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Petition of the Tamils of Sri Lanka Deprived of Their Internationally Protected Human Rights for a Grant of United Nations Effective Remedy and Declaratory Relief

Keywords

Human Rights Law, United Nations

DOCUMENT

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IN THE UNITED NATIONS GENERAL ASSEMBLY
ECONOMIC AND SOCIAL COUNCIL,
HUMAN RIGHTS COMMISSION,
THE SECRETARY GENERAL

UNITED NATIONS PLAZA
NEW YORK, NEW YORK

UNITED NATIONS, ex. rel.
GLOBAL ORGANIZATION OF PEOPLE
OF INDIAN ORIGIN, FRIENDS OF
INDIA SOCIETY INTERNATIONAL,
NATIONAL FEDERATION OF INDIAN
AMERICAN ASSOCIATIONS, on behalf of
the Tamils in Sri Lanka,

PETITIONERS,

vs.

THE GOVERNMENT OF SRI LANKA,

RESPONDENTS

TO: THE SECRETARY-GENERAL OF THE UNITED NATIONS,
THE MEMBERS OF THE GENERAL ASSEMBLY, THE ECO-
NOMIC AND SOCIAL COUNCIL AND THE COMMISSION ON
HUMAN RIGHTS

The PETITIONERS herein invoke the jurisdiction of the United Na-
tions and its organs by virtue of the provisions of the United Nations

Charter, the Universal Declaration of Human Rights, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Convention on the Prevention and Punishment of the Crime of Genocide and the Sri Lankan constitution, and file this petition on behalf of the Tamils in Sri Lanka, praying for peace in the country, institution of recognized judicial procedures, and cessation of torture, extrajudicial killings of civilians and attempted genocide.

I. BACKGROUND INFORMATION¹

1. There are a number of circumstances surrounding the civil and political conflict in Sri Lanka. The following information discusses the main factors which contribute to the unrest.

2. First, the population consists of 74% Sinhalese speaking and 26% Tamil speaking. Because the Sinhalese fear economic and political challenge by Tamils, although the Tamils are so clear a minority, the Sinhalese have discriminated against the Tamils in politics, language, education, and employment.

3. In the 1920s, the British turned over greater political authority to the people of Sri Lanka causing friction between the Sinhalese and the Tamils. With the introduction of the Donoughmore Constitution of 1931, the system of representation in the State Council abolished the proportional communal electorals which were replaced by a territorial election procedure creating a Sinhalese-dominated State Council.

4. After Sri Lanka obtained independence in 1948, the Sinhalese politicians used their majority status to reduce Tamil representation in the legislation by over 40% by disenfranchising nearly a million plantation Tamils. On June 5, 1956, the Sinhala Only Act, making Sinhalese the only official language of the country, was enacted. Tamil was not even recognized as the language of a national minority. The 1972 Sri Lankan Constitution changed the name of the country from Ceylon to Sri Lanka, made it a republic, gave Buddhism pride of place, and removed safeguards provided for minorities in section 29 of the 1949 constitution which had granted independence.

5. The Tamils objected to several provisions of the new constitution which was adopted in their absence. In order to be promoted, minorities must show proficiency in the Sinhalese language. This has severely limited education and job opportunities for those who do not speak Sinhalese.

1. Background information obtained from: *Ethnic Conflict and Reconciliation in Sri Lanka*, by Chelvaduri Manogaran; *The Breakup of Sri Lanka*, by A. Jeyaratnam Wilson; and *Hearing Before the Subcommittees on Human Rights and International Organizations and on Asian and Pacific Affairs of the Committee on Foreign Affairs, House of Representatives, 98th Congress, 2nd Session*.

6. In 1971, the university entrance requirements were changed to the disadvantage of the Tamil students. The minimum grade average was raised for Tamil students, and students from predominantly Sinhalese areas were to receive preference for acceptance.

7. The 1980 unemployment rate for Tamils was 41% compared to 20% for Sinhalese. Labor-intensive industries have been promoted in Sinhalese-dominated areas; the language requirement has excluded many Tamils from public sector jobs and, as yet another obstacle for the Tamil minority, the Tamils who lived in other areas (other than Colombo) came under repeated communal attacks and, due to fear for their safety, had to move to the North and East parts of the country which were neglected in regard to development, siting of industries and infrastructure.

8. In order to resist oppression, parties representing the Tamil people united to form the Tamil United Liberation Front (TULF), the main parliamentary opposition party after the elections held in 1977. Subsequently, after the communal pogrom of 1983, Tamil parliamentarians were expelled from parliament and went into exile in India. TULF goals include a nonviolent resolution to the conflict and the peaceful establishment of a separate Tamil state (Eelam) in the Northeast part of Sri Lanka.

9. The Tamil youth formed several militant groups, including the Liberation Tigers of Tamil Eelam (LTTE), which is the only group fighting the Government now, and resorted to violence to gain greater autonomy and independence for Tamils. These groups have taken violent action against the Sinhalese army and police, Tamils suspected of informing, and moderate Tamil politicians.

10. In response, the Government curbed important legal safeguards, permitting detention without charge or trial for up to eighteen months for all Tamils, and permitted the disposal of bodies without inquiry. Consequently, the government condemned all Tamils for the actions of the few militants.

II. STATEMENT OF THE FACTS

A. *Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

11. The Associated Press (AP) reported on August 10, 1987, that the Sri Lankan Government had freed 667 Tamils from a prison in southern Sri Lanka. Many of the men released claimed they were tortured and abused while in detention in various camps. "Our fingernails were pulled out and we were beaten with pipes and barbed wire," said one. Vyvyan Tenorio, *Sri Lanka's freeing of Tamils: step toward redressing rights abuses*, CHRIS. SCI. MON., Aug. 11, 1987, at 7. He claimed soldiers beat nine Tamils to death when the Tamils went to help three friends, purportedly shot by soldiers when the prisoners were late for meals. *Id.*

12. In September 1991, Amnesty International reported on a person

who had been detained at Plantain Point army base in Trincomalee and then released. The person described the fate of fellow-detainees to a journalist: "I was kept blindfolded for two days and beaten with iron bars. I saw some of my friends being beaten to death. Then their corpses were heaped together with tires and burnt inside the camp." AMNESTY INTERNATIONAL, SRI LANKA - THE NORTHEAST: HUMAN RIGHTS VIOLATIONS IN A CONTEXT OF ARMED CONFLICT, Sept. 1991, at 20.

