

the use of the armed cadre of anti-LTTE militant Tamil groups, Amnesty International urges the government to set up a review of present command and control structures in the security forces.

(Recommendation 29): Bearing in mind the communal character of the present conflict, particularly in the east of Sri Lanka, a strict and effective control over the issuing of weapons to civilians for self-defence should be developed. As with regular security forces, a clear chain of command should be established and all those issued with arms should be provided with adequate training.

To date, Amnesty International has not been given any information about the implementation of these two specific

recommendations. It has received an invitation from the Sri Lankan Government to visit the country to review the implementation of the 30 recommendations accepted by the government, among other things. It is urging the government to fully and speedily implement the above two recommendations.

Note.

1. In early May 1992, Amnesty International expressed concern to the government about reports that army personnel responsible for reprisal killings at Kokkadichholai, Batticaloa District, in June 1991 will be brought before a military tribunal instead of being charged and tried before the civil administration of justice.

A VERDICT ON TORTURE

Arbitrary arrest and torture in custody are two human rights violations that have been constantly referred to by human rights organisations, both local and international.

We reproduce below the major part of a recent Supreme Court decision on a fundamental rights application under Article 126 (2) of the Constitution made by Mathumagala Kankanalage Wilbert Alwis of Kelaniya - S.C. Application No. 145/87. This case concerns both arbitrary arrest and torture in police custody.

The case was argued on 16.06.1992 and decided on 22.06.1992. The judgement was written by Justice Kulatunga, with Justices Bandaranayake and Fernando concurring.

We draw the attention of our readers to the clear conclusion that torture in police custody continues in spite of several previous strictures by the Supreme Court. We also consider it significant that the Inspector General of Police has been asked to take appropriate action and report back to Court by 15 September.

By his letter dated 18.3.91 addressed to his Lordship the Chief Justice the petitioner who had, at the relevant time, been a member of the security service at the Embilipitiya Mill of the National Paper Corporation complained that he was in illegal detention at the Pelawatta

Detention Camp having been unlawfully arrested by the Embilipitiya Police on 19.10.90. He also complained that until his transfer to the said camp on 17.11.90, he was unlawfully detained at the Embilipitiya Police Station during which period the police officers there subjected him to various acts of torture. His affidavit was filed on 31.07.91 wherein he sought relief for alleged infringement of his rights under Articles 11, 13(1) and (2) of the Constitution. On 04.09.91, he filed an amended affidavit in which he stated inter alia, that on 10.08.91, he had been transferred to Ratnavali Rehabilitation Camp, Anuradhapura. The petitioner was then granted leave to proceed; at the same time, this Court directed the Judicial Medical Officer, Anuradhapura to examine the petitioner for any injuries he had sustained and to make a report to this Court. Pursuant to the said direction, the J.M.O. examined the petitioner on 26.09.91 and forwarded his report dated 10.10.91.

The petitioner joined the National Paper Corporation in 1980 as a Security Officer. He was promoted to the post of Executive Security Officer in 1983 and to the post of Mill Security Officer in 1985. The evidence adduced before us shows that he has, as an employee of the Corporation, maintained an exemplary record of service...

On 9.10.89 subversives attacked the Mill and damaged 20 vehicles and assaulted the employees. The Army COD H.Q. (Embilipitiya) and the Embilipitiya Police were in-



formed; but they visited the Mill only in the morning of the next day. Thereafter, the petitioner visited the Embilipitiya Police Station from time to time with a view to adopting security measures but he was informed that Police Officers were unable to intervene without a directive from the Ministry of Defence. On 21.10.89, the petitioner liaised with the Army Head Quarters Embilipitiya and arranged for assistance to be given against further subversive attacks on a signal being given by the blowing of the siren. On 11.11.89 subversives attacked the Mill again, damaged its property and set fire to the Mill. Mr. Gunasena Kuruppu managed to blow the siren, whereupon the army arrived and the subversives fled... The General Manager of the Corporation has, by a writing dated 06.05.92 (P13) confirmed that the facts relating to the two subversive attacks referred to in P9 and further confirmed that the petitioner was present at the station during the said attacks and duly attended to his duties by extinguishing the fire and salvaging the property of the Corporation.

