The judiciary has in innumerable cases acted as a "bulwark against illegal detention". Detenus have been released by order of the High Court Division following the filing of writs of habeas corpus or the initiation of proceedings under section 491 of the Criminal Procedure Code, 1898. It is reported that 2688 writs of habeas corpus were moved between August 1991-June 1992; the High Court gave judgment in 1795 of these cases, and declared 1742 orders of detention to be illegal and without lawful authority [Amnesty International, 1993]. In the vast majority of such cases, the Court has found the grounds of detention to be vague, indefinite and lacking in material particulars. In other cases orders of release have been given on the basis that:

- failure to inform the detenu of her/his right to representation;
- failure to serve the grounds of detention within the statutory period of 15 days;
- lack of nexus between the order of detention and grounds of detention e.g. the order states that a person has been detained "to prevent him from acting in a manner against protection of public safety and law and order" while the grounds specify "preventing him from acting against the economic or financial interest of the state";
- failure to produce the detenu before the Advisory Board within a certain time;
- retrospective issuance of orders.

Recently, the court observed:

It is unfortunate that the authority which is obligated under Art. 32 of the Constitution to protect the liberty of citizens and further required under Art. 112 thereof to act in aid of this Court should flout the laws by resorting to authoritarian acts. [Farzana Hug v Bangladesh 11 Bangladesh Legal Decisions 1991. P533]

In some particularly gross cases, the court's order to release the detenu has been flagrantly violated, with the detenu being served with a frest detention order at the jailgate when about to walk to freedom. In 1992, in four cases reported from Khagrachari-District in the Chittagong Hill Tracts, individuals were handed over into military custody on release from jail, in contravention of orders from the High Court directing their release.

A. Sajeda Parvin v Bangladesh 40 DLR (AD) 1988 P178

Mokbul Hossain, an independent Member of Parliament, was detained in 27. 6. 1986 under the SPA after he had been releassed on bail in a criminal case. The detention was challenged in the High Court Division.

When the matter was ready for hearing the detention order was revoked and

simultaneously a fresh order of detention, with the same grounds, was served on Mr. Hossain. It was argued on behalf of the detenu that as the detenu had not been released from detention and could not come out of jail, the legal challenge is to the fact rather than the order of detention. It was further argued that the order of detention under the SPA had been passed mala fide, and with the intent of bypassing the possibility of the court's granting bail. Counsel for the detenu asserted that Mr. Hossain had been detained in retaliatio for his refusal to vote in favour of Seventh Amendment to the constitution indemnifying the martial law government of Lt. General Ershad.

The Supreme Court on 20. 3. 1988 declared the detention to have been mala fide and ordered the immediate release of Mokbul Hossain. A suit since filed by Mr. Hossain claiming compensation against the government for illega detention is currently pending.

B. Shonchoy Chakma's Case

Shonchoy Chakma, 23, political science student at Dhaka University, was arrested without warrant at 2 a.m. on 15. 3. 1993 from a residential hall on campus. A leading activist among hillstudents from the Chittagong Hill Tracts, he is also a central orgainser of a national leftist students group.

After his arrest Shonchoy was taken to the Special Branch offices for interrogation. The law requires that every arrested person be produced before the court within 24 hours. Shonchoy was not in fact so produced until 17. 3. 1993. He was not able to obtain bail and was returned to the Special Brach offices for further questioning.

Shonchoy was served on 23. 3. 1993. with an order under section 3(1) (a) of the Special Powers Act which directed his detention for 120 days "to restrain him from activities prejudicial to the state and public safety and law and order". He was then served on 6. 4. 1993 with the grounds of detention, which charged him with being "a terrorist... engaged in disrupting law and order by spreading enmity among different sections of the people in Bangladesh ... working for the so called Shantibahini under the cover of the Hill Students Council and [being a] a spokesperson of antistate people".

A writ of haveas corpus was filed in the High Court Division challenging the legality of the order of detention. The Court issued a rule nisi directing the government to show cause as to why the order should not be held to be illegal and without lawful authority. However, before the matter could be heard the government revoked the order and on 24. 5, 1993, police applied to the Magistrate for discharging him from the charges under section 54 of the

Criminal Procedure Code. Shonchoy was released on 25. 5. 1993, after five weaks in preventive detention.

Restrictions on the Freedom of Association and Assembly

The government may order the suspension of the activities of any association, including a union or political party, for six months if it is satisfied that "there is a danger that it may act in a manner or be used for purposes prejudicial to the maintenance of law and order". In such cases, it is also invested with wide powers to order search of the premises of such association, seizure of its documents, freezing of its funds [section 19].

Restrictions on the Freedom of Movement

The Government may declare any place to be a protected place, if it considers this "in the public interest", and to that end it may take special precautions to prevent the entry of unauthorised persons. No person may enter such a place without government permission. Similarly it may declare certain areas to be "protected areas": any person other than a resident who requires entry would require a permit for this purpose. Any person who is in a protected area or place may be searched by a policed officer, and removed from the area or place [sections 21-23].

Special Tribunals

The SPA defines certain offences such as sabotage, hoarding, blackmarketing, smuggling and counterfeiting currency notes. All such offences, together with a number of specific offences defined under other laws, are to be tried by Special Tribunals.

A Tribunal may take cognizance of such offence only on a written report by a police officer of the level of a subinspector. Summary trials are to be held of all offences under the SPA. No adjournments may be granted, unless the Tribunal considers it in the interests of justice. A trial may be held in the absence of the accused in two instances: (i) where s/he is absconding, or is concealing her/himself so that s/he cannot be arrested and there is no immediate prospect of such an arrest and fails to appear before the court despite a direction to that effect, (ii) where the accused person absconds or fails to appear, after her/his production or appearance before the Tribunal, or release on bail [section 27]. Further, bail may not be granted unless the prosecution has had an opportunity to be heard in respect of the bail application and the Tribunal is satisfied that there are reasonable grounds to believe that the accused is not guilty [section 32].

Appeals from orders of such tribunals may be preferred to the High Court Division

within 30 days of the date of delivery or passing of the order. If a Tribunal awards the death sentence, this must be confirmed by the High Court Division [section 30] the Government may suspend or remit or commute any sentence passed by a Tribunal [section 30A]

(ii) Vested and Non Resident Property act 1974.

In 1965, following the India-Pakistan war, the Enemy Property Act was passed. It sanctioned, the seizure of "any property for the time being belonging to or held or managed on behalf of an enemy". Enemy is defined in section 161 of the Defence of Pakistan Rules 1965 to include:

(a) any state or sovereign of a state at war with Pakistan;

(b) any individual resident in enemy territory or ···

(d) any other person or body of persons declared by the Central Government to be an enemy.

(e) any body of persons (whether incorporated or not) carrying on bussiness in any place if and so long as the body is controlled by a person who, under this rule, is an enemy ···

Nearly a decade later,in 1974, in the secular state of Bangladesh, the emeny property Act was repealed. It was however, immediately replaced by the Veated and Non Resident Property (Administration) Act ("the Vested Property Act"), which has served to pertuate discrimination against one community. The Vested Property Act provides that certain types of property, either owned by a nonresident, or "vested in the Government" may be taken charge of by a Management Committee whether on its own motion, or by the application of a nonresident or by direction of the government. Property seized in the Pakistan period under the Enemy Property Act remains in the custody of the government even today.

This law discriminates against citizens on the grounds of their religion. In the name of protecting national security, it violates the rights to equality, to equal treatment under the law, the right to property and the right to profession of members of the Hindu minority. This law clearly contravenes Article 26 of the ICCPR.

Even today, under a freely elected government, Hindus continue to be forcibly dispossessed of their lands by thr discriminatory application of the Vested property act. On 4 July 1991, the Minister of Law informed Parliament that 8,27,705.08 acres of land have been included in the schedule of vested property.

(iii) The Special Security Force Ordinance, 1986

The Presidential Security Force Ordinance established a Security Force, to be under the direct command of the President, and to be controlled and administered by a Director who may be invested with the powers of the Chief of Army Staff in respect of operations of the

Force. The Force may seek the assisstance of other services, such as the law enforcing Agencies, paramilitary forces, defence and intelligence agencies.

The Force was originally intended to "provide physical security" both to the President, wherever he mat be and to the VIPs (including any head of the state or government or any person declared to be a VIP by the government). Followingthe restoration of the parliamentary system, it was renamed the Special Security Force ("SSF"): its primary function is to protect the Prime Minister and other VIPs. Its work also includes "collect[ing] and communicat[ing] intelligence affecting the physical security of the President or a VIP" [section 8]. The SSF are given the following powers:

arrest without warrant without any person when there is reason to believe that the presence or movement of such person at or near the place where the Prime Minister or a very important person is living or staying or through which he is passing or about to pass is prejudicial to the physical security of the Prime Minister or such VIP and if such person forcibly resists the endeavor to arrest him or attempts to evade arrest, such officer may use all means necessary to effect the arrest and may, if necessary and after giving such warning as may be appropriate in the circumstances of the case or otherwise so use force against him as to cause death [Section 8].

These wide and unfettered powers granted to the authorities under the SSFO are exacerbated by section 11 which prevents prosecution for such acts without government sanction.

(iv) The Suppression of Terrorist Activities Act 1992

The Suppression of Terrorist Activities Act ("the STA") was passed by Parliament on 1 November, in the face of a walkout by the opposition. It is to be applicable for an initial period of 2 years, which may be extended by parliament.