13. Government security officials acknowledge that security forces have used torture to elicit information and cooperation from suspected members of the Liberation Tigers of Tamil Eelam (LTTE). Police have also detained suspects on suspicion and used torture to elicit information in criminal investigations. 1990 Human Rights Report, U.S. Dep't. of State Dispatch, Feb. 1, 1991 [hereinafter Human Rights Report].

B. *Political and Other Extrajudicial Killings*

14. The U.S. State Department reports that political and other extrajudicial killings carried out by government forces, police, and vigilante-squads have resulted in large scale human rights abuses in Sri Lanka since 1983. The killings have included members of the Tamils, opposition parties, and civilians. Many of the civilian political killings have been vigilante-style deaths, often characterized by leaving the burned or mutilated bodies in public areas to serve as warnings. In 1990, an estimated 2,600 noncombatant deaths were caused by both government and anti-government forces. Human Rights Report.

15. In 1991, Amnesty International reported that thousands of defenseless civilians were extrajudicially executed in the northeast by Government forces; executions continued to be committed by government forces and "death squads" in the south as well. Many of the victims were stabbed, hacked to death, or burned alive. Amnesty International alleges at least 3,000 Tamils were killed or "disappeared" in the Amparai district between June and October of 1991. Many of these people were believed to have been victims of extrajudicial execution. AMNESTY INTERNATIONAL, SRI LANKA REPORT, 1991, at 210.

16. For example, on February 17, 1991, after the LTTE ambushed soldiers from the Vijayabahu regiment at Kondaichchi, near Mannar, army personnel from the same regiment were reported to have killed four Tamil school teachers who were traveling from Mannar. Their bodies were found dumped in a well at Vankalai. AMNESTY INTERNATIONAL, SRI LANKA - THE NORTHEAST: HUMAN RIGHTS VIOLATIONS IN A CONTEXT OF ARMED CONFLICT, Sept. 1991, at 18 [hereinafter NORTHEAST REPORT].

17. According to the U.S. Department of State, the Sri Lankan Government in 1989 announced that it would establish an independent commission to investigate vigilante groups, but no members were ever appointed. Charges were brought against security force members in two vigilante cases and legal proceedings were initiated in 20 other cases in which security force personnel allegedly murdered civilians between 1988

and 1990. None of these cases, however, had been resolved by the end of the year, partly due to a large backlog in the judicial system and partly due to killings and intimidation of witnesses. Human Rights Report.

18. For example, on February 18, 1990, Richard de Zoysa, a well-known journalist and actor who documented death squad killings in the south, was abducted from his home in the middle of the night. The following morning, his body washed ashore on a beach near Colombo. He had been shot in the head at close range. Steve Coll, *The Mothers Who Won't Disappear; In Sri Lanka, a Maternal Cry Against the Death Squad*, WASH. POST, March 3, 1991, at F1. His mother claimed the abductors included police officers, two of whom she identified. The Attorney General found insufficient evidence to warrant an indictment against the accused police officers and instructed the police to continue their investigation. Human Rights Report. Although motives for the murder are not clear, speculation revolves around de Zoysa's reporting on human rights matters, his alleged ties to leftist organizations and his reputed authorship of a satirical play aimed at President Premadasa. *Id.*

19. Reports indicate that members of the regular security forces (i.e., the army, the police and the Special Task Force (STF)) were responsible for many of the reported extrajudicial executions and "disappearances." NORTHEAST REPORT at 21.

C. Disappearances

20. The United Nations Working Group on Enforced or Involuntary Disappearances (the "Working Group") reported to the Commission on Human Rights in January 1991 that, during the period under review, the Working Group transmitted 246 newly reported cases of disappearances to the Government of Sri Lanka, of which 44 were reported to have occurred in 1990. Forty-two of those cases were transmitted by cable under the urgent action procedure. *Report of the Working Group on Enforced or Involuntary Disappearances*, U.N., Economic and Social Council, Commission on Human Rights, 47th. Sess., Jan. 17, 1991, at 69.

21. The Working Group's visit to Sri Lanka in October 1991 revealed that killings and other violations had resulted in a huge number of disappearances between 1983 and 1991, "by far the highest number ever recorded by the Working Group for any single country." In its report of May 31, 1992, "Human Rights Accountability in Sri Lanka," Asia Watch observed that "a common estimate by human rights groups of the total number of reported disappearances of suspects after arrest by the security forces or abduction by vigilante groups linked to the security forces is 40,000 since 1983." *Human Rights Accountability in Sri-Lanka*, ASIA WATCH, May 31, 1992, at 5.

22. According to Amnesty International, over 3,000 Tamil people are reported to have "disappeared" in the custody of government forces in the east since June 1990. That such serious abuses have continued well into 1991 is confirmed by recent reports in the Sri Lankan and interna-

tional press, as well as from other sources. *NORTHEAST REPORT*, at 17. In Batticaloa town, over 1,500 people were reported to the Local Peace Committee as "disappeared" between June and December 1990. *Id.* Similarly, large number of "disappearances" have also been reported from Trincomalee, Vavuniya, Mannar and Kayts. *Id.*

23. In September 1990, over 100 Tamils disappeared after being removed from a refugee camp in the east, according to credible sources. Human Rights Report. While the Government lifted the Emergency Regulations (ER) authorization granted to security forces to dispose of bodies without inquest, others (55b-f) still restrict full public inquiries into the causes and circumstances of deaths. *Id.*

D. *Arbitrary Arrests and Detention*

24. The Sri Lankan Constitution provides that no person "shall be arrested except according to procedure established by law." An arrested person must be informed of the reason for his/her arrest and brought within 24 hours before a magistrate who may authorize bail or, for serious crimes, order continued detention. Detainees are generally brought before a magistrate within a few days of arrest, but there are reports of detainees who are never informed of the reason for their arrest. *Id.*

25. Persons may challenge the legality of their detention either by filing a Writ of Habeas Corpus in the Courts of Appeal or by charging the Government before the Supreme Court with violating fundamental constitutional rights. There are cases, however, in which these provisions did not provide effective means of redress to persons alleging arbitrary detention. *Id.*

26. In September 1991, Amnesty International reported the establishment of the Human Rights Task Force (the "Task Force") under the chairmanship of a former judge of the Supreme Court of Sri Lanka, J.F.A. Soza. The Amnesty International delegation met with Justice Soza and discussed with him in detail the terms of reference of the newly-established body. *NORTHEAST REPORT* at 33. The Task Force, which is a permanent body, has six parts to its mandate, which is generally described as "to monitor the observance of fundamental rights of detainees." *Id.* at 34.

