

NOTES AND COMMENTS

Discovering Detainees

According to a recent report in the Daily News entitled *Human Rights Task Force Makes Much Headway*, we are told that this body, headed by former Supreme Court Justice J.F.A Soza, has made "great strides in tracing missing persons....." After recounting the setting up of regional offices in Matara, Batticaloa and Kandy, Mr Soza is quoted as saying "we traced 50 missing persons in the Batticaloa area alone, and secured the release of 26 of them. We visited 21 police stations in the Kandy range, and found 18 persons said to be missing detained. In the Matara range, we found 42 such persons detained at 39 places we visited". The news item further recounts that the task force also visited all police stations and three army camps in the north central province, and that nineteen missing persons were traced at Welikanda alone.

The initiative of the Human Rights Task Force (HRTF) in making these visits and seeking out missing persons is commendable; we understand that this is largely due to the energy of the Chairman who makes such visits himself and succeeds by virtue of the force of his personality as well as his status as a former judge of the Supreme Court in obtaining the information sought.

However a larger issue arises from this news report. Why were these people being held in unacknowledged detention in the first place? And why should it have been necessary for a system of personal visits spearheaded by a retired Supreme Court judge to discover them? Can we be sure that this is not just the tip of an iceberg, and that there are not many other such persons languishing in places that the HRTF has been unable to visit or is unaware of?

One of the duties of the HRTF is to draw up a comprehensive register of detainees. One would have thought that the basic step to be taken in this regard would be for the government to compel, by law, every person in charge of any place of detention, to send the HRTF lists of those already in detention, and to inform the HRTF promptly of any (a) subsequently admitted detainees (b) releases and (c) transfers. Once these lists had come

in, the HRTF could make its unannounced visits and surprise checks, in order to verify the information and also to check on the condition of the detainees. For the HRTF to have had to collect this basic information by going round to army camps and police stations and compiling its own lists seems rather a curious way of proceeding.

An examination of the emergency regulation enabling the setting up of the HRTF reveals the following provision:-

"3. 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...."

This provision is defective in several respects. It does not require the information to be provided within a specified time limit, or even "promptly". It does not require transfers and releases to be notified. Moreover it provides only for "a copy of the order of detention" to be served on the HRTF. This is all very well in respect of detention orders under the Prevention of Terrorism Act, or orders of detention made by the Secretary to the Ministry of Defence under emergency regulation 17. But the vast majority of persons held under emergency regulations are, we believe, arrested under Emergency Regulation 18, and in respect of such persons there is, so far as we can understand the regulations, no detention order. Such persons can be held in police custody for up to 90 days without being produced before a magistrate. The obligation to report to the HRTF does not seem to exist as regards such persons, as the regulation we have quoted above refers only to **detention orders**.

In any event it will be interesting to see to what extent, despite its inadequacies, this requirement of reporting to the HRTF has in fact been complied with by officers in charge of places of detention. For this we will have to await the Annual Report of the HRTF which we are told will be issued shortly.

P