Section 2 of the Act defines the following categories of "terrorist activity":

(a) by the use of illegal force or the creation of terror -

(i) to exhort or acquire tolls, assistance or money or property in any other form from any person or institution;

(ii) to create an obstruction on the highways, railways, waterways or air routes ··· or to divert any vehivle against the wishes of its driver;

(b) to intentionally damage any vehicle;

(c) to intentionally damage or destroy any moveable or immoveable property belonging to the government or any government institution, any institution established, constituted or created by law, or any company, firm or non-governmental organisation or organisation of any individual;

(d) to seize or forcibly take any money, jewellery or valuables or any other property or

vehicle from any person;

(e) to indecently harass any adolescent girl, or minor girl,or adult woman on the streets, in vehicles, in educational institutions or their environs or in any public place;

(f) to create fear, terror or indiscipline or an anarchic situation, by the display of force, whether premediated or sudden, in any place, residential home, shop, market,road,vehicle or destination;

(g) to create obstacles or to prevent the sale, acceptance or submission of commercial tenders or to illegally force the acceptance thereof any person;

All these offences are liable to be punished by the same range of sentences, with a minimum of five years imprisonment and a maximum of death. Fines may also be imposed but the rates at which these may assessed are not be imposed but the rates at which these may be assessed are not specified. The Court may also order any person convicted of a terrorist offence to pay compemsation to their victim [Section 4].

Under the STA, certain offences have been defined so as to specifically target these involved in peaceful forms of political protest: such provisions constitute a violation of the right to freedom of movement. For example, the definition of the obstruction of highways as a terrorist offence means that every person participating in a peaceful demonstration or procession on a road or highway is committing a terrorist act.

The STA treats minor and major offences alike. The scale of punishments provided for these offences - which range from 5 years imprisonment to death - have not been graduated according to the seriousness of the offence. The death penalty may be imposed for any terrorist offence, which is violative of Act 35(5) of the Constitution.

Special tribunals

All offences under the STA are to be tried by special Tribunals.To date, such tribunals have been set up in 61 of the 64 districts of Bangladesh (no tribunals have yet been set up in the CHT). Judges are ti be appointed by tje Government [s8].

Cases under the STA may only be filled with the sanction of amny police officer at the level of Sub-Inspector or of any person authorised by the government [s9]. The Act provides that each case must be investigated within a period of 30 days, which may be extended for a further 15 days [s9].

It specified that as a general rule no adjournments should be granted ,unless the Tribunal considers it necessary in the interests of the justice, and in such cases the adjournment may not exceed a period of 7 days [s10]. The trial itself must be concluded

within 60 days,but again this period may, if considered necessary, be extended up to 90 days at the discretion of the court.

The act allows for trials in the absence of the accused, if the Tribunal has reasonable grounds to believe either that the accused is absconding or concealing her/himself in order to avoid arrest or that the accused is absconding or concealing her/himself in order to avoid arrest or if there is little possibility of her/his imminent arrest or that the accused has failed to appear in contravention of an order directing him to do so, on the publication of a notice in the newspapers to this effect. It may also try the accused in absentia where s/he absconds after appearing or being produced in court [s11].

There is no right to bail during the period of investigation of the offence. Effectively, a person can be kept in prison and under interrogation for up to 45 days [section 13].

A recent press report noted a comment from official sources to the effect that from Sept 1992-May 1993, a total of 1304 persons were arrested against 527 complaints; of the 671 cases lodged with police, 65 are being investigated, 407 are under trial, final reports of 79 cases have already been made . To date, 90 persons have been sentenced and convicted in 47 cases tried under the STA [Bangladesh Observer 1. 6.1993]

The concerns voiced by all those concerned with human rights that the Act would be used not to curb terrorism, but to stifle political opposition have been borne out by the experience of the past 8 months. In a number of incidents, the Act appears to have been used in a targeted fashion against members of the opposition. Khaledur Rahman Tito, general secretary of the former ruling party, the Jatio Party was arrested under the Act. The police dispersed a peaceful procession being led by Mr. Rahman on 24 December 1992 outside his party offices, assaulted him and dragged him away in a police van. Mr. Rahman was charged with having disrupted traffic, and was refused bail by the Special Tribunal.

More recently, the Act was again applied to pick up activists of the Sromik Kormochari Oikko Porishod,(the Workers and Employees Unity Council) who were organising a general strike in support of their demands for the implementation of an agreement on minimum wages concluded with the Government. Several have already been sentenced and convicted.

CRIMINAL LAWS

(i) Section 505A Penal Code.

In 1991, the SPA provisions relating to restrictions on the freedom of the press (namely sections 2d,3g,16,17 and 18) were repealed. Within months, a new section, 505A, was added to Penal Code: this provided that any person who "by words, written or spoken, or by sign or by visible representation or otherwise does anything or makes, publishes or circulates any statement, remark or report" which threatens national security, public order, or friendly

relations with foreign states or the maintenance of essential supplies and services is punishable by seven years of imprisonment.

Under this provision, no defence is available to the person on the grounds that their statement was true, or they lacked criminal intention. Recently, a newspaper owned by an Islamic fundamentalist party published a report charging leaders of a leftist political alliance with desecration of the national mosque. A case has been filed against the newspaper under section 505A and is currently pending. Although, the law may be used as in the above example, to curb the practice of "yellow journalism", there remains considerable scope for its potential abuse.

(ii) Section 99A, Code of Criminal Procedure

If the administration considers any publication to be prejudicial to the security of the state, it may take action section 99A of the Code of Criminal Procedure to ban and seize all copies of that publication. To date, the government has banned two publications, Radar and Satellite, which contain reports to human rights violations in the Chittagong Hill Tracts, and Glani (Shame), report on the communal attacks of against the Hindu community. It is also reported that this section has also been applied to seize and ban books on religious reform within Islam.

INTELLIGENCE SERVICES

The following intelligence agencies operate to protect internal or national security: National Security Intelligence (NSI), Director General of Forces Intelligence (DGFI),Field Intelligence Unit (FIU),Special Branch (SB), and more recently, the Special Security Force (see above). The DGFI and FIU are part of the military and governed by the Army Act 1952 and accountable to the Defence authorities. The SB is a part of the military and reports to the Home Ministry. The NSI and SSF are however, directly accountable only to the Prime Minister. The NSI was created by a cabinet decision in 1972; there is no statutory basis to its creation.

These agencies are intimately involved in the application of national security legislation. In some cases, detenus have been illegally kept in the custody of the intelligence services for interrogation purposes. Many cases have been reported of custodial violence against political activists by members if the intelligence services, surveillance of political, socio-cultural, development and human rights organisations is also conducted by such agencies. NGO require prior clearance by the NSI and SB to initiate projects or appoint staff.

These agencies have placed themselves in a position beyond the reach of the law.There

is no scope to discuss their activities in the national parliament,given the restrictions on discussions of matters relating to national security.

CONCLUSION

Executive discretions the basis for definitions of the national interest,the public interest,law and order,internal disturbance. Inevitably, these interests are treated as synonymous with those of the state or more particularly of the ruling government, regardless of its political hue. For example, the public interest is narrowly defined in relation to the oossibility of initiating public interest litigation: and yet the public interest takes on a much wider and amorphous shape when it is the basis for imposing restrictions on movement of assembly.

Similarly the application of national security laws disproportionately affects the political rights of citizens. Such application is frequently discriminatory. On the one hand, there is continued inaction against fundamentalist groups involves in brutal attacks on women or students,or against those who ferment violence on campuses across the country. On the other hand, those participating in peaceful political activities are arrested and detained.

There is wide political consensus for the repeal of national security legislation. The three major political alliances in their Joint Declaration of 19 November 1990, had resolved to repeal the SPA and all other black or repressive laws. The present ruling party was also a signatory to the Joint Declaration. We urge the immediate repeal of all such laws to ensure the protection of human rights in Bangladesh.

RECOMMENDATIONS

To ensure the full enjoyment of fundamental human rights and freedoms we recommend:

1. Ratification of the International Covenant on Civil and Political Rights and the Covention against Torture.

2. Strict and equal enforcement of Article 26(1) and article 26(2) and the repeal of Article 26(3), to ensure that all laws are consistent with fundamental rights.

3. Amendment of Article 141A-C, and clarification of terms such as "international disturbance" to restrict derogations from human rights "during states of emergency.

4. Repeal of all constitutional provisions sanctioning preventive detentions, in Art. 33(4)-33 of the Constitution.

5. Repeal of all black laws - national security laws which violate human rights including :
   - the Special Powers Act 1974
   - the Vested Property Act 1974
   - the Special Security Forces Act 1986
   - the Suppression of Terrorism Act 1992
6. Amendment of laws restricting the right to freedom of peace and freedom of speech:
   - section 505A of the Penal Code to include the following defences; that the statement was true, that there was no criminal intention behind the statement, that there were sufficient reasons to believe the statement to be true.
   - section 99A of the Criminal Procedure Code

7. Measures to ensure the legal and political accountability of the intelligence services and of all law enforcing agencies.

National Security Laws and Human Rights - Sri Lankan Experience

Kayananda Tiranugama / Lakmali Cabral

1. INTRODUCTION

During the last few years Sri Lanka has earned a bad reputation as one of the worst violators of human rights in the world. The country is governed under the emergeney Laws continuously for the last 10 years from July 1983 to date other than for a short spell of 6 months in 1989. According to certain estimates, between July 1987 and January 1992 over 60, ooo people have disappeared, mostly presumed be to extra-judicially killed. Human bodies burning on tyres on road sides was a common sight all over the country. Over 15,000 people were languishing in detention camps and police stations over long periods-3 to 4 years - without trial. Torture in custody was rampant. Detainees are indicted, tried and convicted solely on the basis of confessions extracted from them while they were in police custody.

Democratic rights of the people were greatly curtailed. Emergency powers were used to harass political opponents. Demonstrations and processions and picketing and strikes banned. Meetings were disrupted and freedom of expression threatened. Journalists were assaulted on numerous occasions. Rule of law was immensely weakened and a virtual police state was being created.

All these atrocities were committed under the emergency powers brought into being in the name of national security and the maintenance of public order.

2. NATIONAL SECURITY LAWS : HISTORICAL BACKGROUND

In Sri lanka there are two laws dealing with national security - The Public Security Ordinance(PSO) No. 25 of 1947 and the Prevention of Terrorism (Temporary Provisions) Act(PTA) no. 48 of 1979.