27. Amnesty International was assured that a register of all people detained under the Prevention of Terrorism Act (PTA) and Emergency Regulations (ER) would be kept centrally, regularly updated and made accessible to members of the public. Amnesty International was also assured that the authority of the Task Force would extend to all places of detention, including army camps and possible unofficial "safe houses." *Id.* These assurances have not been fully implemented, for, as Amnesty International reported, Government security forces often refuse to acknowledge individual detentions, and the authorities, despite widespread detentions, did not disclose how many political prisoners were held in the northeast nor whether any had been charged. *AMNESTY INTERNATIONAL*

SRI LANKA REPORT, 1991, 210.

E. *Violations of Geneva Conventions*

28. The following are a few examples:

On 11 July 1990, government forces ordered aerial bombings on civilian targets.

On 20 July 1990, *Vibrio cholerae*, the causative organism of cholera, was found in the shells of bombs dropped by Sri Lankan forces on Jaffna.

On 10 September 1990, chemical weapons were used by government forces.

F. *Destruction of Essential Services and Institutions*

29. As of 15 August 1990, the following essential services and institutions have been bombed: Jaffna General Hospital; Manipay Green Memorial Hospital; Phillips Hospital; Killinochi Base Hospital; Mullaitivu Base Hospital; over 13 private medical clinics, laboratories and pharmacies; thermal power station at Chunnakam; Jaffna Petroleum Corporation; telephone links to Trincomalee and Jaffna; train service in the North and East; Jaffna Old and New Markets; Thinnevely and Chavakachcheri markets; over 14 places of worship. Postal services are at a standstill.

G. *Refugees*

30. There are about 50,000 Tamil refugees in Canada, 210,000 in India (an additional 150,000 unofficially), 100,000 in Europe, and over one-half million displaced persons in Sri Lanka who are internal refugees. UNHCR's official position is that "it is not safe for a Tamil refugee to return to Sri Lanka unless the person is manifestly a refugee". *Report of the Canadian Human Rights Mission to Sri Lanka*, January 1992, at 30.

H. *Lack of Accountability*

31. Recent reports by Asia Watch (*Human Rights Accountability in Sri-Lanka*, ASIA WATCH, May 31, 1992.) and the Canadian Human Rights Mission to Sri Lanka (*Report of the Canadian Human Rights Mission to Sri Lanka*, January 1992) confirm that the vast majority of cases of abuse of power by the security forces are never brought to justice. Officers in the police and army seem to operate with almost total impunity. The new agencies established by the Government of Sri Lanka since 1990 to respond to international criticism of the government's continuing human rights abuses have not been effective. To illustrate, the Special Task Force on Human Rights was established on November 30, 1990 "to formulate and implement a strategy to meet charges of human rights violations." Asia Watch reports that "by May 1992 it had little to show in terms of concrete results." *Human Rights Accountability in Sri-Lanka*, ASIA WATCH, May 31, 1992. at 15.

32. Similarly, the Human Rights Task Force the Government established in August 1991 suffers from "a number of shortcomings," according to the Asia Watch Report. The Report notes that as of April 1992, the officials of the Task Force "had not yet attempted to visit detainees in police stations and detention centers run by the police or in army camps in the Northeast, nor had they begun keeping records on persons detained at interrogation centers or other temporary holding facilities. This is a serious shortcoming since, as a rule these are the facilities where the most serious violations occur." *Id.* at 16.

33. The Presidential Commission of Inquiry into the Involuntary Removal of Persons was appointed in January 1991 for one year and in January 1992 its mandate was extended for another year. The Commission is, however, not allowed to inquire into disappearances occurring before January 1990. The pace of its investigation is extremely slow, which will prevent it from fulfilling its task. Neither have other special commissions appointed to investigate specific cases of retaliatory killings by government troops and military attacks on relief workers fulfilled their tasks. *Id.* at 20-22.

III. JURISDICTION

34. The organs and agencies of the United Nations, including the SECRETARY GENERAL, the GENERAL ASSEMBLY, the HUMAN RIGHTS COMMISSION, and the SUBCOMMISSION ON THE PREVENTION OF DISCRIMINATION and the PROTECTION OF MINORITIES, have the jurisdiction to receive and hear this petition and to provide the relief requested.

35. The organs of the U.N. are endowed with explicit and inherent powers to assume jurisdiction of the cases of the kind presented in this petition as reflected in the UN CHARTER. Chapter 1, article 1(3), of the U.N. CHARTER obligates the U.N. and member states to encourage "respect for human rights and for fundamental freedoms." It is clear that torture, abductions, killings, and attempted genocide are violations of not only the letter, but the very spirit of international law as evidenced in instruments such as the UNIVERSAL DECLARATION OF HUMAN RIGHTS (G.A. Res. 217A (III), at 71, U.N. Doc. A/180 (1948)) and the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. (No. 16) at 22, U.N. Doc. A/6316 (1966).

36. The GENERAL ASSEMBLY is authorized to act under Chapter IV, article 22 of the U.N. Charter to establish an AD HOC TRIBUNAL empowered to grant the relief requested. For instance, in 1950 the GENERAL ASSEMBLY established a special tribunal to deal with various claims arising in the former Italian colony of Libya. Given the circumstances detailed in this petition, such a tribunal is equally justified and necessary to carry out the very principles and purposes for which the United Nations was established: to ensure international peace and secur-

ity, and to guarantee the protection of fundamental human rights.

37. All members of the United Nations have pledged themselves under the UNITED NATIONS CHARTER, articles 55 and 56, to take action to ensure respect for human rights. Article 55 states in part,

with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

(c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56 states:

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in article 55.

