covenant on Civil and Political Rights

1. The Working Group on Arbitrary Detention was established by resolution 1991/42 of the Commission on Human Rights. The mandate of the Working Group was clarified and extended by resolution 1997/50, and reconfirmed by resolution 2000/36. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.

2. The Working Group conveys its appreciation to the Government for having provided the requisite information.

3. The Working Group regards deprivation of liberty as arbitrary in the following cases:

- (i) When it manifestly cannot be justified on any legal basis (such as continued detention after the sentence has been served or despite an applicable amnesty act) (category I);
- (ii) When the deprivation of liberty is the result of a judgement or sentence for the exercise of the rights and freedoms proclaimed in articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and also, in respect of States parties, in articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
- (iii) When the complete or partial non-observance of the international standards relating to a fair trial set forth in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned is of such gravity as to confer on the deprivation of liberty, of whatever kind, an arbitrary character (category III).

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. However, in a letter dated 25 October 2001 the source reiterated, in general terms, its allegation concerning the deplorable situation of detainees of Tamil origin in various prisons in the south of Sri Lanka; it made no comment on the merits of the reply of the Government. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the case.

5. According to the information submitted by the source to the Working Group, the Government of Sri Lanka has given wide powers to the police and the Minister of Defence, under the Prevention of Terrorism Act (PTA) and the Emergency Regulations (ERs) linked to PTA, to arrest and detain Sri Lankan citizens of Tamil origin for a period of up to 18 months without a warrant. Under the said Act, a magistrate can remand a person indefinitely until his or

her trial is completed in the High Court. Section 6 of PTA is said to enable a police officer (not below the rank of a superintendent of police) or a police officer (not below the rank of sub-inspector with written authorization of a superintendent of police) to arrest a citizen of Tamil origin.

6. According to the source, normally the police would arrest a person under the Emergency Regulations and, at the end of the 21 days, the 60 days, or the 3 months of permissible detention under the ERs, change the legal basis for detention and file charges under PTA, so as to provide for the possibility of indefinite remand of the detainee.

7. The ERs provide that an individual can be detained without a warrant for a period of up to 60 days in the Northern or Eastern Province, or up to 21 days outside the Northern and Eastern Provinces. If the arrest order is issued by the Ministry of Defence, the individual can be held for another period of three months. When there is a confession from a detainee, the security forces produce the detainee before a magistrate and try to obtain authorization for indefinite remand.

8. The 14 Sri Lankan citizens of Tamil origin whose cases are listed below are all said to have been arrested without reasons being given for their arrest and to have been forced to sign self-incriminating statements. Those statements were written in Sinhalese, a language not known to most of them. In many cases, the confession statement, obtained under duress, is said to be used as the only evidence against the accused in court proceedings:

1. Edward Anton Amaradas, born in 1975 and an undergraduate at the University of Moratuwa, was arrested on 27 August 1999 in Colombo by members of the Sri Lankan army. He was detained at Nugegoda police station.
2. Gajamohan, born in 1974 and an undergraduate student at the University of Moratuwa, was arrested on 27 August 1999 in Colombo by members of the army. He was also detained at Nugegoda police station.
3. Thanigasalam Pillai Nandan, also born in 1974 and an undergraduate of the University of Moratuwa, was arrested on 27 August 1999 in Colombo by members of the army. He was detained at Nugegoda police station.
4. Kadiravelupillai Sivamogan, born in 1974 and an undergraduate of the University of Moratuwa, was arrested on 27 August 1999 in Colombo by members of the army. He was detained at Nugegoda police station.
5. Selvanayagam Suganthan, an Arts Faculty student at Jaffna University, was arrested on 25 October 1999 in Jaffna by members of the army.
6. Moothuthamby Uthayakumar, a teacher at Kadukkamunai Vidyalayam, was arrested on 2 August 1999 in Naavatkudu, Jaffna district, by members of the army.