The Public Security Ordinance (PSO) was passed by the State Council on the eve of Sri Lanka, then Ceylon, gaining independence from the British colonial rulers. It was hurriedly passed to meet the threat of a general strike organised by the leftist trade unions, in June 1947.

The PSO, as amended today, enables the Executive to make Emergency Regulations which have the effect of laws passed by parliament by-passing the normal legislative process, where he is of the opinion that "inview of the existence or imminence of a state of public

emergency it is expedient so to do in the interest of public security and the preservation of public order or for the maintenance of suplies and services essential for public life."

The PSO was further strengthened in 1959 by an amendment adding part III to the Ordinance enabling the Executive to make Orders calling out the armed forces, declaring curfew, declaring essential services etc. Since then the PSO was extensively used on numerous occasions whenever there were threats of political turmoil, or general strikes. From March 1971 to December 1976 too Sri Lanka was continuously governed under the Emergency laws.

The prevention of Terrorism Act No. 48 1979 was enacted for the avowed purpose of cradicating the seperatist Tamil militanoy which was carrying on a guerrilla war against the security forces in the North and East of Sri Lanka, Originally this Act was meant to be in force for one year and later its operation extended annually. 1982 Amendment made it a permanent law in the country. Souhtern political forces supported the enactment of this act because it was originally intended to be used against the Tamils in the North. However when the Southern militancy arose in July 1987 it was used against them too.

3. THE PUBLIC SECURITY ORDINANCE

Both under th 1972 Constitution and the 1978 Constitution the PSO is deemed to be a law enacted by Parliament. The 1978 Constitution deals with Public Security in a seperate chapter(Ch.XVIII). Article 155 of the Constitution declares that the Emergency Regulations (ERs)have the legal effect of overriding, amending or suspending the opoeration of the provisions of any law other than the Constitution. The Supreme Court(SC) has held the PSO intra vires the Constitution.

S. 2 of the PSO enables the President in a State of Emergency to bring into operation part II of the PSO which vests him with extensive and wide powers to deal with the emergency situation. However the fact of the existence or the imminence of a state of emergency cannot be called in question in any Court of Law. The President is the sole judge of the existence or imminence of a state of emergency and of the necessity of bringing into operation the provisions of Part II. The SC has declared, "The existence of a state of emergency is not a justiciable matter which the Court could be called upon to determine by an objective test." It is sad to note our Courts imposing restrictions on their jurisdiction in view of the fact that there is no way to prevent the Executive from improperly using these wide powers for with political motives as when the Emergency was used to prevent the radical elements in the S.L.F.P from coming to power through Parliamentary Elections due in 1983

A Proclamation of Emergency must be approved by parliament within 14 days. Otherwise it lapses. Once proclaimed it remains in force for one month. Once a month it has to be

proclaimed again and approved by parliament. Though this provision for approval by parliament is an admirable provision to check abuse, it has become something mechanical. The experience in the past decade has shown that the ruling party with a clear majority in parliament gives an automatic assent to the continuance of emergency.

Once such a proclamation is made and part II is brought into operation S.5 of the PSO empowers the president to make such regulations as appear to him to be necessary or expedient in the interest of public security and the preservation of public order and the suppression of mutiny, riot or civil commotion or for the maintenance of supplies and services essential to the life of the community. These regulations commonly known as Emergency Regulations (ERs) are published in govt. Gazzette Extraordinary and come into effect immediately overriding all existing laws except the Constitution.

Only a few copies of such gazzattes are printed and no notification of the coming into operation of any new regulation is given to the public by way of newspapers or otherwise. These Gazzattes are hardly available thus leaving the judges, lawyers and the public in darkness as to their contents.

The president is the sole judge of the necessity to make ERs under S.5 of the PSO. Normally Courts would not review what the President has done. Nor is it competent to examine the reasonability of the ERs made. The president cannot be compelled to disclose his reasons. The President is only bound by the Article 155(2) of the Constitution.

S. 8 of the PSO ousts the jurisdiction of Courts to examine the validity of regulations, orders etc. made under the Emergency. Sometimes ERs thomselves contain ouster clauses. ER 17(10) states that a detention order made under ER 17(1) shall not be called in question in any court on any ground what soever. Reg. 55 of the ERs in 1971 ousted the jurisdiction of the SC to grant writ of Habeas Corpus. (This is no longer in force.) Despite these ouster clauses our SC has held in several cases that it had the jurisdiction to review the validity of ERs. However only in one case the SC held an ER ultra vires the constitution - Joseph Perera vs.A.G. 107/86(unreported).

4. EMERGENCY REGULATIONS AND FUNDAMENTAL RIGHTS

Chapter III of the constitution of Sri Lanka guarantees every person the right to freedom of thought, conscience and religion, freedom from torture, right to equality and equal protection of law without discrimination, freedom from arbitrary arrest, detention and punishment, freedom of speech, assembly, association, occupation and movement.

Those fundamental rights can be enjoyed subject to the restrictions that may be prescribed by law in the interest of national security, public order and in the protection of public health and morality or for the purpose of securing due recognition and respect for the rights and freedoms of others or of meeting the just requirements of the general welfare of a

democratic society. For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security. It further says that all existing written and unwritten law though inconsistant with the provisions of Chapter III shall remain valid and operative. Thus ERs can restrict the fundamental rights guaranteed by the constitution.

In a state of emergency the president can make laws bypassing Parliament. The ERs have the same legal effect as laws passed by the parliament. ERs prevail over any other law. They only cannot override or suspend the Constitution. ERs create new offences. ERs enhance penalties prescribed by the existing laws for various offences. e.g. under the normal law in Sri Lanka the punishment for possession of an unlicensed firearm is Rs.1000/-fine or one year jail sentence. Under ER 34 possession of an unauthorized firearm is punishable with rigorous imprisonment for a term not less than 10 years. ER 36 prescribes for the same offence death penalty or life imprisonment and forfeiture of all property. ERs give very wide powers of search, arrest and detention to the security forces. ERs authorize indefinite detention of persons without trial. They take away powers of the Courts to grant bail. ERs prohibit domonstrations, public processions and public meetings;impose press censorship; authorize closure of printing houses. ERs make provision for disposal of dead bodies without inquests. ERs lay down procedure for trial and punishment of offenders.

ERs have been made on many matters which have nothing to do with public security. e.g.Jssue of Driving License Cards; Amendment of Monetary Law Act; School Development Boards and provincial Boards of Education; Amendment of Universities Act; Anendment of Adoption of Children Ordinace. There are many other regulations like these which have been enacted through Emergency. These are clear instances of abuse of emergency powers and attempts to substitute normal legislative procedure by ERs.

5. ARREST AND DETENTION UNDER ERs and PTA

Under the normal law of Sri Lanka a person arrested has to be produced before a Magistrate within 24 hours of the arrest.

The PTA gives wide powers to the police. A Superintendent of police, or any other police officer not below the rank of a sub-inspector authorised in writing by a Supt. may without a warrant arrest any person, enter and search any premises, stop and search any individual or any vehicle and seize any document or thing connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity - S.6. Any person thus arrested can be kept in custody for a period not exceeding 72 hours without producing him before a Magistrate. Unless there is a detention order(DO) under S.9(1) he should be produced before a Magiotrate who can make order remanding that person till the conclusion of the trial of such person, The Magistrate has no jurisdiction to review the

grounds of arrest nor order the release of the person on ball. He can be released only with the consent of the Attorney General. Any police officer can remove a person thus remanded to any place for interrogation and from place to place for investigation purposes.

S.9(1) of the PTA authorises the Minister of Defence to detain a person suspected of unlawful activity against the state for a maximum period of 18 months without trial. The Do is issued by the Minister initially for a period of 3 months, which is renewable for a period of 3 months at a time. S.10 declares that an order made under S.9 shall be final and shall not be questioned in any court or tribunal by way of writ or otherwise.

Though the idea behind the requirement of renewal of DOs every 3 months seems to be for reviewing the necessity of detaining the persons any further, in practice DOs are automatically renewed and people detained under PTA are invariably kept in detention for the maximum duration and even more. It must be said however that our SC has held that detention under PTA is for purposes of investigation and not as a preventive measure and therefore detention after investigations are concluded or longer than is necessary for same is illegal and a violation of fundamental rights.

ERs give wider powers for arrest and detention. Under ER 18(1) any police officer or any member of the armed forces may search, detain for purposes of such search or arrest without warrant any person committing or has committed or whom he has reasonable ground for suspecting so to do or to have done an offence under ERs. Such person can be detained under ER 19 for a period 60 days, (Till February 1993 the maximum stood at 90 days.) on a DO issued by an Asst. Superintendent of police and the place of detention too decided by the police. Invariably people thus detained were detained in police stations or army camps.

Prior to December '89 the detaining officer was required to produce the detaince before a Magistrate within 30 days of such detention. This imparative requirement was seldom complied with and non-protection was held by our SC to be a violation of fundamental rights of such person.

An amendment to ER 19(1) made in December '91 required the Magistrates to visit the places of delention within their divisions at least once a month. If this requirement had been complied with it would have had a very salutary effect. However this provision was never given effect to as the Magistrates were unaware of this provision due to the non-availability of gazette notifications. Besides in the absence of a corresponding requirement on the part of the detaining authorities to inform the Magistrates of the arrest and the place of detention it was impossible to comply with this requirement. Though several national and international human rights NGOs requested the authorities to give effect to this provision they took no notice of it.

Persons other than members of the police and the armed forces too were given power to arrest under ER 18(1). This provision facilitated the mass scale disappearences of youth in the country in the past. The recent amendment to ERs removed these powers of arrest given

to persons other than the police and the armed forces.