38. Such pledge indicates that under the Charter, Member States must be prepared to take action to assist in enforcing human rights. If an organ of the United Nations determines that the rights of petitioners (or those they represent) were violated by the respondent, Members must act according to their pledge to cooperate with the United Nations in taking necessary steps under the Charter to promote "universal respect for, and observance of, human rights."

39. The respondent, SRI LANKA, is a member of the United Nations and, as such, is obligated to act in compliance with any determinations of the U.N. organs concerning this matter.

40. The GENERAL ASSEMBLY has the inherent power to establish methods and instruments to carry out the objects and purposes of the U.N. CHARTER, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS and other instruments of international law. The SECRETARY GENERAL, acting as an agent of the GENERAL ASSEMBLY, also possesses inherent powers to carry out these principles.

IV. COMPETENCE

41. Under the human rights provisions of the UNITED NATIONS CHARTER, the UNIVERSAL DECLARATION OF HUMAN RIGHTS, the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, the CONVENTION AGAINST TORTURE, and the CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE, the petitioners, the Tamils, are proper parties to invoke the jurisdiction of the United Nations in requesting a United Nations investigation on their behalf in order to find redress for the deprivation of their basic human rights. Further, the petitioners are proper party petitioners in requesting a United Nations investigation in order to obtain release of those being held under arbitrary arrest and detention, to

restrain the carrying out of extrajudicial executions, and to order the release of said individual petitioners who may so desire to leave respondent's said detention centers and clandestine prisons.

42. The respondent, Sri Lanka, has willfully and definitely violated obligations undertaken as a member of the United Nations and as a member of the international community by denying and violating the human rights of its nationals who reside within its confines.

43. The respondent, Sri Lanka, as a signatory to the UNITED NATIONS CHARTER, the UNIVERSAL DECLARATION ON HUMAN RIGHTS, the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, the CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT, and the CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE, is accordingly thereby obligated to comply with the terms of these instruments.

44. The oppression of the Tamils, the petitioner minority, in the areas of education, employment, politics, language, and security of person is specifically recognized as a violation of international law pursuant to the UNIVERSAL DECLARATION OF HUMAN RIGHTS and the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS. The respondent, Sri Lanka, as a member of the international community of nations, is obligated to comply with accepted norms of international law.

45. The actions of the respondent merit the creation of an AD HOC TRIBUNAL to investigate and punish those responsible for the arbitrary arrests, detention, extrajudicial killings and torture of the said petitioners, individually and as a class.

46. The actions of the respondent in violating the petitioners' rights in the areas of education, employment, politics, language, and security of person, violate international law and internationally prescribed standards of conduct. These violations warrant sanctions against Sri Lanka.

V. CONTENTIONS

47. That the oppressed minorities are all legal residents of the state of Sri Lanka.

48. That the victims have been neither charged with nor found guilty of any crime or violation of international or domestic law.

49. That the victims have not been allowed hearings or any of the other requirements of due process guaranteed under international human rights law. The victims have been denied communication with their families or others. The families of abducted persons have been denied either communication with the victims or acknowledgement of their whereabouts by the Government of Sri Lanka.

50. That the victims have been denied their human rights to be free from arbitrary arrest and imprisonment, torture, and other inhumane treatment. The Tamil society has been denied its collective right to be

free from genocide. Specifically, those rights guaranteed under the UNIVERSAL DECLARATION OF HUMAN RIGHTS that are violated include all rights set forth to be assured without distinctions of any kind, including race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status (art. 2), the right to life liberty and security of person (art. 3), the right not to be tortured or treated to cruel, inhuman, or degrading treatment or punishment (art. 5), the right to equal protection against discrimination (art. 7), the right to an effective remedy by competent national tribunals for acts violating fundamental human rights (art. 8), the right to be free from arbitrary arrest, detention or exile (art. 9), the right to a fair and public hearing by an independent and impartial tribunal (art. 10), the right to freedom of movement and residence within the borders of the state (art. 13), the right to take part in government, access to public service, and universal and equal suffrage (art. 21), the right to free choice of employment (art. 23), the right to education equally accessible to all on the basis of merit (art. 26), the right to freely participate in the cultural life of the community (art. 27), and the right to be free from activity aimed at the destruction of any of the rights set forth (art. 30).

51. That similar rights are protected under the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, in articles 6(1), 7, 9(1), 9(3), 12(1), 14(1), 25, 26, and 27. Other internationally protected rights and freedoms include: that the death penalty shall only be imposed for the most serious of crimes (art. 6(2)), freedom from state-caused genocide (art 6(3)), freedom from the death penalty for persons below 18 years of age (art. 6(5)), the right to be promptly informed of the reasons for arrest (art. 9(2)), the right of detained persons to be treated with humanity and respect for dignity (art. 10(1)), and the right to be presumed innocent until proven guilty (art. 14(2)).

52. The CONVENTION AGAINST TORTURE AND OTHER FORMS OF CRUEL, UNUSUAL AND DEGRADING TREATMENT OR PUNISHMENT imposes upon the parties to the agreement to "take effective legislative, administrative, judicial, or other means to prevent acts of torture."

53. That the respondent is a member of the United Nations and signatory to the UNITED NATIONS CHARTER, the UNIVERSAL DECLARATION OF HUMAN RIGHTS, the CONVENTION AGAINST TORTURE, and OTHER CRUEL, UNUSUAL AND DEGRADING TREATMENT OR PUNISHMENT, the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, and the CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE, and is therefore obligated to uphold the provisions of these documents. The respondent is also obligated to cooperate with other nations and the UNITED NATIONS in securing respect for human rights in Sri Lanka.

54. That the respondent has been directly involved in acts of arbitrary arrest, torture, inhumane treatment, abduction and killing.

55. That the victims and their families have no available remedy to secure justice. The oppressed population has no available remedy to guarantee their protection from arbitrary arrest, torture, inhumane treatment, abduction and annihilation.

