

**Memorandum to the Sri Lankan government
based on the recommendations of the Asia Watch Report
*Human Rights Accountability in Sri Lanka***

On May 31, 1992, Asia Watch released a 78-page report, *Human Rights Accountability in Sri Lanka*, based on its mission to Sri Lanka in December 1991. The report welcomed a series of Sri Lankan government initiatives to protect human rights, but said that the real test of the government's commitment to human rights would be when victims of human rights abuse could make complaints against the security forces without fear of retribution, and those complaints would yield vigorous investigation and, if appropriate, prosecution and punishment. The report described a climate of impunity that has existed in Sri Lanka for many years and has encouraged violations by state forces. It also provided an analysis of the many government agencies created since 1990 to counter international criticism and address these abuses.

These new initiatives came after a decade of violence in Sri Lanka. Militant insurgents have killed thousands. Successive governments in Sri Lanka, adopting the tactics of their armed opponents, engaged in disappearances and extrajudicial executions of suspected sympathizers of the various guerrilla groups. Victims of killings and disappearances by government forces and death squads are estimated in the tens of thousands. As the war with Tamil militants in the northeast drags on, and the fear of a resurgence of militant activity in the south haunts officials, it has become clear that the government's strategy has only made things worse.

Asia Watch found that even today, with the new agencies in place, accountability is far from guaranteed. Sri Lankan citizens, and lawyers working on their behalf, may still face harassment, intimidation or even death when attempting to lodge complaints with the courts to protest human rights violations by state forces. Emergency laws persist which undercut attempts to hold security forces accountable for human rights offenses.

While not comprehensive, this memorandum, based on that report, outlines key recommendations to improve the workings of governmental bodies such as The Human Rights Task Force, The Special Task Force on Human Rights, and the Presidential Commission of Inquiry into the Involuntary Removal of Persons. The memorandum also suggests steps toward fuller accountability for human rights violations.

The Human Rights Task Force (HRTF)

Asia Watch research has shown that many of the most serious violations of human rights, including torture, disappearances and extrajudicial executions, occur in the first days of detention, in police stations and other temporary holding facilities. It is essential, therefore, that these place of initial detention, before the transfer of detainees to permanent detention centers, be very closely monitored.

In December, the Asia Watch delegation urged representatives of the Human Rights Task Force to undertake surprise inspections of police stations and army camps. Human Rights Accountability in Sri Lanka welcomed the announcement in April by HRTF Chair, Justice J.F.A. Soza, that the Task Force would soon begin unannounced visits to police stations; Asia Watch pledged to continue monitoring the progress of these visits. Following the publication of the Asia Watch report, on June 9, 1992, the HRTF reported that it had made fourteen such visits and found 142 detainees in eleven police stations, of whom almost 100 were subsequently released. This suggests that the overall number of detainees in police stations in Sri Lanka may be very large indeed, and that many of these detentions are arbitrary in nature. The press release does not indicate what measures the HRTF has taken to protect these detainees against further abuse.

- **Asia Watch recommends that the HRTF make follow-up visits to all detainees discovered during the course of these investigations to guard against ill-treatment and disappearances. Reported releases should also be closely monitored.**
- **While the HRTF's effort to maintain a registry of detainees is welcome, it is still crucial that each police station keep an accurate log of all arrests and detentions. These registers should include detailed information on each detainee, the length of detention, the charges pending, the date and the specifics of all releases and transfers, as well as the identity of the arresting officer, the health of the detainee, and the medical care received. Monitoring on an unannounced basis the accuracy of these registers should be an important part of the HRTF's inspection efforts.**
- **Asia Watch urges the Sri Lankan government to ensure compliance with the requirement that all security forces, including police officers, immediately report any detention to the HRTF and issue receipts for prisoners to family members. (As of June, the HRTF indicated that it still sometimes receives this initial information from detainees' families, rather than from the police).**
- **Failure to comply with record-keeping and reporting requirements should result in immediate disciplinary or criminal action.**
- **The Human Rights Task Force should insist on observance of paragraph 3 of its establishing Emergency Regulation, which states:**

"Where a person is, otherwise than by an order of a competent court, detained in custody under regulations made under the Public Security Ordinance or under the Prevention of Terrorism Act, No.48 of 1979, the person having custody of such detained person shall cause a copy of the order under which such person is being detained to be served on the Human Rights Task Force appointed by regulations made under the Sri Lanka Foundation Law No.31 of 1973."