It is common ground that on 15.11.89 a police post was established inside the Mill premises to tighten the security there. The petitioner states that on 29.05.90 he was arrested by Sgt. Bandara of the Embilipitiya Police who was ill-disposed towards him; he was not informed of the reason for his arrest; and he was detained at the Embilipitiya Police Station until 31.05.90. Shortly before he was released, a Police Officer recorded a statement from him about subversive activities at the Mill premises... The petitioner alleges that in the meantime Sgt. Ariyadasa and other police officers were stealing the property belonging to the Corporation. On 05.06.90 the petitioner made a report (P10) to the Chief Security Officer detailing the alleged acts of theft. In that report, the petitioner states that property including stocks of paper were being removed by the police without gate passes claiming that the Management had permitted such removal.

On 12.09.90 the General Manager of the Corporation addressed a letter (P11) to the Superintendent of Police Ratnapura giving a detailed account of alleged acts of misconduct by Police Officers attached to the police post at the Mill (between 22.08.90 and 11.09.90) including the unauthorised removal of empty barrels, bleaching powder, paper and exercise books, misuse of Corporation vehicles, assaulting a security guard and taking two employees into custody. The General Manager also arranged, for the Chief Security Officer of the Corporation (who was accompanied by the petitioner) to discuss the matter with the S.P. The petitioner states that after discussions, all the Police Officers attached to the Police post at the Mill were transferred out; that thereafter, on 19.10.90 when he was on duty, Police Officers from the Embilipitiya Police Station arrested him; that at the Police Station Sgt. Wimalasiri and other police officers assaulted him; that as a result he sustained many injuries including a permanent disability

of the middle finger of his right hand; that whilst so assaulting him they questioned him about the damage caused to the Mill by the subversives; and that he was detained at the Embilipitiya Police Station until 17.11.90 on which date he was transferred to the Pelawatte Detention Camp where he remained until his transfer to Ratnavali Rehabilitation Camp, Anuradhapura, on 10.08.91.

The petitioner denies that he engaged in any unlawful activity or was in any way associated with subversive activity at the Mill and asserts that he duly carried out his duties as a Security Officer and assisted in safeguarding the Mill against such activity. He alleges that the motive for his illegal arrest, detention and torture was the fact that the Police Officers concerned were displeased with the action taken by him for safeguarding the property of the Corporation and its employees.... It is the case for the respondents that the petitioner had links with the Janata Vimukti Peramuna and was involved in the subversive attacks at the Mill. ASP Amaradasa Fernando states that the petitioner's involvement with the subversives was confirmed by the fact that he was absent from his place of work during both attacks and was absent for two months thereafter; that the petitioner was arrested on 30.05.90 and was released the next day after recording his statement; that after the establishment of the police post at the Mill, the petitioner was kept under observation and being displeased with the vigilance, he made complaints against police officers; and that on receipt of further information, the petitioner was re-arrested on 19.10.90 and detained pending investigations....

In the instant case, there is no material to warrant the suspicion that the petitioner had JVP links or that he was concerned in the subversive attacks at the mill... In the circumstances, the petitioner's arrest under regulation 18(1) was unlawful and the consequent detention order Z1 was also unlawful. Further no material was produced before us as to the basis on which the Secretary could have formed the opinion that it was necessary to detain the petitioner under regulation 17(1); consequently the detention order Z2 was unlawful. I hold that the arrest and detention of the petitioner are violative of his rights under Articles 13(1) and (2) of the Constitution.