56. The oppressed population's only available remedy is through an AD HOC COMMISSION-TRIBUNAL of the UNITED NATIONS pursuant to a RESOLUTION by the HUMAN RIGHTS COMMISSION calling upon the GENERAL ASSEMBLY to adopt WORLD HABEAS CORPUS as the only effective way to implement INTERNATIONAL HUMAN RIGHTS LAW as embodied in the UNITED NATIONS CHARTER, the UNIVERSAL DECLARATION OF HUMAN RIGHTS, the INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, the CONVENTION AGAINST TORTURE AND OTHER CRUEL, UNUSUAL AND DEGRADING PUNISHMENT, and the CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE. Alternatively the SECRETARY-GENERAL may either appoint such an AD HOC COMMISSION authorized to make findings or the SECURITY GENERAL may convene the SECURITY COUNCIL to order the establishment of an AD HOC COMMISSION, which may report back to the SECURITY COUNCIL, and which may then act through a SECURITY COUNCIL RESOLUTION or provide for other remedial and declaratory action.

57. That such a tribunal is requested to determine that the respondent has violated its obligations under the UNITED NATIONS CHARTER.

58. That the UNITED NATIONS should support the establishment of an appropriate government which will recognize the right of all Sri Lankans to be adequately and effectively represented in the government. An appropriate government is one which will meet the legitimate aspirations of the minorities to be treated equally with the Sinhalese majority, in particular, a federal or confederate government of two states.

VI. QUESTIONS PRESENTED

59. Have the Government of Sri Lanka and its Special Task Force, or other instruments within its control, subjected Tamil and other populations to torture or to cruel, inhuman or degrading treatment or punishment in violation of Article 5 of the Universal Declaration of Human Rights and Article 7 of the International Covenant on Civil and Political Rights?

60. Have the Government of Sri Lanka and its Special Task Force, or other instruments within its control, carried out extrajudicial and arbitrary killings of civilians and non-combatant Tamil and other populations in violation of Article 3 of the Universal Declaration of Human Rights and Article 6(1) of the International Covenant on Civil and Political Rights?

61. Have the Government of Sri Lanka and its Special Task Force, or

other instruments in its control, carried out extrajudicial and arbitrary arrests and detention of civilians and non-combatant Tamil and other populations, many resulting in the disappearance of those arrested or detained in violation of Articles 3, 9 and 10 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights?

VII. ARGUMENTS

A. *Torture*

62. In response to the first question, the Government of Sri Lanka and its Special Task Force, or other instruments in its control, have violated the Government's obligations under the Universal Declaration of Human Rights (the "Declaration") and the International Covenant on Civil and Political Rights (the "Covenant") by committing documented acts of torture, and cruel, inhuman, or degrading treatment or punishment of people in its custody.

63. Sri Lanka ratified the Covenant without reservations in 1980 and has recognized the competence of the Human Rights Committee to hear interstate complaints under Article 41. The Government of Sri Lanka, as a member of the United Nations, is also held accountable under the Declaration and has embodied freedom from torture in its own constitution.

64. In Article 7, the Covenant states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Likewise, the Declaration and Sri Lanka's constitution both use this same language in Articles 5 and 11, respectively. As a party to these agreements, and by its own constitution, Sri Lanka has assumed an obligation to respect the rights enumerated in these documents and to ensure the protection of such rights through its laws and institutions.

65. Those cited as responsible for committing human rights violations under the authority of the Government include members of the military, the police, and the Special Task Force (STF) (a police commando unit). In some areas of the east, members of unidentified groups who wear plain clothes and use unmarked vehicles have also been cited. These people operate in much the same manner as the plain-clothes "death squads" linked to Government forces which were a feature of the recent counter-insurgency drive in the south. *NORTHEAST REPORT*, at 14.

66. Other forces opposed to the LTTE have also been cited as responsible for committing abuses. The Government has assisted in the creation of armed groups within the civilian population, such as the Muslim home guards, and has also mobilized the armed cadres of anti-LTTE militant Tamil groups to assist in its campaign against the LTTE. Sometimes, members of these groups appear to be used as proxies for the regular security forces, committing abuses which the security forces ignore and for which members of the security forces cannot be held directly responsible. *Id.*

67. The documentation of these abuses and their link to the Government have been reported by several organizations:

68. The U.S. Department of State Dispatch reports "some government security officials acknowledge that security forces have used torture to elicit information and cooperation from suspected members of the JVP and LTTE." Human Rights Report.

69. Amnesty International published a comprehensive report on the human rights situation in Sri Lanka. This report was the result of a visit by an Amnesty International investigation team sent to the country in June 1991. The delegation conducted detailed discussions with Government officials, political leaders, and individuals active in the field of human rights. They interviewed dozens of victims and relatives of victims of human rights violations allegedly committed by the Sri Lankan security forces and paramilitary groups associated with them. NORTHEAST REPORT, at 1. While this report concentrates on the more serious violations of extrajudicial executions and "disappearances," it also highlights some of the abuses which constituted torture and cruel, inhuman or degrading treatment or punishment.

70. For example, one person who had been detained at Plantain Point army base in Trincomalee and then released, reported to a journalist that he had been blindfolded and beaten with iron bars. He saw some of his friends beaten to death, their corpses then heaped together and burned. *Id.* at 20

71. Amnesty International places responsibility for abuses such as these with the Government forces and elements under its control. It observes that the arming of civilian groups by the Government appears to repeat the practice which occurred in the south, when it distributed weapons for self-defense to home guards and to politicians for their bodyguards. *Id.* at 15. Muslim home guards are also reported to have detained Tamil people and then handed them over to the police. *Id.* at 16

72. Petitioners contend that regardless of how the abuses are carried out — directly by Government forces or indirectly through elements under its control — this link places responsibility for the abuses of torture and mistreatment of Tamils on the Government of Sri Lanka.

73. The International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights must be interpreted in accordance with the dominant purpose of both documents; that is, to promote human rights. Therefore, the right to freedom from torture or cruel, inhuman, or degrading treatment or punishment must be interpreted broadly because there are no permissible limitations allowed under international law.

74. Although Article 4(1) of the Covenant allows certain derogations in times of public emergency which threaten the life of the nation, Article 4(2) specifically states there may be no derogation from Article 7. Thus, even if the Government claims a public emergency due to armed conflict, this would not override the protection from torture provided for in the

Covenant.