The HRTF should also make use of powers granted by paragraph 5 of Emergency Regulation

674/17, which allows it to summon persons and receive evidence to fulfill its mandate.

- **Asia Watch calls on the Human Rights Task Force to take steps to ensure full disclosure by the police and army of all sites where detainees are being held (this includes public acknowledgement of the accuracy of reports by former detainees that unofficial places of detention, such as private homes and interrogation centers, have been used);**
- **Asia Watch also calls on the HRTF to proceed with its plan to establish regional offices throughout Sri Lanka. (At the time of the Asia Watch mission in December, fifteen regional offices had been proposed. In its latest communication the Task Force mentioned only two, one in Matara and the other in Kandy. Plans for offices in other areas should proceed. Access to detainees in the northeast is particularly important because a large number of violations have occurred there.)**
- **Asia Watch further recommends that each of these offices include a small task force engaged in full-time, unannounced visits to police stations and army camps.**
- **The Task Force's June press release states that it now has unrestricted access to people detained at local army detention centers and that inspections are unannounced. However, it notes that the HRTF does not visit persons in detention where "military conditions prevail." This must be clarified so that it does not swallow the rule of inspection of all detainees in areas where inspection is most needed, such as the northeast. The areas where inspections are not and are not being conducted should be publicly reported.**
- **The Asia Watch report found that in general, more publicity about the Task Force was needed, not just for the benefit of foreign embassies, which receive regular reports, but also for human rights groups and their clients. Advertisements in the regional broadcast and print media are also essential to deter abuse by the army and police.**

Commission of Inquiry into the Involuntary Removal of Persons

The Asia Watch report found that several commissions had become bogged down by inefficient procedures and lack of adequate funding. This was particularly true of the Commission of Inquiry into the Involuntary Removal of Persons, which has proceeded very slowly. In its current form, this Commission is of little use. The report pointed out that by mid-December 1991 the Commission had received more than 2500 complaints. In April 1992, the Presidential Secretariat issued a progress report on the Commission, stating that by then only 370 complaints fell within its terms of reference.¹ Of alleged removals after January 11, 1991, only 40 missing persons had been traced and their whereabouts reported to their relatives; 319 cases were still under investigation. In only four cases had public testimony been taken and in only one case was the Commission considering "the possibility of legal and disciplinary action against the officers concerned." By June 1992, no prosecutions had resulted from the Commission's inquiries.

It should be noted that the discover of a detainee's name in the records of a police station or detention center does not guarantee that the Commission knows his present location, only that his

¹The Commission is empowered to inquire only into complaints of "removal" taking place since January 11, 1991. It is not mandated to investigate any of the tens of thousands of reported disappearances that occurred at the height of the government's anti-insurgency campaign against the JVP, or indeed any disappearance that occurred in the first six months of the Second Eelam War.

whereabouts "at a certain point in time" were established. In fact, according to the UN Working Group on Disappearances, which met with the Commission in October 1991, in at least two cases in which a detainee's name was found in police records, the police reported that the missing person had been transferred to another facility and his whereabouts were unknown.

"When a person was located, the Commission informed the relatives but did not follow up the case. The Commission, in fact, did not follow up the case if the person had been transferred, so that it could not ascertain whether he had finally been found by his relatives; and there were several cases in which the information received by the police indicated that the person had escaped."²

An efficient and expeditious inquiry into the fate of disappeared persons must be undertaken at once, and to do so requires a complete review of the Commission's current operating procedures. The Commission must also be provided with adequate funding. Pressure to deal with the exceedingly large number of well-documented disappearances that currently fall outside the Commission's mandate makes it doubly crucial that the Commission make changes now.