6. PREVENTIVE DETENTION

ER 17(10 authorises the Secretary to the Ministry of Defence to order arrest and detention in custody of any person, with a view to preventing such person (a) from acting any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services; or (b) from acting in any manner contrary to the provisions of Reg. 41(2)(a) or (b) relating to essential services, or Reg. 26 relating to sedition and incitement. Under this regulation a person is kept in detention not because he has committed an offence. nor for the purpose of investigation, but to prevent him from doing anything mentioned therein.

There is no time limit prescribed for detention under this Reg. It can be indefinite. After July 1987 over 15000 people were kept in detention over long periods - many 3-4 years, without trial under ER 17(1). Still there are over 1500 people held in detention under this provision. Most of these detainees were not served with DOs nor were they informed of the reason for detention. They are not aware under what provision of law they are detained.

Both under the PTA and the ERs though the detainees have a right to make representation against their detention to the Advisory Board/Committee set up under these laws many of the detainees have not been provided an opportunity to do so. This is a Violation of their right recognised by law. These committees consist of retired Judges of the Court of Appeal or High Court. Secretary/Defence is not bound by the recommendation of the Committee. Despite the Committee's recommendation for release of detainees they continue to be detained.

Despite the ouster clause in ER 17(10), in several cases the SC reviewed the validity of DOs issued under ER 17(1). In early cases they gave a restricted interpretation. They held that it was the subjective opinion of the Secretary that mattered and that there was a strong presumption that a DO exfacie valid was made because the Secretary formed the opinion stated in it. In more recent cases the SC has adopted a more liberal approach. The Court held that the power to make DO is not unfettered and the test of reasonableness in the wide sence applies to it. The SC was also inolined to considor unduly long detention as a punishment imposed in violation of Article 13(4) of the constitution.

Apart from ER 17 and 18 ER 21 also deserves mention. Under this surrendees to the police, Armed Forces of to any public officer should be handed over to the custody of the Commissioner of Prisons or Commissioner General for Rehabilitation within 7 days (earlier within 28 days). It further states that such person shall remain in the custody of the Commissioner of Prisons/Commissioner General of Rehabilitation till he is released on an order by the Secretsry to the Ministry of Justice. However to the detrimony of surrendees

this latter provision was never given effect to and they too were detained under ER 17(1) and sent to detention camps instead of prisons, where they had to languish for years in preventive custody without their cases being processed.

These provisions relating to detention have been immensely abused causing gross violations of human rights. The law empowers detention under S.9 of the PTA and ER 18(1) only for investigation purposes. Once investigations are concluded, if there is no evidence the detainee must be immediately released; if there is evidence they should be prosecuted. Instead of taking legally due step all those who were detained under the above two provisions were brought under ER 17(1). The vast majority of those who were detained under Reg. 17(1) were people who cannot pose a threat to the security of the state. Most of them were village youth who were not involved in any act of violence. The allegation against most of them was that they did not inform the police about subversive activity, something which was unthinkable under the conditions prevailing at the time.

The detainess were subject to 3 fold punishment. First they were detained 2-3 years without trial. Then they were sent for rehabilitation 3-18 months. Order for rehabilitation is arbitrarily taken without giving a hearing to them. While being rehabilitated or after rehabilitation they are indicted in Courts on the basis of confessions extracted from them while in police custody.

7. TORTURE IN CUSTODY

Most of the detainees allege that they were assaulted or subjected to torture while in police and army custody. Since the detainees are held incommunicado, without access to lawyers they could not seek relief from the SC. However in a number of Fundamental Rights Applications the SC held that the detainees were subjected to torture and awarded compensation against the police.

Since under the PTA and ERs the detainees are held in custody in police stations and army campe for long periods, the police and army get an opportunity to assault them. Since the trials depend to a great extent on confessions and they can be convicted solely on the basis of confessions the detainees are invariably assaulted and tortured for extracting confessions from them.

8. CRIMINAL TRIALS UNDER PTA AND EMERGENCY REGULATIONS

In 1971 a special Criminal Justice Commission was set up to try those who were involved in 1971 youth uprising. The Law that created that commission is no longer in force. At present there are no special courts for trying those charged under national security laws in Sri Lanka. However both the PTA and the ERs lay down special procedure for the trial of

those charged under these laws.

Generally persons charged with committing offences under the PTA and the ERs are tried without a preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury. A person so indicted shall not be released on bail except with the consent of the Attorney General. In actual practice consent is withheld in a majority of cases.

Under the normal law of the country a statement made to a police officer by an accused person or while in police custody, whether it amounts to a confession or not, is not admissible in evidence in a trial against such person. But in a trial under PTA or ERs any statement or confession made by an accused to a police officer above the rank of an Assistant Superintendent of police is admissible in evidence against him. Such a statement can be proved not only against the maker himself but also as against any other person charged jointly with him, provided that such statement is collaborated in material particulars by other evidence.

A person can be convicted solely on the basis of cofessions extracted from them. In a recent case in Kandy High Court 3 young people, one a high school student, were convicted on a charge of collection of firearms under the PTA and sentenced to 16 years rigorous imprisonment. There was no complaint of collection or loss of firearms. No firearms were recovered from the posession of the accused or on their statements. Yet they were convicted solely on the basis of a statement in their confession recorded from them while they were in police custody that they collected a gun from a house in Kandy.

Evidence which is not admissible in a trial under the normal law has been made admissible in trials under the PTA and the ERs. A statement made before a Magistrate or at an identification parade by a person who is dead or who cannot he found is admissible in evidence. Documents found in the possession of persons accused of offences under the PTA or the ERs can be admitted in evidence without proof thereof, If there is a conbradiction between the evidence given by a witness at a trial under PTA and a statement made by him before a Magistrate previously, the Court can act upon the previous statement. A certificate purported to be under the hand of the Government Analyst shall be conclusive proof of the statements therein without the officer concerned being called to testify.

Thus it is apparent that the PTA and the ERs a severe departure from the normal law. At the conclusion of a trial what can a detainee expect? Take the case of a person accused of possession of an unauthorised gun. If charged under the normal law he is liable to a fine of Rs. 1000 or one year jail sentence. If charged under S.2(1)(g) of the PTA he is liable to a jail sentence between 5-20 years., if charged under ER 34 he is liable to a minimum sentence of 10 years R.I. However if he has the misfortune of being indicted under ER 36 he is liable to be punished with death or life imprisonment an forfeiture of all his property.

Even if a person is acquitted at the end of a trial there is no guarantee that he will be

released from custody. Until and unless the DO on him is revoked by the Secretary, Ministry of Defence he will be detained.

9. VIOLATION OF HUMAN RIGHTS AND DEMOCRATIC PROCESS BY NATIONAL SECURITY LAWS

* Public Security Ordinance has been used to subvert democratic process by declaring a state of emergency with ulterior political motives when there was no real threat to national security as when the emergency was made use of to prevent the left elements of the S.L.F.P from gaining power by detaining them prior to 1982 Referandum.

* The emergency is resorted to fro reasons of expediency in law making, thus circumventing the normal Parliamentary process e.g. the spate of ERs made for such issues as Validating Driving Licences; Issue of Driving License Cards; (Quality Control of) Edible Salt; Adoption of children etc. The above examples clearly show that matters which have no nexus to public security concerns and which should have been dealt with under normal law have been brought under the emergency powers.

* The emergency has been used to suppress oppesition political activities and deny legitimate democratic rights of the people: e.g. ERs titled Prevention of Subversive Political Activity. Although heading of ER seeks to prevent subversive political activity, it interferes with the normal functioning of specified institutions, viz., all workplaces, educational institutions and community residences etc.

* Workers' right to strike has been taken away by the ERs. ER 41 that deals with essential services states that a person employed in any work in connection with an essential service who absents himself from work is deemed to have vacated his employment and also is guilty of an offence. It further states that in certain essential services, referred to as specified services, the same consequence follows if an employee fails, when so required, to work outside normal working hours or on holidays, and notwithatanding that his action was in furtherance of a strike or other organised action. Almost everything has been included into the definition of essential services.

* Thousands of people who could never have posed a threat to national security have been held in detention over very long periods without trial in violation of their human rights.

* Detainees are held incustody in police stations for years with the result that many of them are subject to torture and cruel, degrading and in human treatment in violation of their human rights.

* Continued emergency poses a grave threat to the rule of law. Under ER the Police and the Armed Forces are vested with very wide powers of arrest, search and detention. They have got accustomed to emergency powers so much they tend to apply ERs to matters governed by the normal laws. Often it appears that the police consider ERs as the normal

law of the country.

* Powers given to the police, security forces and others under the ERs resulted in the large scale extra-judicial killings and tens of thousands of involuntary disappearences in the last few years.

10. SUGGESTED REMEDIAL MEASURES

* The state of emergency should be immediately lifted. Emergency has falled to achieve its declared objective of restoring law and order in the country.

* The power of the Executive to Proclaim Emergency should be made subject to judicial review. Especially where emergency is continued for years the Courts should be empowered to review the necessity of continuing with emergency.

* All obnoxious laws like the PTA should be repealed.

* Violations of human rights in the implementation of national security laws should be made criminally liable.

* Victims of violations of human rights under NSLs should be adequately compensated.

Human Rights Violations under National Security Laws in South Asia

Ravi Nair*

1. BACKGROUND

The present South Asian countries with the exception of Nepal and Bhutan had been under British colonial rule. During 200 years of its domination, the British promulgated various legislation in order to supress political dissent against colonialism.

After independence, the South Asian region witnessed a similar kind of diminution of democratic space. At the same time, ethnic conflicts due to arbitrary demarcation of boundaries during partition, political suppression and violent protest against the state in many parts of the region saw the introduction of National Security Laws in South Asia in clear violation of the internationally recognised standards for human rights. The modern South Asian state has dealt with political opposition, in a similar way to the colonial state before them.

There have been flagrant human rights violations under the national security laws. A brief and cursory analysis of the National Security Laws and human rights violations under these extra-constitutional legislations in South Asian countries would give a clear picture of existence of perpetual "emergency situation" in these countries.