75. Even though Article 4(2) prohibits any derogation from Article 7, the Government has claimed a public emergency through the Prevention of Terrorism Act (PTA) of 1979. This Act was initially a temporary measure, but an amendment in 1982 made the PTA a permanent part of Sri Lankan law. *The Human Rights Crisis in Sri Lanka: Its Background and Possible Solutions*, 15 DEN. J. INT'L. L. & POL'Y. 173, 370. The PTA undermines the inalienable human rights of certain citizens of Sri Lanka, both on its face and in its application. It is argued that the Government has no valid interest in its continued application, since after eight years it has proven itself to be ineffective as a tool to curb terrorist activity. *Id.* at 369.

76. Part IV of the PTA permits trial under special procedures which curtail normal legal safeguards. *Id.* at 370. Section 16(1), for example, provides extremely liberal rules on the admissibility of certain statements made to the police. Section 7(3)(a) of the PTA gives police the authority to take any suspect "to any place for the purpose of interrogation and from place to place for the purpose of investigation." *Id.*

77. Although Sri Lanka has not adopted the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT), its Constitution forbids torture and cruel, inhuman, or degrading treatment or punishment, while the Emergency Regulations (ER) allow the use in court of confessions made to police officers and place the burden of proof on defendants to show that a confession was exacted under duress. Human Rights Report.

78. Additionally, Sections 22, 23 and 31(i) of the PTA attempt to make that document and its provisions retroactive. The definition of "unlawful activity" under Section 31 expressly includes "any act committed prior to the date of passing of this Act, which act would, if committed after such date, constitute an offense under this Act." Provisions of retroactivity such as this are specifically prohibited by the Covenant and the Declaration. Article 15 of the Covenant states that "no one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national or international law, at the time when it was committed." Article 11(2) of the Declaration also expressly prohibits retroactive imposition of criminal sanctions on actions that were not criminal when committed. Thus, the retroactive language of the PTA is invalid under international law and contravenes the historic principle that no ex post facto law should be passed.

79. The Declaration also prohibits derogation from the inalienable rights set forth in that document. Article 29(2) states:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 29(3) adds:

These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

80. Thus, any limitations on the rights declared in the Declaration must be to promote, and not hinder, human rights. That is, the purposes and principles of the United Nations as stated in the preamble to the Declaration include "promoting respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance. . . ." The actions of the Sri Lankan Government in torturing and mistreating people in its custody is directly contrary to these stated purposes and is contrary to the aspiration of Article 29.

81. Consequently, since the Covenant, the Declaration and Sri Lanka's constitution declare that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or torture or to cruel, inhuman degrading treatment or punishment, and as it is the express desire of the United Nations to prohibit derogation from freedom from torture, the actions of the Government clearly violate international law.

B. *Extrajudicial Killings and Disappearances*

82. In response to the second question, the Government of Sri Lanka has been linked to extrajudicial and arbitrary killings of civilians and non-combatant Tamils and other populations and has thus violated Article 3 of the Declaration and Article 6(1) of the Covenant.

83. As a party to the Covenant and the Declaration, and by its own constitution, Sri Lanka must ensure protection of the right to life. The Government may only restrict this right to the extent permitted by the Covenant and the Declaration.

84. Sri Lanka has ratified the Covenant without reservations and, in addition, has recognized the competence of the Human Rights Committee to hear inter-state complaints under Article 41. Moreover, Sri Lanka is bound by the Declaration and by the prohibition on extrajudicial and arbitrary killings in its own constitution.

85. Article 6(1) of the Covenant states: "Every human being has the inherent right to life. This right shall be protected by the law. No one shall be arbitrarily deprived of his life." The Declaration secures that "everyone has the right to life, liberty and security of person" in Article 3. Sri Lanka's own constitution (Article 1394) provides: "No person shall be punished with death or imprisonment except by order of a competent court, made in accordance with procedure established by law." As a party to these instruments, and by its own constitution, Sri Lanka has assumed an obligation to respect the rights enumerated in these documents and to ensure the protection of such rights through its own laws and institutions.

86. Reports indicate that members of the regular security forces—the army, the police and the Special Task Force (STF)—were responsible for

many of the reported extrajudicial executions and "disappearances." Others were reportedly perpetrated by home guards who launched retaliatory attacks on Tamil civilians, with the apparent acquiescence of the security forces.

87. The documentation of these abuses linked to the Government has been gathered by several organizations:

88. *The U.S. Department of State.* The report by the State Department indicates that political killings have been carried out by the government's security forces, police and vigilante squads. It is argued through strong circumstantial evidence and a wide range of observers, including human rights groups, opposition politicians, individual government officials, and members of the security forces themselves, that there is a link between the government security forces and these vigilante groups. It is likely that vigilantes often commit extrajudicial killings with the knowledge and acquiescence of some government officials.

89. Although charges were brought against security force members in two vigilante cases and legal proceedings were initiated in 20 other cases in which security force personnel allegedly murdered civilians between 1988 and 1990, none of these cases had been resolved by the end of 1990. In one case in which police officers were accused of shooting a teenager, a number of witnesses received death threats; three witnesses and an attorney for the deceased's family were killed, one witness disappeared after being abducted from his office by armed men, and two lawyers connected with the case went into hiding. Human Rights Report.

90. *Amnesty International.* Amnesty International documents human rights violations in Sri Lanka in its September 1991 report. Prisoners taken by the security forces have not been the only victims of extrajudicial execution. Reports indicate such killings have been conducted by home guards and other instruments of the government. NORTHEAST REPORT, at 18. Even when they are not directly involved, there is evidence indicating the acquiescence or collaboration of the security forces in such attacks in some cases by other parties.

91. In an incident reported to Amnesty International, for example, a convoy of Tamil civilians travelling to Batticaloa from Colombo and Valachchenai on February 20, 1991 were attacked by Muslim home guards outside Eravur. Six passengers on the buses were killed. Others were injured, and some are unaccounted for. Witnesses said that home guards in uniform were responsible and it is reported that the military neither did anything to prevent this attack nor to intervene once it had begun. NORTHEAST REPORT, at 19.

