

**OPINION No. 8/2005 (SRI LANKA)**

**Communication addressed to the Government on 22 June 2004.**

**Concerning Mr. Maxilan Anthonypillai Robert, Ms. Thirumagal Robert, Mr. Loganathan Saravanamuthu, Mr. Aarokiyarasa Yogarajah, Mr. Selvarasa Sinnappu, Mr. Sritharan Suppiah, Mr. Selvaranjan Krishnan, Mr. Krishnapillai Masilamani, Mr. Akilan Selvanayagam, Mr. Mahesan Ramalingan, Mr. Rasalingam Thandavan, Mr. Sarma C.I. Ragupathy and Ms. Sarma Raguphaty R.S. Vasanthi.**

**The State is a party to the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of opinion No. 20/2004.)
2. The Working Group conveys its appreciation to the Government for having forwarded the requisite information.
3. (Same text as paragraph 3 of opinion No. 20/2004.)

4. In the light of the allegations made, the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source.

5. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government.

6. The source reported that:

(a) Mr. Maxilan Anthonypillai Robert, resident of Marnhoy Road, Jaffna, was arrested on 8 September 1996 in Kollupitiya, Colombo, by police officers in plain clothes;

(b) Ms. Thirumagal Robert, 25 years old, resident of 20 Third Cross Street, Jaffna, was arrested on 8 September 1996 in Kollupitiya, Colombo, by police officers;

(c) Mr. Loganathan Saravanamuthu, 21 years old, resident of Alaveddy, Jaffna, was arrested on 29 August 1996 at a checkpoint in Vavuniya by members of the Army;

(d) Mr. Aarokiyarasa Yogarajah, aged 21, resident of Anaikoddai East, Jaffna, was arrested on 20 August 1996 at a checkpoint in Vavuniya by members of the Army;

(e) Mr. Selvarasa Sinnappu, aged 32, resident of 333 KKS Road Kokuvil, Jaffna, was arrested on 29 August 1996 at a checkpoint in Dehiwala, Colombo, by police officers;

(f) Mr. Sritharan Suppiah, 20 years old, resident of Puttalam, was arrested on 2 September 1996 in Puttalam during a house-to-house search by members of the police;

(g) Mr. Selvaranjan Krishnan, aged 21, resident of Natchinor Koruladdy, Jaffna, was arrested on 11 July 1995 at a checkpoint in Colombo by police officers;

(h) Mr. Krishnapillai Masilamani, aged 35, resident of Karathivu, Batticaloa, was arrested on 12 December 1998 while travelling in a public bus in Mannampitiya by members of the Army;

(i) Mr. Akilan Selvanayagam, 21 years old, resident of 10th Canal, Uruthirapuram, was arrested on 9 September 1997 in Colombo during a joint round-up operation by members of the Army and the police;

(j) Mr. Mahesan Ramalingam, aged 23, resident of Dutch Road, Jaffna, was arrested on 9 September 1997 in Colombo during a joint operation by members of the police and the Army;

(k) Mr. Rasalingam Thandavan, 27 years old, resident of Baddula, was arrested on 29 September 1999 in Baddula by members of the Army and the police;

(l) Mr. Sarma C.I. Ragupathy, 38 years old, a Hindu temple priest, resident of Sivan Kovil Road, Jaffna, was arrested on 9 February 2000 in his temple in Colombo by members of the police, along with his wife;

(m) Ms. Sarma Raguphaty R.S. Vasanthy, aged 36, resident of Sivan Kovil Road, Jaffna, was arrested on 24 February 2000 in a Hindu temple in Colombo by members of the police.

7. It was reported that the above-mentioned 13 persons are being kept in detention in Wellikadai Prison in Colombo. All these persons were arrested on ethnic grounds, i.e. for the simple fact of being ethnic Tamils, and under suspicion of involvement with the Liberation Tigers of Tamil Eelam (LTTE), the main armed opposition group. They were held without charge or trial for several months, at the end of which they were charged under the Prevention of Terrorism Act (PTA) of 20 July 1979, and obliged to sign self-incriminatory statements, sometimes under torture. Their trials are allegedly progressing very slowly. Most of the charges were reportedly fabricated. The self-incriminatory statements were written in Sinhalese, a language most of them do not understand.

8. It is further reported that PTA allows confessions made under torture to be accepted as evidence against those arrested. Arrests under PTA should no longer take place, according to article 2.12 of a memorandum of understanding signed on 22 February 2002 between the Government of Sri Lanka and LTTE, entitled "Measures to restore normalcy". The PTA facilitates arbitrary arrest, lengthy detention of suspects without trial and attendant abuses.

9. The Government replied that there are no persons in detention other than under valid judicial orders. PTA was introduced as temporary legislation owing to the extraordinary security situation that prevailed in the country, with a view to preventing acts of terrorism and other unlawful activities. The Government acknowledged that under the provisions of PTA a confession made to a police officer of a rank not lower than assistant superintendent of police may be admitted as evidence, provided that such confession was not made under threat, coercion or promise. Accordingly, there exists no possibility of admitting as evidence any confession made under torture.

10. After the signing of the Ceasefire Agreement between the Government of Sri Lanka and LTTE in February 2002, all arrests and investigations are carried out under the normal law of the land. Since the signing of the Ceasefire Agreement over 1,000 indictments under PTA pending in the High Courts were withdrawn by the Attorney-General. The Attorney-General, who reviewed all PTA cases, decided to go ahead only with cases where the indictments included charges of a very serious nature.

11. In addition to its response mentioned above, the Government provided a list of persons who were detained in judicial custody under provisions of PTA. Only one of the persons referred to in the present opinion was mentioned in this list.

12. The Working Group recalls that confessions made to police officers in the circumstances described violate the principles of article 14 of the International Covenant on Civil and Political Rights, regardless of whether the legislation concerned is of an emergency nature. Article 14 states that all persons have the right to be heard in public by an independent and impartial tribunal with the guarantees of a fair trial, which prevents the use of confessions made to police officers as elements of proof.

13. In the view of the Working Group, the 13 persons concerned in the present opinion remain under the application of the provisions of PTA, and as such have not received a fair trial.

14. In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Mr. Maxilan Anthonypillai Robert, Ms. Thirumagal Robert, Mr. Loganathan Saravanamuthu, Mr. Aarokiyarasa Yogarajah, Mr. Selvarasa Sinnappu, Mr. Sritharan Suppiah, Mr. Selvaranjan Krishnan, Mr. Krishnapillai Masilamani, Mr. Akilan Selvanayagam, Mr. Mahesan Ramalingan, Mr. Rasalingam Thandavan, Mr. Sarma C.I. Ragupathy and Ms. Sarma Ragupathy R.S. Vasanthy is arbitrary, as being in contravention of article 10 of the Universal Declaration of Human Rights and article 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of the 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 and bring it into conformity with the standards and principles set forth in the Universal Declaration of Human Rights.

Adopted on 25 May 2005