2. NATIONAL SECURITY LAWS IN INDIA

On the surface, India is the largest functioning democracy with a parliament, judiciary, executive, an array of political parties representing the whole spectrum of political ideologies, and regular elections at national and state level. But scratch the surface, a different picture of political violence and human rights violations emerges.

Each area and each region of India face their own peculiar problems. In the North East the army enjoys virtually a free run in Assam, Manipur and Nagaland. In Bihar, the class divide among the peasantry is both sharp and frighteningly volatile.

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In Uttar Pradesh communal violence has taken its toll with the loss of many lives. Caste war and communal violence have become a fairly regular feature in Gujrat. In Andhra Pradesh, the government has distinguished itself by its single minded pursuit of the Naxalites. In Tamil Nadu, the press and the suspected Liberation Tigers of Tamil Ealam face the vendetta of the Chief Minister Ms Jayaram Jayalalitha. In Punjab, the state in the name of fighting terrorism has unleashed repression on innocent Sikhs. In Jammu and Kashmir, in the name of crowd control, the security forces massacre innocent civilians. National Scurity Laws in India covers the whole gamut of preventive detention legislation and anti-terrorist legislation.

The National Security Act, 1980 :

The National Security Act (NSA) permits detention of persons considered security risks; police anywhere in India (except Kashmir) [Kashmir has it's own Public Safety Act] may charge suspects under NSA provisions. The Jammu and Kashmir Public safety Act (1978) has corresponding procedures for that state. To be released from detention under the NSA, a court must determine that all grounds for detention are invalid. NSA detainees are permitted visits by family members and lawyers.

Under NSA's strong special and preventive detention provisions, a person may be detained for upto 1 year without charge or trial (2 years in Punjab) on loosely defined security grounds, but must be informed of the grounds for detention within 5 days of arrest and brought before an Advisory Board of three High Court judges within seven weeks of arrest. At that time, the detainee may be released on the basis of "insufficient grounds".

The Terrorist and Disruptive Activities (Prevention) Act :

The Terrorist and Distuptive Activities (Prevention) Act (TADA), though enacted in 1985 to fight terrorism in Punjab, is applicable to all States and all Indians abroad. In 1992, 23 of 25 State governments had formally invoked TADA, though a handful of States face actual insurgencies. The TADA is subject to renewal every 2 years and will be next expire in May 1995. The law was promulgated to punish those found guilty of Terrorist and distuptive acts with no less than five years imprisonment and up to the death penalty for certain terrorist crimes. Disruptive Activities are defined broadly to include speech or actions which disrupt or challenge the sovereignty or territorial intergrity of India. In some cases, the government has been accused of using the TADA in criminal procedures in order to avoid the lengthy process of building a criminal case. The TADA extends the period to 60 days during which a detainee may be held in police custody after remand by the court and allows additional administrative detention up to 1 year while an investionation proceeds. Persons held under the TADA must be presented within 24 hours before an executive

Magistrate, but this requirement is widely ignored.

The Terrorist and Distuptive Acitvities (Provention) Act (TADA) is a clear violation of international standards. A study of it's provisions clearly birngs out the incompatibility of TADA with international human rights standards.

Article 51(c) of the Constitution of India, proclaims that, "The State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized peoples one with another." India is singnatory of various international covenants, and the provisions of TADA contravene the promises made under these agreements.

The case for abiding by these covenants is strong;

Firstly, the government is bound to abide by the Constititution of India. They thus under Art. 51 have a duty to uphold these agreements.

Secondly, in the difficult area of national security legislation these international norms to which we have acceded are a useful minimum standard to ensure that the balance between security and the rights of the individual is respected.

Thirdly, by breaching these agreements the government is brought into disrepute in the international community, even to the extent of financial aid being threatened.

As a member of the United Nations, India subscribes to the UN Charter which enjoins member states to "achieve the promotion of universal respect for and observance of fundamental rights and freedoms."

India is also signatory to the Universal Declaration of Human Rights which was proclaimed as "the common standard of achievement for all peoples and all nations" in respect of human rights and which, it was agreed, "constitutes and obligation for the members of the international community". More pertinently, India is signatory to the International Covenant on Civil and Political Rights (ICCPR) which is a treaty which formally binds member-states to respect, ensure and take steps for the full achievement of a wide range of rights.

TADA offends against several provisions of the ICCPR:

1) By allowing detention of people for investigation for up to one year, it contravenes Art. 9(2) of the ICCPR which requires anyone who is arrested to "be informed at the time of his arrest of the reasons for his arrest" and "to be promptly informed of any charges against him."

2) By conferring a discretion on the arresting authority to produce the arrested person before an executive magistrate - instead of a judicial magistrate - TADA effectively disregards the requirement under Art. 9(4) of the ICCPR that anyone who is deprived of his liberty by arrest or detention shall be brought before a judicial body to decide on the lawfulness of the detention.

3) By requiring all trials to be conducted in camera, TADA falls foul of Art. 14(1) of the ICCPR part of which states, "In the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public

hearing by a competent, independent and impartial tribunal established by law."

The article countenances the exclusion, in certain strictly defined circumstances of the press and public from a trial, but by no stretch of the imagination can that exception be read to include a mandatory ban on open hearings. The paramount importance of open trials was emphasized by the Human Rights Committee in the following words:

> *"The publicity of hearings is an important safeguard in the interest of the individual and of society at large...it should be noted that, apart from such exceptional circumstances (as are listed in Art 14 (1)) a hearing must be open to the public in general, including members of the press, and must not for instance, be limited only to a particular category of persons. It should be noted that, even in cases in which the public is excluded from the trial, the judgement must, with strictly defined exceptions, be made public."*

4) By reversing the burden of proof so as to require the accused person to prove his innocence in certain circumstances, TADA clearly violates Art 14(2) of the ICCPR which enshrines the principle that "everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." The improtance of this principle was also underlined by the UN Human Rights Committee thus:

> *"···(T)he presumption of innocence···is fundamental to the protection of human rights···By reason of the presumption of innocence, the burden of proof of the charge is on the prosecution and the accused has the benefit of the doubt. No guilt can be presumed until the charge has been presumed beyond reasonable doubt···It is a duty for all public authorities to refrain from prejudging the outcome of a trial."*

It is also arguable that, by allowing the identity of witnesses to be kept secret at trials. TADA offends against Art 14(2) (e) which confers on the accused the right "to examine or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him."

Experience has shown that keeping the identity of witnesses secret hinders effective cross-examination by the accused and thus undermines the fairness of the trial.

5) The abridged appeal procedures under TADA seem to fall short of the internationally accepted standards of fair trial especially when viewed in the context of (a) the severe abridgement of other legal safeguards which trials under the Act entail; and (b) the fact that special courts under the Act are empowered to impose capital punishment. Although the

ICCPR contains no specific guidelines on what would be an acceptable regime of appeals, concern on this issue has been expressed time and time again in UN forums. In 1978 for instance, the General Assembly called upon all government to "review their legal rules and practices so as to guarantee the most careful legal procedures and the greatest possible safeguards for the accused in capital cases." Similarly, ECOSOC in 1989 urged governments to "(afford) special protection to persons facing charges for which the death penalty is provided by allowing time and facilities for the preparation of their defence, including the adequate assistance of counsel at every stage of the proceedings, above and beyond the protction afforded in non-capital cases."

6) By defining "terrorist" and "disruptive" activities so broadly as to bring within their sweep several acts of peaceful legitimate dissent, and by prescribing a harsh mandatory minimum sentence for such acts, TADA effectively leaves the door open for arbitrary detentin.

Many of these concerns were highlighted by the UN Human Rights Committee during its examination of India's second periodic report under the ICCPR in March 1991.

The Jammu and Kashmir Public Safety Act :

The Jammu and Kashmir Public Safety Act, 1978, permits detention for acts considered prejudicial to the security of the State for a maximum of two years. Political prisoners have been detained without trial under it for engaging in alleged "anti national activities"; For example one was released by Court order in December 1987, when the State High Court declared the newly introduced section 10-A of the act unconstitutional. Section 10-A permits detention on any of the grounds sepcified by the Deputy Commissioner of a district. Under the original Act a person had to be released even if one of the detention grounds was found to be invalid and unreasonable; but the new section 10-A, incorporated into the Act in early 1987, permits detention for "prejudicial activities" even if only one ground was found to be valid. The Court ruled out that section 10-A removed existing constitutional safeguards and infringed the fundamental rights guaranteed in the Constitution. The Court ordered the release of an alleged member of Muslim United Front, saying that the detainee was not given any material with which he could have made an effective representation aganist his detention, as the Constitution required.

The Terrorist Affected Areas (Special Courts) Act, the Disturbed Areas Act, the Armed Forces Special Powers Act, the Unlawful Activities Prevention Act and other state level Acts also form part of the States repressive armory in India.

3. THE NATIONAL SECURITY LAWS IN PAKISTAN

Unlike India, Pakistan experienced the conflict between the military dictators and the democratic forces immediately after its inception. The military continues to play the pivotal role in Pakistan politics. The National Security Laws like **Maintenace of Public Order Ordinance and Prevention of Anti-National Activities Act of 1974** are extensively used for preventive detention.

The Maintenance of Public Order Ordinance (MPO) empowers the authorities to detain people for up to three months if there are any grounds to believe that they are "acting in any manner prejudicial to public safety or the maintenance of public order". A review board may extend such detention upto eight or 12 months, depending on the grounds of detention. Detention order under the MPO - though the MPO is a detention instrument of the executive - are subject to judicial review by way of appeal to the Provincial High Court.