92. Moreover, reports indicate that members of the regular security forces were responsible for many of the reported extrajudicial executions and "disappearances." For example, extrajudicial executions, burning of bodies and "disappearances" started in several towns in the east within days of government forces moving in. Father Eugene Hebert, an American Jesuit priest who has lived in Sri Lanka for 42 years, described the

outbreak of killings in Batticaloa as follows in a letter to his brother-in-law:

When the army first came in on June 25 no shot was fired as the Tamil Tigers had withdrawn to fight first in Jaffna. But then began arrests of innocent citizens, looting, killings, and burning of bodies on public roads to terrorize the people. I had to supervise the burial of two, a man and woman, who had been killed, put into a sack and thrown off the bridge into the lagoon just in front of St. Sebastian's Church. They had been in the water three days before we were able to get the army to let us bury them.

NORTHEAST REPORT, at 22.

Disappearances and extrajudicial executions continued to be committed in large numbers in the Batticaloa area after this date, and Father Hebert himself apparently disappeared on August 15, 1990 while traveling along a road reportedly deserted except for army check posts. *Id.*

93. *Report of the Canadian Human Rights Mission to Sri Lanka, January 1992.*

A team of distinguished Canadians from academia, political parties, the Canadian Bar Association, and community and human rights groups visited Sri Lanka from January 22 to 29, 1992, and following their visit reported that the human rights abuses in Sri Lanka were "shocking to the conscience and. . . unacceptable in any civilized society." *Report of the Canadian Human Rights Mission to Sri Lanka, January 1992, at 15.* They added: "Extensive and reliable evidence was presented to the Canadian team from a variety of sources, detailing the widespread abuse of human rights by the security forces and by paramilitary groups co-operating with the Government." *Id.* They found that in Sri Lanka "today, people live under the threat of extra-judicial killing, disappearance, torture, and arbitrary arrest and detention at the hands of the state security forces. . . ." *Id.* They found governmental coverup of "abusive acts perpetrated in its name," *Id.* at 17 and concluded that "the government has not yet demonstrated a serious commitment to stop the human rights violations being committed by members of the security forces and allied groups." *Id.* at 18.

94. Amnesty International and the U.N. Working Group have reported numerous arbitrary arrests and detentions by the Government of Sri Lanka. These reports confirm that many of those arrested and detained pose little or no threat to national security. For example, in 1991, Amnesty International reported that according to Sri Lankan governmental information, 7,619 people were in detention in the south as of June 1991. Of those, approximately 500 were Tamils. The government would not disclose why these people were being detained or what the charges were against them.

95. *Report of Asia Watch, Entitled "Human Rights Accountability in Sri Lanka," May 1, 1991.*

The report finds the Sri Lankan government's complicity in serious

rights abuses.

96. *The Report of the U.N. Working Group on Enforced or Involuntary Disappearances, January 1992.*

The Report found that by far the highest number of disappearances ever recorded for any country had occurred in Sri Lanka.

97. *Memorandum Prepared on Behalf of the European NGO Forum on Sri Lanka by the Country Working Group on Sri Lanka (Geneva), and submitted at the Forty-eighth Session of the U.N. Commission on Human Rights in February 1992.*

The Memorandum details the enormity of human rights violations in Sri Lanka. It states:

The record of human rights violations including arbitrary arrests, detentions without trial, deaths in custody, 'disappearances,' arbitrary killings and disregard for the norms set by international human rights and humanitarian law continue to be matters of grave concern deserving serious attention by all those who are concerned about the situation in Sri Lanka. *Id.* at p. 1.

98. *ICCPR's Examination of Sri Lanka's Second Periodic Report in April 1991.*

Members of the UN Human Rights Committee stressed that emergency measures taken by the Government in addressing the difficult situation it faced in dealing with violence must be within the framework of the law, and that some of these provisions, including indefinite detention without charge or trial and retroactive application of criminal laws, are in violation of Sri Lanka's international legal obligations. *See, e.g., U.N. Doc. CCPR/C/SR 1095, ¶¶ 16, 17.*

99. *Forty-eighth Session of U.N. Commission on Human Rights.*

The Chairman of the United Nations Commission on Human Rights made a statement on the human rights situation in Sri Lanka on February 27, 1992, which reads in part:

The Commission calls upon the government of Sri Lanka to further intensify its efforts to ensure the full protection of human rights and further calls upon all parties to respect fully the universally accepted rules of humanitarian law.

The Commission urges the government of Sri Lanka to continue to pursue a negotiated political solution with all parties, based on principles of respect for human rights and fundamental freedoms, leading to a durable peace in the north and the east of the country.

The Commission urges the government of Sri Lanka to implement the recommendations of the Working Group, and expresses its satisfaction at the willingness of the government of Sri Lanka to take the necessary steps to implement the recommendations of the Working Group.

100. These reports of disappearances and extrajudicial killings by the

Government and elements under its control are only a few of the many examples of such abuses. Extrajudicial killings are widespread against the Tamil population, continue to occur under the direction of the Sri Lankan Government and are in direct violation of Article 6(1) of the Covenant and Article 3 of the Declaration.

101. The Covenant and the Declaration must be interpreted in accordance with the dominant purpose of both documents (i.e., promoting human rights). Therefore, the right to life must be interpreted broadly and the permissible limitations must be interpreted strictly and narrowly.

102. In situations of armed conflict, fundamental human rights cannot be ignored. "Disappearances" and the deliberate killing of prisoners and other defenseless individuals cannot be justified under any circumstances. International human rights law clearly maintains that certain fundamental rights, particularly the right to life and the right not be subjected to torture, must be protected by governments at all times and under all circumstances. Killings by members of the armed opposition do not provide justification for government forces to deliberately kill defenseless people. Nor is there any justification for enforced "disappearance" or torture of prisoners in the custody of government forces.

103. Article 4(1) of the Covenant states:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

104. Although Sri Lanka has officially declared a public emergency through its Emergency Regulations and the Prevention of Terrorism Act, Article 4(2) of the Covenant specifically states that no derogation from certain articles, including 6 and 7, may be made under this provision. Thus, even in the context of an armed conflict, the Covenant provides: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." (Article 6(1).)

105. In order for the government to invoke the death penalty, the accused person must be charged and given a trial before a competent court which gives its final judgment. Moreover, under Article 4 of the Covenant, there may be no derogation from the duty to uphold the right to life even in "time of public emergency which threatens the life of the nation."