- **Asia Watch calls on the Sri Lankan government to use all means necessary, including expanding the mandate of the Commission of Inquiry into the Involuntary Removal of Persons, to investigate reported disappearances from before 1991, and strongly supports the position of the UN Working Group on Disappearances that "acts found to involve grave violations of human rights, such as disappearances, should not benefit from indemnity legislation."³ While Asia Watch recognizes that in many cases no record of the detention may exist, it is nevertheless the responsibility of the Sri Lankan government to make a good faith effort to locate missing persons and provide that information to their families.**
- **To prevent disappearances and extrajudicial executions, the Commission should make every effort to follow-up cases in which the detainee has been transferred, released or reported to have escaped and to confirm that detainees' current whereabouts are in fact known.**
- **The working methods of the Commission should to be reviewed. Even without the thousands of extra cases that retroactive accountability would add, the Commission has proceeded far too slowly. Asia Watch encourages the Commission to explore more efficient systems for investigating all reported disappearances and urges that it be provided with the additional funding necessary to do so.**
- **Asia Watch supports the position of the Working Group on Disappearances that government forces responsible for disappearances in Sri Lanka should be rigorously prosecuted and "that severe disciplinary punishment be meted out to government officials who have failed to take adequate measures to prevent disappearances."**

² *Report of the Working Group on Enforced or Involuntary Disappearances*, January 8, 1992, Commission on Human Rights Forty-eighth session, E/CN.4/1992/18/Add.1.

³ This includes disappearances that occurred before February 1990 and thus fall under Emergency Regulation 55FF, which allowed for the disposal of bodies without inquest; and those covered by The Indemnity Act, which protects government personnel from prosecution for acts "legal or otherwise" committed for the purpose of restoring law and order.

The Special Task Force on Human Rights (The Officials' Committee)

When the Special Task Force was appointed on November 30, 1990, its stated objective was "to formulate and implement a strategy to meet charges of human rights violations world-wide." Its responsibilities include the collection of "data to meet allegations of disappearances and extra-judicial executions," and assisting "in expediting court and departmental disciplinary action against state officers charged with excesses." The Task Force (now called the Officials' Committee) is well placed to play a powerful role in pressing for the effective enforcement of fundamental rights and in insisting on rigorous accountability for those who violate them.

At a meeting with the Asia Watch delegates in December 1991, the Committee's convener, Bradman Weerakoon, indicated that the Committee would indeed play such a role, although by May 1992 it had little to show in terms of concrete results. Noting the government's acceptance a few days earlier of the recommendations made by Amnesty International, Weerakoon said that the Committee had already contacted the security forces, relevant Commissions and other government agencies, and required them to report back within 10 days on their proposed strategies to implement those recommendations.

- **Asia Watch calls on the Officials' Committee to make public the strategies proposed by these bodies.**
- **Asia Watch urges the Committee to uphold its duty to expedite prosecutorial and disciplinary action against state officers charged with excesses, and requests that the Committee make periodic public reports on its progress.**

The Kokkadicholai Commission

In March 1992, the final report of the Commission of Inquiry into the massacre at Kokkadicholai found that the killings of at least 67 civilians were the result of "unrestrained behavior" on the part of military personnel, but failed to provide evidence against any particular soldier or soldiers. The Commission recommended that the army undertake its own investigation and take action under military law. Military officials estimated that this process would take about three months.

- **Asia Watch calls on the Sri Lankan government to make public the progress and results of this and other investigations into criminal acts by government forces and to prosecute those responsible. Holding members of the security forces accountable for abuses they commit is essential to improve human rights conditions in Sri Lanka and restore the faith of the Sri Lankan public in the system of justice.**

The Need To Review Emergency Regulations

Many of the human rights protections contained in the Sri Lankan Constitution are rendered illusory by the continued existence of the Prevention of Terrorism Act, the Emergency Regulations and other restrictive legislation.⁴ The Asia Watch report points out that during the examination of Sri Lanka's

⁴See "Sri Lanka: Emergency Reimposed as Killings Continue," *Asia Watch*, July 18, 1989.