As regards the alleged violation of Article 11, Sergeant Wimalasiri Goonawardena states that he is familiar with the facts and circumstances relating to the arrest of the petitioner but denies the allegation that the petitioner was assaulted whilst he remained in police custody....

The J.M.O. states that he is unable to express an opinion on the above injuries as they are old wounds. The respondents have not taken up the position that the petitioner had any injuries on him at the time of the arrest. Even during the subversive attacks it was Gunasena who was as-



saulted. The petitioner did not sustain any injuries at the hands of the subversives. The history given by the petitioner to the J.M.O. is consistent with the description of the assault given in the petitioner's affidavit to this Court prior to his medical examination; and even in the absence of a clear medical opinion, there is no difficulty in taking the view that the said injuries were probably caused by the use of blunt force. In all the circumstances, I am satisfied that Sergeant Wimalasiri Goonewardena and other Police Officers of the Embilipitiya Police Station assaulted the petitioner whilst he was in police custody and caused multiple injuries to him. I hold that such conduct is violative of the petitioner's rights under Article 11 of the Constitution.

In deciding the question as to what relief may be granted to the petitioner, I have taken the following matters into consideration: ...

(iii) The petitioner who had an exemplary record of service and had won the confidence of his employer was arbitrarily arrested and incarcerated for a period of one year. He was subjected to torture whilst in police custody and was detained in a police cell for one month, which was itself cruel. On 27.05.91 the Attorney General informed the SP Ratnapura and Mr. D.G. Jayalath (the Chairman of the Committee For Processing, Rehabilitation and Release of Suspects in the Ministry of Defence) that the available evidence

was insufficient to prefer criminal charges against the petitioner. Had the Secretary reviewed the petitioner's case periodically (as he claimed to have done), the petitioner might have been released at that stage; instead, he was continued in detention and was released only on 31.10.91 after 2 months rehabilitation. It seems to me that the decision for rehabilitation itself had been mechanically made, the effect of which would have been to further humiliate the petitioner.

(iv) This court has condemned torture of persons in police custody in *Amal Sudath Silva v. Kodituwakku* (1987) 2 Sri L.R. 119, *Geekiyanaage Premalal Silva v. Rodrigo* SC Appeal No. 24/89 SCM 05.09.90; *Jayarathne v. Tennakoon* SC No. 18/89 and 10/89 SCM 04.07.91 and *Gamalath v. Neville Silva* SC Application No., 78/90 SCM 27.08.91. In the last case I observed that the previous decisions have had no effect on the police and that violations of Article 11 by police officers (which symbolise man's inhumanity to man) continue. The instant case shows that the situation is still the same....

As the offending officers have not been made parties to these proceedings, it is not possible to make any order against them personally. I therefore direct the Registrar to forward to the Inspector General of Police a copy of this judgement to enable him to take appropriate action and to make a report to this Court in that regard on or before 15.09.92.....

PEACE: THE PRIMACY OF HUMAN RIGHTS

Rajan Hoole

Those of us in the University Teachers of Human Rights, Jaffna, (UTHR-J) have constantly argued that a stable peace must necessarily incorporate human rights as an active principle. This means upholding the sovereignty of the people. To give an indication of what this means: past efforts at peace, to resolve more than one conflict in the country, showed themselves to be fundamentally flawed, because they did not have the interest of the people at the centre. There were rather secret talks about how those with organised repressive power were going to carve up spheres of influence. Thus in the months leading up to the current war, peace was said to prevail. But the

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corrosive destabilising influences involving murder and mass incarceration were connived at or ignored by both sides. The nemesis has been terrible.

We have had several vivid illustrations of where ordinary people stand in the scheme of things; as, for example, when people forced onto the streets at gunpoint by the JVP, are fired at by forces of the state, or when civilians cowering in fear are massacred after a landmine blast.

Subsequent statements and actions by those who wield power, have exposed their distance from the people. This insensitivity towards ordinary people by those who hold power, as well as aspirants for power, is at the heart of the problem.