Under the provision of the Anti-National Activities Act of 1974 the magistrate may not proceed to register a complaint and order remand on the basis of the First Information Report submitted by the police. Rather some further information requirements have to be fulfilled: Section 16 of the Prevention of Anti-National Activities Act of 1974 states that "no court shall take cognizance of any offence punishable under the Act except with the previous sanction of the Federal Government or Provincial Government or any other officer authorised by the entire government···". The sanction issued by the government must specify names of persons, facts allegedly constituting the offence and reasons for issuing the sanction. Further, Section 3 requires that a notification be issued by the government which declares the organization concerned an anti-national organization.

Besides these legislations, Pakistan witnessed promulgation of Special Courts for speedy trial in violation of Article 9 and 14 of International Covenant on Civil and Political Rights(ICCPR). The establishment of "speedy trial" court under the **Suppression of Terrorist Activities (Special Courts) Act of 1975** to try the cases involving crimes of terrorist is a case in point. In 1987 another ordinance was passed establishing special speedy trial courts. The jurisdictional authority of both types of special courts was modified under amendments made in 1983 and they continue to operate since that time. In August 1991, the President promulgated new versions of the **Terrorists Affected Areas (Special Courts) Ordinance and Special Courts for Speedy Trials Ordinance.**

4. THE NATIONAL SECURITY LAWS IN SRI LANKA

Sri Lanka is constitutional, multiparty form of government with a strong executive

presidency and a unicameral legislature elected by universal adult franchise. For the last 10 years, it has been effected with violent ethnic conflicts between the government and the Liberation Tigers of Tamil Ealam (LTTE), an organization fighting for a separate state for the Tamil minorities in the north east. The government also ruthlessly suppresed the Janata Vimukti Perumana (JVP) extremists in the south.

Prevention of Terrorism Act (PTA), adopted in 1979, and the **Emergency Regulations (ER)**, both of which must be reviewed monthly by parliament with the extension of emergency in effect since 1983. The Prevention of Terrorism Act gives wide powers such as preventive and incommunicado detention. A person held under PTA may be detained without any charge up to 18 months. There have been cases in which persons have been detained longer.

Under the Emergency Regulations, security persons may detain a suspect for upto three months before he must be presented to the magistrate. Magistrates are not empowered to investigate the circumstances leading to a person's arrest and continued detention but must send him to a prison where he may be held in preventive detention indefinitely. Courts may grant bails for persons held under the ER, but this happens only infrequently, once charged the PTA detainees are ineligible for bail. Visits by family and access to lawyer are normally restricted under these laws.

The High Court may order that any detainee be produced at any time, and persons detained under the ER and PTA may challenge the legality of their detention by filing habeas corpus petitions in Court of Appeals or by charging the gorvernment of violating fundamental constitutional rights.

5. THE NATIONAL SECURITY LAWS IN NEPAL

Nepal is presently a constitutional monarchy with a democratic, parliamentary form of government. Till 1990, it was an absolute monarchy. But in 1990 the King legalized political parties after a bloody democratic movement and promulgated a new Constitution. Under the new constitution, the King effectively disassociated himself from the exercise of powers but retains important residual powers. The parliament consists of House of Representiatives (Lower House) and the National Council (Upper House).

During the Movement to Restore Democracy (MRD) in 1990, the **Public Security Act** was often used to detain and arrest peoples. The new democratic government in 1991 amended the Act. It permits the Home Ministry to detain an individual for upto six months upon presentation of written notice that includes "grounds and reason". The district court must be notified of the detention within 24 hours. It may extend the period of detention once, for an additional six months, before charges must be filed. The grounds for detention under

the Act are open to broad interpretation; to ensure the security of Nepal; order and tranquility inside Nepal; amicable relations among people of different classes or religion within Nepal. Persons detained under this Act are considered to be in preventive detention and are brought to trial.

6. THE NATIONAL SECURITY LAWS IN BHUTAN

Bhutan is ruled by the Wangchuk dynasty of hereditary monarchs. The third monarch of Wangchuk dynasty King Jigme Dorji Wangchuck (1952-72) took several steps to move the Kingdom towards a more representative political system including the National Assembly (1953), the Royal Advisory Council (1965) and the Council of Ministers.

Bhutan does not have a written constitution or bill of rights. There is no guarantee for arbitrary arrests and detention in Bhutan. Human rights activists reported that hundred of activists belonging to the Human Rights Organization of Bhutan, Bhutan National Democratic Party are allegedly being detained in jails and detention centres. International Committee for Red Cross also confirmed this after its visit to Bhutan in early January 1993.

7. THE NATIONAL SECURITY LAWS IN BANGLADESH

Immediately after liberation, Bangladesh was struck with serious famines in 1973-74. Hundreds of people died due to starvation. The crisis was largely due to hoarding of rice.

The Shiekh Mujubur Rehman Government also ruthlessly suppressed the leftist movement in Bangladesh. Bangladesh saw the emergence of **Special Powers Act, 1974.**

The Special Powers Act (SPA), 1974 which is repugnant to fundamental rights of the people is still in force in Bangladesh despite Begum Khaleda Zia's promise to abolish the Act during the 1991 election campaign. The broad powers of administrative detention available under the SPA, 1974 had often been used to arbitrarily arrest and detain the political opponents and as well as against the Jummas (tribal communities) in the Chittagong hill tracts without charge or trial in contravention of internationally recognized human rights standards.

Under the SPA (SPA), a person can be detained without any charge for an initial period of 30 days to prevent the commission of any "prejudicial act" as loosely defined in the legislation. Detentions under SPA are not subject to judicial review until after six months. In practice a lawyer is not allowed to see the detainee until a specific charge has been filed.

The Bangladesh National Party placed an "Anti Terrorism Bill" before the Parliamentary Special Committee in February 1992 after widespread resistance from the Opposition. Information Minister Mr. Nazmul Huda speaking at a Public rally on 27 February 1992 said

that it would be used against the Shanti Bahini. The Home Minister Mr. Abdul Matin Chowdhury also criticized violence by the Shanti Bahinis.

The "Anti Terrorism Bill" was introduced by the government as an **Anti Terrorism Ordinance** on 15 September 1992 and was apporved by the Parliament on 6 November 1992. The new law entitled **"the Suppression of Terroristic Offences Bill"** provides that special tribunals will be created to try various offences within specified and compressed time frames. The law prescribes death penalty and life imprisonment. No warrants will be required for the arrest, and during investigatory stage of one month no bail may be set for the detainee.

8. THE EVIDENCE

The ever increasing legislation of National Security Laws, undermining the respect for the rule of the law, represent a pattern and point to a situation in South Asia in which the belief in the principles of human rights are being classified as subversive. Legitimate political dissent in democratic polity and social discontent is being suppressed ruthlessly under the pretext of threat to National Security. The concept and notion of "national security" have been inclucated in such a way in the mind of the people that "under the national security curtain", the security forces can run amuck over the peaceful demonstrators or sleepy hilltop villages with absolute impunity and without any public outcry for accountability.

Thousands of peoples have been arrested and continue to be detained under National Security Laws without any charge or trial. The detainees are tortured, kept incommunicado and in many occassions arrest under these laws lead to disappearances. The victims comes from all walks of life. The journalists, the rival political activists, the peasants, the suspected members of the armed opposition groups, the civilians who willingly or unwillingly abet the armed opposition groups are behind the bars. The Government of India in 1991 stated that around 48,000 people have been arrested under the Terrorist and Disruptive Activities (Prevention) Act.

International and national human rights monitors have consistently exposed the misuse of National Security Laws while moitoring the human rights situation in the region. These legislations on many occassions violate the very basis of their Constitution and internationally recognized human rights standards like the Universal Declaration on Human Rights and International Convenant on Civil and Political Rights. The United Nations Human Rights Committee on many occassions brought under its scrutiny the human rights violations under these terms and human rights violations under the entire gamut of National Security Laws, till date, there has been an absence of through research study of human rights violations under these laws in South Asia.

NATIONAL SECURITY STATE : THAILAND EXPERIENCES[1)]

Boonthan T. Verawongse

1. HISTORICAL BACKGROUND

In the past, Thai society was under absolute monarchy with slavery and the patronalistic system. The slave was levied to pay tax and supply labour to the state.

Before 1855, the Thai economic system was self-subsistent. The production was for community self consuption. the trade relationship was based on barter system and foreign trade was dominated by the King.

During the colonial period, when most of our neighbour countries were colonized by the French and British superpower, Thailand faced a critical political problems. Finally, in 1855 Thailand signed the Bowling Treaty with the British colonist, then French and other western countries followed. That made Thaliland politically independent, but it lost independence in economics. The selfneeds like weaving was also decreased. The changes of the economic system led to the rapidly growth of the monetary system, the market system which had never junctioned before became very important.

In this marketting system, the Chiness migrants who were experienced in trade, play the role of "middle men" between the state and the communities, at the same time, they were the "Tax collectors" for the king. Such kind of relationship was the basis of the Thai Capitalists are not independent, they have to ally themselves with the ruling class. The changes of the economic system and the critical political problems resulted ot the social reform of King Rama V. Thailand began to be "modernized" in every aspect eg. the abolishment of slavery, the reformation of politics, administration and education system; the building up of the infrastructure. Since then Thailand has gradually become part of the world capitalistic system. The other important result production of this social reform was the emergence of the middle class or bourgeosis due to the need of educated people to govern the country in Western

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* This paper was prepared to present at the consultation on National Security State in Manila, January 1992.

style. The government sent students to study in Europe in order to be government officials when they come back. They came back to the country with Western Style democratic edeology. In 1932, these groups of intellectuals played a leading role in changing the political system from absolute monarchy to democracy. Some factors leading to this change were the serious economic crisis that King Rama VII had to cut down the salary of government officers and the impact of nationalist and the patriotic movement that struggled for independence from western colonisers.

The period of 1932 - 1960

The political change in 1932 led by the "People's Revolution Committee", the new Western-educated intellectuals, is not the revolution for the bourgeoise nor for the capitalist class due to the fact that many of these leaders used to belong to the alliance of the ruling class. Those leaders who were the representative of the nobles and the government officers who aimed to develope the country by westernization were strongly objected. At the same time, the military grasped the absolute power in government and society.