Second Periodic Report under the International Covenant on Civil and Political Rights (ICCPR) in April 1991, members of the UN Human Rights Committee, while sympathizing with the government's difficulty in confronting violence, nonetheless stressed that emergency measures taken to address such exigencies must be within the framework of the law, and that some of these extraordinary provisions, including laws allowing indefinite detention without charge or trial and retroactive criminal penalties, are in violation of Sri Lanka's international legal obligations.⁵

- **The emergency laws, which even government officials admit are generally unnecessary and are said to be rarely used, should be repealed. They virtually invite abuse.**
- **The Indemnity Act of 1989 (Act. No. 20 of 1982 as amended by Act. No. 60 of 1988) also obstructs accountability for human rights abuse and should be repealed.⁶ Extensions of the dates covered by such indemnity are also dangerous. They create a climate in which those who abuse their official power have reason to believe they can continue to do so — because parliament can be expected once again to extend the deadline.**

The Need to Review Police Structures and Procedures

The difficulty of establishing accountability for human rights abuses is compounded by the plethora of different units within the police department, and by the often blurred command structure of the armed forces, the paramilitary groups acting in liaison with them, and the various civilian and volunteer groups organized by the army. Some of the cases before the courts make clear that people are moved from one police station or detention center to another without any record kept of the transfer, and without any clear allocation of responsibility between different units of the security forces for the safety and well-being of the detainee.

- **The government of Sri Lanka should publicly clarify the chain of command for all its forces, and do away with unnecessary law enforcement and anti-insurgency units. Frequent and clearly worded directives should be issued to all personnel outlining the command structure, the procedures for arrest, detention and transfer of detainees, and the penalties for failing to observe these procedures.**

The Need to Protect Fundamental Rights Petitioners

Human Rights Accountability in Sri Lanka found that Sri Lankan citizens still confront difficulties when trying to bring human rights claims against the state. Those who lodge petitions with the Supreme Court claiming that their fundamental rights have been violated, or lawyers acting on their behalf, can face harassment, intimidation and even death — if they can overcome the logistical difficulties of filing complaints in the first place. When charges are filed against members of the security forces, arrests often do not follow, let alone trials and convictions. Even in the very rare cases in which security forces are found

⁵See, for example, UN Doc CCPR/C/SR 1059 paras 16,17.

⁶This legislation provides that no legal proceeding shall be instituted for an act done or purported to be done by a Minister, Deputy Minister or any public servant, "whether legal or otherwise" for the purpose of restoring law and order. The period covered by the indemnity granted in the 1982 legislation has been extended repeatedly — most recently by Act No. 60 of 1988, which extended the indemnity period to December 17, 1988.

guilty, their sentences are often not enforced.

Even when those claiming infringement of their fundamental rights are fortunate enough to secure relief from a court, they may face procrastination and retaliation. The instructions of the Court to release the complainant or to provide compensation may not be carried out; complainants may also be subjected to long delays or made subject to unnecessarily harsh conditions.

- **A formal inquiry and report should be required in any case in which the Supreme Court has found that illegal detention, arrest or ill-treatment has been proved, and there is evidence implicating one or more government officials. This report should be required within a specified period of time, it should be made public, and it should recommend measures to be taken to ensure that those responsible are brought to account.**
- **Severe disciplinary or criminal action should be taken against anyone attempting to harass fundamental rights petitioners or their lawyers, or otherwise to obstruct the proceedings of a fundamental rights case or impede the implementation of the Court's instructions.**

Threats to Freedom of Expression

The report found that restrictions continue on freedom of expression which hamper an open debate about the government's role in human rights violations. Many people to whom Asia Watch spoke voiced considerable concern at the perceived unreliability of the Sri Lankan media and its lack of any real independence. This is particularly true of the electronic media, which reaches a much wider audience in Sri Lanka than do newspapers, journals and other publications, but is entirely state-owned. This state control can be, and is, used to provide generous opportunity for coverage of the government's position, while denying adequate (or in some cases, any), air-time to the government's opponents.

The most recent examples of this state control over the free expression of dissenting views have surrounded the press coverage of a series of highly volatile political events which have rocked Colombo in the past year -- all of which, in one way or another, challenged President Premadasa's legitimacy. After a resolution was introduced in parliament calling for the impeachment of President Premadasa in August 1991, the president was given ninety minutes of television time to express his position on the matter. The resolution's sponsors were given no air time at all. Indeed, the Minister of State for Information, A.J. Ranasinghe, was widely reported to have said that the dissidents and the pro-impeachment groups could not "of course" expect coverage on the State-controlled media.

There are also pressures on newspapers and journals that are not government-owned. The government has power over the allocation of newsprint, and newspapers are dependent on government advertising. The report documents several occasions when, after publicity was given to opposition viewpoints, or after opinions had been aired that were perceived to be critical of the government, legal action was taken against papers, journalists were physically threatened, printing presses were closed, and journalists were demoted or dismissed. Many of these incidents also related to reporting on the attempted impeachment.