7. Mrs. Navajothi Sinnarasa, a teacher at the Batticaloa Teacher Training College, was arrested on 3 September 1999 in Batticaloa by agents of the Criminal Investigation Department (CID) on orders of the CID office in Kandy. She was detained in Batticaloa.
8. Sinnathambi Kamalanadan, Ms. Sinnarasa's husband, a teacher at the Batticaloa Teacher Training College, was arrested on 3 September 1999 in Batticaloa by CID agents on orders of the CID office in Kandy. He was detained in Batticaloa.
9. Krisnapillai Pavalakeshan, born in 1973 and an employee of a local non-governmental organization, was arrested on 12 August 1999 in Batticaloa by members of the army.
10. Thambinakayam Sribalu, a journalist, was arrested on 12 August 1999 in Batticaloa by members of the army when he inquired about Pavalakesan's arrest at a local army camp.
11. P. Selvaraja, President of the Jaffna Missing Persons Guardian Association, was arrested on 6 September 1999 in Chemmani, Jaffna district, by army personnel as he witnessed the clearing of an alleged mass grave site located at Chemmani. The source reported that Jaffna District Judge Illancheliyan reprimanded an army commander and a major general for interfering in the Chemmani Court proceedings, noting that the arrest of this person was an attempt to disrupt the investigations.
12. S. Senthurajah, coordinator of a local welfare organization, was arrested on 31 October 1999 in Akkaraipattu, Batticaloa district, by agents of the Sri Lankan police under PTA.
13. Sri Arasaretnam Senthinathakurukkal, chief priest of a Hindu temple, was arrested on 22 July 1999 in Akkaraipattu, Batticaloa district, by the police under PTA.
14. Krishnapillai Perinpam, a Hindu priest, was arrested on 13 August 1999 in Matala, Kandy district, by the police, while he was carrying out his duties at Balamurugan Temple. He was detained at Naula police station.

9. In its replies dated 29 June and 12 November 2001 the Government made the same comments as those reported in paragraph 7 of Opinion No. 21/2001 (SRI LANKA), to which the reader is referred, including the description of the action taken by the Government to implement the recommendations made by the Committee against Torture at the time of its delegation's visit to Sri Lanka in August 2000.

10. With regard to the allegations made by the source concerning the unlawful detention of the above-mentioned 14 persons, the Government made the following statement:

(a) Despite the inquiries made of the relevant services, the Government maintains that no trace can be found of the detention of the following four persons: Gajamohan, Moothuthamby Uthayakumar, Krisnapillai Pavalakeshan and Thambinakayam Sribalu (the Government specified the bodies and registry services of which it made inquiries). In the absence of any comment by the source and to the absence of sufficient information, the Working Group therefore considers that, in accordance with paragraph 17 (d) of its methods of work, the case may be filed. The same applies to the cases of S. Senthurajah and P. Selvaraja, in the absence of sufficiently well-founded allegations;

(b) Four of these persons have been released: Thanigasalam Pillai Nandan, Kadiravelupillai Sivamogan, Edward Anton Amaradas and Selvanayagam Suganthan (released on bail).

11. In the light of this response, a determination as to whether the deprivation of liberty was arbitrary is necessary only in the following four of those cases brought to the Working Group's attention: Ms. Navajothi Sinnarasa (Sebastian Pillai Selvarasa Navajothi), Sinnathambi Kamalanadan, Sri Arasaretnam Senthinathakurukkal and Krishnapillai Perinpam.

12. The Working Group welcomes the action taken by the Government of Sri Lanka to implement the recommendations of the Committee against Torture, particularly with regard to the maximum period during which an arresting authority can detain a person for questioning without bringing him before a judge, which has been reduced from 30 to 14 days. The Working Group nevertheless wishes to point out that 14 days is still far in excess of what can be considered consistent with the term "promptly" within the meaning of article 9, paragraph 3, of the International Covenant on Civil and Political Rights (to which Sri Lanka is a party), according to which "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge"

13. The same applies to article 17, paragraph 1, of the ERS, which provides that the Minister of Defence may order a person to be detained solely on the basis of information to the effect that a harmful act might be committed. This measure is similar to administrative detention and therefore not compatible with article 9 of the Covenant. The Working Group is particularly concerned because, according to the source, new Emergency Regulations were promulgated on 3 May 2000, widening the emergency powers already vested in the executive.

14. In the light of the foregoing:

(a) The Working Group takes note of the release from detention of Thanigasalam Pillai Nandan, Kadiravelupillai Sivamogan, Edward Anton Amaradas and Selvanayagam Suganthan. In accordance with paragraph 17 (a) of its methods of work, the Working Group is of the view that their case should be filed, without expressing an opinion on the arbitrary nature of their detention;

(b) The Working Group finds that, in the absence of sufficient information concerning Gajamohan, Moothuthamby Uthayakumar, Krishnapillai Pavalakeshan and Thambinakayam Sribalu, their cases should be provisionally filed in accordance with paragraph 17 (d) of its methods of work;

(c) The Working Group is of the view that the deprivation of liberty of Mrs. Navajothi Sinnarasa (Sebastian Pillai Selvarasa Navajothi), Sinnathambi Kamalanadan, Sri Arasaretnam Senthinathakurukkal and Krishnapillai Perinpam is arbitrary, being in contravention of article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group.

15. Consequent upon the opinion rendered, the Working Group requests the Government to take the necessary steps to remedy the situation of the persons enumerated in paragraph 14 (c) of the present opinion and to bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Adopted on 29 November 2001