The People Revolution Committee or "Ka Na Ras Dorn" tried to takeover the economic power of the country under the so-called "State Capitalism" system. Many stat enterprises were set up. The right wing of the "Ka Na Ras Sa Dorn" led by the military, Field Marshall Piboonsongkram, committed a coup d'etat in 1949. This was the begining of military domination in Thai politics until present. The failure of "state capitalism" gave way to the growth of Chinese capialists who had strong economic power in Thai society. They entered the political circle by inviting the political elites to take part in their business as the committed member or chairperson. This was am means to exercise the political power for economic benefit.

This was how the capitalism developed as a means of production in Thai society. Capitalism has dominated both the political and economic power of the country. The political power is in the hands of themilitary, capitalists and nobles which are three main groups that comprisesthe ruling class today.

The period of 1960 - 1973

After the coup d'etat in 1949, Thai politics was not yet under absolute dictatorship. General Field Marshall Sarit Thanarat committed another coup d'etat in 1958 and governed the state under his absolute dictatorship. This was an era that Thailand was under the

dependent capitalism, controlled by the US. Industrialization was developed as a model of economical development. The so-called "First National Socio-economic Development Plan" began in 1961, it promoted investement, particularly from the west, Thai government saw the cheap labour as a main factor to attract the foreign investros with sort of privilege labour as a main factor to attract the foreign investore with sort of privilege to the industrial and business sectors. The agriculture setor was neglected while the infrastructure for supporting the industries and capitalism were full scale constructed in order to expolit the economic surplus from the agriculture sector to the industrial sector. Through this approach, all of the benefits certainly flew into the hands only of the minority ruling class. In summary, at this period of time Thailand became actively involved into the international division of labour of the world capitalism. And it was the time of economic boom in Thai recent history. The ruling class was using the absolute dictatorial power to control the society, meanwhile the workers and peasants sufferedthe serere poverty.

The industrialization has created improtant change such as the expansion ofthe middle class in cities. Since the urban middle class has conflicts with the political structure, they became the main force of the important change in the contemporary Thai hstrory: October 14, 1973 incident. The explanation of this is that the development of 1950 -1973 has expanded the economy in every aspects, it required more technocrats, executives, lawyers, economists, etc. However, the political structure was stagnant under the absolute military dictatorship and restrictive bureaucracy which transfered the power continusously from Field Marshall Sarit Thanarat to Thanom Kitiakajorn. It can be claimed that only few persons had controlled Thailand throughout this decade.

As mentioned above, the allocation of benefit among 3 main leading groups worsened the political situation with the favour of the military and bureaucracy who earned most of the benefit. The situation, of course, impeded the expansion of the Thai capitalism. Eventually, under the leading of the middle class students as the frontline had overthrown this dictatorship on October 14, 1973.

The period of 1973 - 1976

The October 14, 1973 incident has a strong impact to the Thai society socially and politically. The struggling people eg. the workers, peasants, profeddionals, students, intellectuals have played a very active role during this 3 years period. This because it was the first time that the people have an opportunity to enjoy their democratic freedom openly as it was called "the flowers of democracy bloom".

Political polarization took place during this period. The conservative forces were dissatisfied with the changing trend because they felt that they were going tho lose their power.

In March 1976, the students led massive rally against the presence of US military bases in Thailand was succeeded. Therefore, the plots against the students and democratic movement were employed. The conservative forces led the armed forces to surround and brutally massacre students and demonstrators (who were rallying against the come back of the dictator oustde and fled the country in 1976) in Thammasat University on October 6, 1976. The coup d'etat was carried out at the same time. Hundreds were killed while more than 3,000 arrested and charged as the communists suspects.

After October 6, 1976, Thailand was under the absolute military power until October 1978 military coup (again) carried by Gen. Kriengsak Chamand. There was some relaxation of political tension, a general election was held under the semi-democratic constitution. The polical atmosphere became better afterward eventhough there was so many conflicts between the politicians and the bureaucrat - military, and among the politicians. But still, the military tried to influence the government in many means and cases. After the down Kriengsak, the military backed Gen. Prem Tinsulanond to be the new Prime Miniser in 1980 until 1988. This sort of intervention and influences had been remained until they committed another military coup against civilian-led Chatichai's government on February 23, 1991. It can be said that there were around 4-5 military coups since 1976 which many of them were aborthed.

In summary, from 1932 revolve (from the absolute monarchy to constitutional monarchy - democratic system) up to now, there were more than 20 military coups.

{ 20 coups during the last 60 years ! }

2. NATIONAL SECURITY STATE AND THAILAND

Internationally, since Mao Tze Dong's victory over KMT in 1949, the US decided to lay down its Policy of Containment aiming at the prevention of the Communist influences in Southeast Asia. Thailand was being used as an important strategical spot for this counter-insurgency scheme. In February 1950, the US convened its all Far East based American Diplomats Conference in Bangkok and emphasized on this matter. The US Ambassador met Field Marshall Piboonsongkram (the Thai Prime Minister at that time) and askingfor support to the anti-communism campaign. Not long after that, President Truman of

the US approved a big sum of military aid packages to Thailand. In late 1950, the Treaty on economic, technical and the military aid was signed between Thailand and the US.

During that period, the propaganda on the anti-communist was intensifide in many third world countries especially the areas close to the socialist countries.

Regionally, in Southeast Asia, the tensions in Indochina during the past decade, i.e. Vietnam's presences in Kampuchea, China's conflicts over Vietnam, Thailand's fears as a border state facing the tensions and problems cause by the unresolved situation in Kampuchea, had affect the region. The political and military stalemate over Indochina, however has brought the six ASEAN states close together, even if there are differences within them, as to how the problems should be solved. Malaysia and Indonesia are more strongly infavour of keeping out big-power involvement in Southeast Asia, as also infavour of keeping out big-power involvement in Southeast Asia, as also in favour of keeping "in check" China. Thailand as a border state directly facing the tensions, Singapore as a city-state with its own in-built fears for its security and stability and Philippines with its ties to the US and given its continuing internal troubles and unrest, are advocating a different approach (form Malaysia and Indonesia) to the situations in Indochina.

Burma, (now renamed as Myanmar) the neighbour in the western part of Thailand, also one of the itching issues in relating the security question. In the past, the ethnic minorities living along the Thai and Burma border were the buffer between both countries. But since the brutal massacre and bloody coup in 1988, the buffer zone had change to be the battle fields drastically. Thousand of students and people fled to the Thai border to seek refuge. But they were not so welcomed by the Thai authorities. This conflict in Burma may not ended easily in the ordinary way.

Laws and Military Orders

A) The Martial Law Act 1914

Although this law was promulgated during the reign of King Rama VI (1910 - 1925), it has continude to be enforced until the present time.

The law stipulates that in order to maintain peace and order and to prevent both internal and external threats, all of some of the articles or part of an artcle of the Martial Law Act can be imposed incertain parts or all over the country.

Artcl 15/2 of the Martial Law Act empowers military authorities to detain persons for interogation if they are suspected to be hostile to the country. The detention period cannot exceed 7 days. After that if there is sufficient evidence the suspect has to be turned over to the police for further investigations.

B) The Prevention of Communist Activities Act 1952

This Act was enacted on 13th November 1952 after the mass arrest of suspects against national security (the so-called "Peace Rebellion") some six years after the first Communist Law of 1933 had been revoked.

It can be said that the PCAA 1952 was just followed the "subversive Activities Acts" of the US which was drafted 2 years earlier in 1949. The purposes were to serve the US benefits both politically and economically.

* The terms "communism" and "communist activity" according to the 1933 Communist Act were defined as follows:-

"Communsim" means economic methods or economic principles which aim at the abolition of all or part of private ownership of properties by the state or collective ownership of the people instead.

"Communist" means the nationalisation of land or industry or capital labour. However, the definition of "communism" was greatly broadened to cover a much wider scope in 1976 by Order No. 25 of the National Administrative Reform Council, to include the following as well:

"Communist organizations" means -

(a) Any group of persons or any party which aims to do communist activities, directly directly or otherwise.

(b) The Communist Party of Thailand (CPT) or the various levels of the organizations of the CPT, from top to bottom, i.e. the CPT General Assembly, the central committee, the regional committee, the provincial committee, the district committee, the sub-district committee, the village committee, the factory organization, the cells, the political department, the organizational department, the propaganda department, the united front department, other leading organizations etc.

(c) Organization of CPT which use other names, such as the Liberation Army of Thailand (LAT), the National Patriotic Front of Thailand, the Sovereignty Movement of

Thailand, the Democratic Youth Federation of Thailand, etc. or

(d) The armed Communist terrorists using such names as the Royal Soldiers, the Basic Soldier, the Local Soldiers, the Villaga Soldiers or the Mobile Village Soldiers, etc.

"Communist activities" refer to the penetration, the propaganda, the instigation, the sabotage, the destruction, the coercion by forec, or any other activities which aims -

(a) To undermine the sccurity of the national, the monarchy or the democratic system of government with the King as the Head.

(b) To bring about the change in the national economic system, causing private property to be nationalized without any just compensation or

(c) To re-organize a new social order based on the principle of common ownership of properties, except those organized as multi - purpose cooperatives according to the laws governing such matters.

C) Military Decrees and Orders

Whenever there were coups, the military junta exercised the special absolute power to do anything they want (including the impose over the Supreme Court of the Judicial system). Most of them (more than 600 items) vioiated the democratic and human rights principle are still existing.

It is very ridiculous that even the elected House of the Representative Members were not able to abolis those military decrees and orders.

D) Special powers of the Prime Minister

In the past, during periods when the country has been ruled under an interim Constitution, (that is after the coup d'etat), the Prime Minister of the day has been given wide powers to issue orders on matters of "national security".

These special powers have included the power to order the imprisonment or execution of persons without trial.