More recently, in April, when a series of articles appeared in the Sri Lankan press featuring allegations by former police officer Deputy Inspector General Premadasa Udugampola¹ that the

¹ Udugampola is the former chief of the Bureau of Special Operations (an elite police force mandated to investigate "economic

government was involved in the death-squad killings of hundreds of suspected JVP members and opposition party members, charges were brought against the editor and publisher of one of the papers which carried the story, a privately owned newspaper called Aththa. The two were indicted under Article 26 of the Emergency Regulations for "causing hostility, ill-will and contempt of the government."⁸

Besides concerns about the suppression of particular news items, the report expresses a more general concern that restrictions on freedom of expression under the Constitution, and in current or proposed legislation, exceed the level of control acceptable under international law.

Article 15(2) of the Sri Lankan Constitution provides that free expression may be subject to such restrictions "as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence." As the UN Human Rights Committee pointed out to the representative of Sri Lanka in April 1991, restrictions simply "in the interests of" are not permissible. Under the ICCPR the only restriction acceptable are those which are "necessary" for the protection of "the rights or reputations of others (and) of national security or public order or of public health or morals" (Article 19(3)).

The final text of a proposed Media Commission Bill had not been settled when the Asia Watch report was released, but the report expressed concern over restrictions contained in a draft proposal which were wider than those acceptable under the ICCPR. For example, a potentially restrictive interpretation could be given to two of the Act's objectives: (i) "to ensure the upholding of the unity and integrity of the country and the rights, freedoms and social values reflected in the Constitution, in the media" and (ii) "to ensure the strengthening of national unity, ethnic harmony and multiculturalism, by means of the media."

- **Asia Watch urges the Sri Lankan government to amend or repeal all laws and emergency regulations which exceed the narrow restrictions permitted by international standards on freedom of expression and the press.**
- **The Sri Lankan government should investigate all claims of harassment and abuse of journalists by members of its forces and pursue disciplinary or criminal actions against the offending parties.**
- **Political opposition should be granted equal access to the media under exclusive government control, such as the radio and television. In addition the government should not allocate newsprint or advertising according to political criteria. Free expression of dissenting views and access to information on human rights violations by state forces, as well as on efforts to correct these abuses, is essential to reestablish public faith in the principle of accountability.**

Conclusion

The Asia Watch report of May 1992 concluded that it is not enough to point to an impressive array of laws and institutional mechanisms adopted to protect and promote human rights. Unless these laws

crimes,") and architect of many of the government's most infamous anti-insurgency strategies.

⁸Charges were brought against the editor of a second paper, *Rajaliya*, in June for publishing a similar article.

and mechanisms are utilized to secure the effective enforcement of rights, and unless that enforcement is strictly monitored, the introduction of such measures will serve only a cosmetic purpose. Such measures may enable a government to deflect, for a limited time, criticism that it is failing to fulfill its international human rights obligations. But they will do little to improve the human rights situation in the long term unless individual members of the security forces are held accountable — and are seen to be held accountable — for human rights violations they commit. As the report observed:

"Fundamental rights provisions, an independent judiciary, and the most elaborate mechanisms with mandates to protect particular categories of rights, or to inquire into particular categories of abuses, will all be of no avail if aggrieved citizens do not feel safe to lodge complaints, if witnesses to human rights abuses are frightened to come forward to provide testimony and if lawyers or other activists seeking to make security and other personnel accountable for their actions are harassed, or worse, killed."

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For More Information

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Asia Watch was founded in 1985 to monitor and promote internationally recognized human rights in Asia. The Chair is Jack Greenberg and the Vice Chairs are Harriet Rabb and Orville Schell. The Executive Director is Sidney Jones and the Washington Director is Mike Jendrzeczyk.

Asia Watch is a division of Human Rights Watch, which also includes Africa Watch, Americas Watch, Helsinki Watch, Middle East Watch and the Fund for Free Expression. The Chair of Human Rights Watch is Robert L. Bernstein and the Vice Chair is Adrian DeWind. Aryeh Neier is Executive Director, and Kenneth Roth is Deputy Director, Holly Burkhalter is Washington Director and Susan Osnos is Press Director.