106. According to Article 6(2) of the Covenant, in countries such as Sri Lanka which have not abolished the death penalty, the death sentence "may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not

contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.”

107. Further limitations on the death penalty in Article 6 solidify the right to life. The United Nations Human Rights Committee states that the right to life “should not be interpreted narrowly.” The Human Rights Committee has described the protection against arbitrary deprivation of life in Article 6 as being “of paramount importance.” It has stressed the need for governments to “take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces.” In addition, the public emergency limitation in Article 4(1) of the Covenant, allowing derogation from certain articles, specifically prohibits derogation based on discrimination against race, color, sex, language, religion or social origin. Since the Sri Lankan Government’s acts of repression are directed specifically at the Tamils, who have their own ethnic, religious, and linguistic traditions which are distinct from the Sinhalese, repression constitutes the prohibited discrimination in Article 4(1). Again, any derogation by the Sri Lankan Government for public emergency reasons is contrary to its obligations under the above-mentioned international prescriptions.

108. The Sri Lankan constitution, in Article 15(1), provides that “the exercise and operation of the fundamental rights declared and recognized by Articles 13(5) and 13(6) shall be subject only to such restrictions as may be prescribed by law in the interests of national security.” Also, Article 15(7) states that the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 “shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality. . . .” While these Articles allow derogation from the stated provisions, they clearly do not allow derogation from the freedom from torture in Article 11, nor derogation from the freedom from being “punished by death or imprisonment except by order of a competent court” in Article 13(4). Thus, the stated restrictions on fundamental rights delineated in the constitution apply only to those listed provisions. As torture and killings are not listed, there are no restrictions which may impinge upon these rights.

109. Because the Covenant, the Declaration and the Sri Lankan constitution all protect the right to life and because there may be no derogation from this right, even for public emergencies, the Government’s actions of arbitrary killings and extrajudicial executions violate international law.

C. *Arbitrary Arrests and Detention*

110. In response to the third question regarding arbitrary arrests and detention, the Constitution of the Democratic Socialist Republic of Sri Lanka (the “constitution”), Article 13 provides:

13(1). No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest.

13(2). Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of the nearest competent court according to procedures established by law, and shall not be further held in custody, detained or deprived of personal liberty except. . . in terms. . . made in accordance with procedures established by law." *The Constitution of the Democratic Socialist Republic of Sri Lanka*, Chapter III, Article 13 (1979).

111. The constitution, however, limits these provisions for freedom from arbitrary arrest, detention and punishment in Article 15(7) which states:

15(7). The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13 (1) and 13 (2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality. . . .

112. Similarly, the Universal Declaration of Human Rights (Articles 3, 9 and 10) provides:

Article 3. Everyone has the right to life, liberty and security of person.

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. *Universal Declaration of Human Rights*, United Nations General Assembly, Dec. 10, 1948.

113. According to Article 29 (2) of the Declaration, however, "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Thus, this provision also allows member states to limit fundamental rights in the interest of national security.

114. Under customary international law, Sri Lanka is bound by the provisions of the Declaration. While Articles 3, 9 and 10 may be limited by state governments in the interest of national security, the facts show the Government of Sri Lanka has exploited this limitation beyond its intended use. Amnesty International, Asia Watch, the Canadian Human Rights Mission, the United Nations Working Group and the U.S. State Department have all reported such violations. For example, over 3,000 Tamil people have disappeared in the custody of government forces since June of 1990 and government security forces have refused to acknowledge

individual detentions. It is unlikely these Tamils have all disappeared voluntarily, yet the government refuses to acknowledge they are being detained. It is also unlikely the government is detaining all of these Tamils for national security reasons.

115. Finally, Article 9 of the International Covenant on Civil and Political Rights provides:

19(1). Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. *International Covenant on Civil and Political Rights*, General Assembly of the United Nations, adopted Dec. 16, 1966.

116. Sri Lanka has ratified the Covenant and is bound by its provisions under Article 2, which states:

2(1). Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant. . . .” *International Covenant on Civil and Political Rights*, General Assembly of the United Nations, adopted Dec. 16, 1966

117. The facts clearly show the Government of Sri Lanka has subjected Tamil people to arbitrary arrests and detention. Government security forces have taken people from their homes and detained them without explanation. Many of these people have either disappeared or have been found dead. Rarely are the detainees or their actions shown by the government to be a threat to national security.

118. The Sri Lankan people deserve to live their lives in peace, free from the threat of arbitrary arrests, detentions and exile. It is the responsibility of the Government of Sri Lanka to protect and ensure these rights protected by the Declaration, the Covenant, and Sri Lanka's own constitution; not to participate in violating them.

III. PRAYER

119. Pursuant to the U.N. Charter, Article 22, Petitioners pray for the formation of an AD HOC COMMISSION to function as an AD HOC TRIBUNAL to be convened by a resolution of the HUMAN RIGHTS COMMISSION, the GENERAL ASSEMBLY, the SECURITY COUNCIL, and the SUBCOMMISSION ON THE PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, to hear the complaint of the petitioners for the victims and the Tamils of Sri Lanka, and to investigate the allegations of torture, arbitrary arrest, disappearances, killings, and attempted genocide.

120. Petitioners also pray for the establishment of a truly representative government in Sri Lanka which will prevent future violations of human rights and assure the protection and nondiscrimination of the minority people of Sri Lanka.

121. Petitioners also pray that the AD HOC TRIBUNAL be authorized to function as an INTERNATIONAL CRIMINAL TRIBUNAL to try officers and agents of the respondent under international criminal law.

122. Petitioners also pray that proper sanctions be taken against the respondent Government of SRI LANKA for any refusal to comply with any of the orders or decisions that the tribunal or any other organ of the UNITED NATIONS makes in relation to this matter.

123. Petitioners also pray that the UNITED NATIONS authorize a full investigation of the matters presented in this petition and subsequently authorize a complete and public disclosure of all evidence and findings of fact at the conclusion of such investigation.

124. Petitioners also pray that the U.N. establish an ad hoc tribunal for Writ of World Habeas Corpus to ventilate and adjudicate all cases of deprivation of human liberty.

Respectfully submitted,

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