

No. 49/2011 (Sri Lanka)

Communication addressed to the Government on 6 June 2011

Concerning: Jegasothy Thamotharampillai and Sutharsini Thamotharampillai

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

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the mandate in its decision 2006/102. The mandate was extended for a further three-year period in Council resolution 15/18 of 30 September 2010.

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

(a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);

(b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);

(c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III);

(d) When asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV);

(e) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

Submissions

Communication from the source

3. Jegasothy Thamotharampillai and Sutharsini Thamotharampillai are mother and daughter, Sri Lankan citizens, both usually residing in Colombo.

4. It is reported that on 14 May 2009, a number of police officers of the Colombo Crime Division and the Government Intelligence Services came to the home of the Thamotharampillais. The son of Jegasothy Thamotharampillai, Sugeenthan Thamotharampillai, was the first to be arrested. The officers ordered the two women to stay in the living room and took Sugeenthan Thamotharampillai to another room. A short while later, the police officers informed the two women that Sugeenthan Thamotharampillai had jumped off the balcony and committed suicide, and that they had recovered a suicide bomb jacket from his room. According to the source, Sugeenthan Thamotharampillai was

tortured and thrown from the seventh floor. No bomb jacket was found and neither were any other items related to terrorist activity. No one was presented with an arrest warrant. The women were then taken into custody.

5. The source reports that the women's detention is based on regulation 19, paragraph 1, of the Emergency Regulations and the Prevention of Terrorism Act, and was ordered by the Ministry of Defence. Jegasothy and Sutharsini Thamothersampillai are currently being held in the women's section of Welikada Prison. The reasons for their arrest are linked to the alleged involvement of their deceased son and brother, respectively, with the Liberation Tigers of Tamil Eelam (LTTE).

6. The source has reported that Jegasothy and Sutharsini Thamothersampillai brought a court action in October 2009. There have been several hearings, and a court ruling to release the two. The Attorney General ordered the authorities to release the detainees on 29 April 2010. The Ministry of Defence refused to execute this order, requiring a further court order. The authorities have filed an appeal against the court decision. The first hearing before the High Court took place on 12 January 2011. It was followed by hearings on 8 March 2011 and 2 May 2011, and a hearing had been scheduled for 25 July 2011.

7. The source contends that the case is being drawn out to force Jegasothy and Sutharsini Thamothersampillai to confirm that their son and brother was a member of LTTE and was planning a terrorist attack in the city, and that they had failed to inform the police. It is alleged that there is no material evidence that could implicate Jegasothy and Sutharsini Thamothersampillai in any terrorist activity.

Response from the Government

8. The Working Group forwarded its communication to the Government on 6 June 2011 and regrets that the Government has not provided the requested information. The Working Group would have welcomed the cooperation of the Government.

Discussion

9. The matter before the Working Group is the detention of Jegasothy Thamothersampillai and Sutharsini Thamothersampillai. They have been detained since 14 May 2009. The source has established a prima facie case that the arrest and detention of the two women do not comply with international requirements and constitute arbitrary detention. In the same way, the source has established that the continued detention of Jegasothy and Sutharsini Thamothersampillai follows from the non-compliance with the outcome of the judicial procedures. The Working Group has requested that the Government provide it with detailed information about the current situation of the women and clarify the legal provisions justifying their continued detention. In the absence of such information, the Working Group must base its opinion on the prima facie case as made out by the source.

10. The detention of Jegasothy and Sutharsini Thamothersampillai is therefore in violation of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights. Their detention thus falls within category III of the categories applicable to the cases submitted to the Working Group.

11. As the detention of Jegasothy and Sutharsini Thamothersampillai constitutes a breach of international human rights obligations, the principal remedy is their immediate release. They should also have an enforceable right to compensation under article 9, paragraph 5, of the International Covenant on Civil and Political Rights, which is an expression of general principles. The reasons that may be given for the detention of Jegasothy and Sutharsini Thamothersampillai cannot be used against a claim for compensation.

12. The Working Group reminds Sri Lanka of its duties to comply with international human rights obligations not to detain arbitrarily, to release persons who are arbitrarily detained, and to provide compensation to them. The duty to comply with international human rights rests not only on the Government but on all officials, including judges, police and security officers, and prison officers with relevant responsibilities. No person can contribute to human rights violations.

Disposition

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

The deprivation of liberty of Jegasothy Thamothersampillai and Sutharsini Thamothersampillai is arbitrary, and constitutes a breach of articles 9, 10 and 11 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, falling within category III of the categories applicable to the cases submitted to the Working Group.

14. The Working Group requests the Government of Sri Lanka to take the necessary steps to remedy the situation, which include the immediate release of Jegasothy Thamothersampillai and Sutharsini Thamothersampillai and adequate reparation to them.

[Adopted on 2 September 2011]