Nationally, the National Security State is being implemented in various approaches and aspects such as political, economic, social and cultural.

Forms of implementation / action:

Overthrown the established government / seizing power

- Abfolish the constitution
- Dissolve the Parliament
- Set up the Military Court
- Political suppression eg. crackdown, wipe out / arrests, harassments, hamletting, executions, censorship
- Create the conflicts among the people
- Socialization / brain-wash and Ideological control
- High Military and Defense Expenditures
- Seizing the people's land for their own purposes, Land eviction
- Propaganda through various programs eg. Green-Isarn, etc.
- Ban the social groups / organizations, Trade Unions, Student organizations and the democratic movement

Structure / Mechanism / Instrumentalities

- Military Junta (Now - the National Peace Keeping Council - NPKC)
- Internal Security Operation Command (ISOC) response to civil affairs
- National Security Council (ISC) or known as CIA - Thailand
- National Security Fund (NSF)
- Border Patrol Police
- Special Branch, Police Department
- Squad Units
- Paramilitary
- Thai Volunteer Defence Forces
- Village Scout
- Mass Media (TV - 2 channels out of 5, Radio Broadcatsting - more than 400 stations all

over the countries were controled by the military) etc.

- Most of the Public (state) Enterprise are controlled by the military leaders or ex-leaders (in form of Chairmanship, Presidentship of those firms as awards)

Approaches

- Socio- cultural approaches / Psychological warfares / propaganda / images building
- Political approaches
- Military approaches

Cases and experiences

Recently

① The intention to ban the Public Enterprise Trade Unions
② An arrest of Conservationist Monk and the people at Dong-Yai
③ Land eviction of the tribals at Mae-Rim, Chiengmai
④ Land Allotment Project (Khor Jor Kor)
⑤ Purchase of arms, ammunitions
and F-16 Jet Figthers (US$ 607 million).
Military Expenditure / Foreign Debts / Arms Race
⑥ Indochina Conflicts
⑦ National resources and natural resources
⑧ Political situation after the military coup 23 February 1991.

Victims

Who are the victims then ? Military ? The people ?

Remarks:

Once an expert on international affairs says:

"The doctrine of national security was born in the USA after the Second World War and spread to the Third World. Its fullest expression is the thesisof flexible response and its emphasis on counter- insurgency warfare. Some of its theoreticians were French military men following the Indochinese and Algerian wars. But the American developed it. Its first experience was in the Philippines, afterwards Korea, Vietnam and Indonesia, and after the Cuban revolution in Latin America".

"According to theoreticians of national security doctrines, internal subversion is the most important threat to national security. The main front is the internal front. This means that there is a latent and permanent war between the State and an enemy who is identified within the people. The characterization of subversion as the enemy is wide and limitless 'subversion is more than the mere objective emergence of an armed group. The phenomenon of subversion is much more complex, profoud and global'. Theoreticians of counter-insurgency warfare have pointed out that the enemy is found everywhere and anybody providing him aid,

even at the humanitarian level must be considered an enemy as well. While the theory has been developed primarily in Latin America its application to South East Asia and Korea is evident. These are all allied to the United Ststes. The conflicts related to Indochina and the Soviet and China roles in them have only stimulated the union between militarization and national security".

Human Rights Violations under National Security Laws in Burma[1)]

Kyaw Thi Hao / Myint Shwe

To : Dear and respected friends,

First we need to apologise you for our long delay in replying you. We have received your fax in time and are pleased to know that our Korean brothers and sisters ard able to be hardworking on Human Rights matters, the work we are dedicated to do so. We are also happy to learn that Korea NGOs' Network is appointed as coordinator with a special emphasis on NSLs in the comming Vienna meeting.

We would like to answer your letter in the following arrangement.

1. Vienna Meeting

We are sorry to imform you that we are in no position to attend this meeting. As you may have known generally, our Burma Human Rights Committee which came into existence two years ago is an organization in exile since no peoples' Organization of its kind could survive within the boundry of Burma due to the harshest perecutions of Burmese military government. So we have found B.H.R,C in Thailand, having most closest relations with it, while we ourselves have to live here as political refugees without having adequate documents as to live, move, and act freely in Thailand which eventually made us practical difficulties in participation of international Human Rights Movements.

2. National Security Laws

Please permit us to say firstly that your line of approach on this issue is the best way to present the matter since laws unmistakably are the reflection of every civilised

* This letter was sent as answers to the Questionnaire distributed by KONUCH for the purpose of preparing the event during the World Conference on Human Rights in Vienna. As mentioned above, it has been impossible for us to contact with the authors since we had received this letter probably because of authors' unstable status in Thailand. The editor decided to include their letter in this booklet. KONUCH's Questionnaire is attached hereto for reference.

infrastructure. On the other hand, it is a relatively easy method for many Asian countries as many of them had been fallen under a colonial power, eithor British or Franch, that made their legal systems largely in similar patterns. For exemple, Burma fell under British colonialism so that her criminal, civil and commercial laws were developed along the line India, another colonialised nation under British rule, has developed. In fact the Penal Code which is still using in Burmess courts is the same Indian. Penal Code made by Lord Mac Caulay originally meant for Indian courts. So is the 1923 official Secrets Act and other dozens of civil and commercial acts. In our opinion, all former British colonialised nations in Asia namely India, Pakistan, Sri Lanka, Bangladesh, Burma, Malaysia, Singapore, Hong Kong and Mauritious may have largely the same legal systems and the same laws. But as for Burma, which had unfortunately undergone a socialist dictatorship, there had been more laws to curb the free developement of th individual in almost every direction, After the great 1988 uprisings in Burma, the military rulers has changed the direction firstly in the national economy that requires them to repeal the old socialist economic laws. However, they still has maintained some Acts made aiming to restraint the freedom of the people, from what is now officially but not actually passed away socialist society. To curb the freedoms of the peoples in the name of national security is an old excuse used by all oppressive governments. In this respect, Burmese military government is second to none by using all oppressive laws handed down by the British, by the former civilian government, by the former socialist goverment and the freshly made new ones, in the form of orders issued by the State Law and Order Restoration Council (SLORC). So to list the laws against Human Rights in the name of National Security in Burma, we have

A. The 1923 Official Secrets Acts.

B. The 1950 Emergency Provisions Acts.

C. The 1957 Unlawful Associations Act.

D. The 1962 Printers and Publishers Registration Law.

E. The 1975 Protection of State law (also known as the Law to safeguard the state from the
dangers of Destructive Elements)

F. The Penal Code (certain sections)

G. All Decrees and Orders issued by SLORC after it came into power in September 1988 and after.

In reviewing the above mentional laws the Penal Code and the 1923 Official Secrets Act and the various other code were handed down by the British as well as the 1950 Emergency Provisions Act and the 1957 Unlawful Associations Act were promugated in the regions of

civilian governments before 1962 military takeover. After 1962 the military government has made a series of new laws specially aimed at the freedoms of all sort. Most notorious among these are the 1962 Printers and Publishers Registration Act which was made to abolish the freedoms of expression in the form of criticisms against the government and the 1975 Protection of the State law specially made for those enemies of the socialist regime. On the other hand the current military ruling body in Burma is using the old Indian Penal Code, especially Section 124, 124(A) defining blasphemy aginst the government and its conviction, and Section 122, 122(1)(2) defining High Treason and its conviction, for its own end repeatedly. Because it is more proper for them since these promulgations were not their own invention but just inherited from the distant ancester, i.e the British Colonial Administration.

To add these laws left by former governments in their supressions of Human Rights in the excuse of national security measures, the present regime, which is characterised by brutality, has decreed dozens of Martial law Orders since it came to power five years ago. All these orders issued by the State Law and Order Restoration Council of Burma can be categorised as NSLs by seeing their official title given by themselves. Moreover, this ruling body is the army which has set itself the so-called Our Responsibilities of 3 Causes. (Doh Tar Won Ah Yay thone Par- in Burmese).

- Not to disintegrate the Union.
- Not to disintegrate the national unity.
- To survive and to perpetuate the national soverignty.

They have been issuing countless numbers of Martial Law Orders up to 1991 and recently as SLORC Orders in the spirit of above reported(Doh Tar Won etc..). In this light they became NSLs themselves.

Atteched with this letter is how or in what manner SLORC, i.e the Burmese military government is using these laws in the name of national security. (Source....pls, see in Martin Smith "STATE OF FEAR" published by Article 19.).

3. Special Agencies in Enfercing NSLs in Burma

Burma has about half a dozen special agencies in enforcing NSLs.

A. Since early 1960s, Burma Army has Military Interllient Services(MIS) at its disposal. These MIS were responsible in dealings with anti-government students, U.Gs, or insurgents. In those days M.I(6) and M.I(7) were the mostly feared branches in the country. Today, Burmese authorities have more than nineteen M.I branches. They make all suspect huntings, interrogatings, torture and forced confessions from the victims; before bringing them to the magistrate or to the military tribunal these days. They are responsible in enforcing all NSLs

from the Benal Code, Unlawful Associations Acts etc.. down to the Marshal Law Orders issued by SLORC.

B. In addition to these military intelligent units under Ministry of Defence, there are also the Special Branch(S.B) under Home Ministry, which is mainly responsible for gathering information about the movements of students, workers, government servants and intellectuals in the cities. They are called "Information Units" in other words, All these MIS and S.B units were integrated into one body of National Intelligent Bureau(N.I.B) under a Director-General responsible only to Ne Win the strongman of Bruma since 1962 up to now. However when SLORC has staged second coup in September 1988 on the behest of the same strongman, Ne Win, these forces were transformed into "Directorate of Defence Service and Intelligent" (D.D.S.I) under Lt. General Khin Nyunt, the latest protege of Ne Win thesedays.

C. As of the freedoms of expression, all printing and audio, visual bussinesses such as film, video tapes and music and lyrics are under the administration of 1962 Printers and Publisher Registeration Act. The special agency for this purpose, the Press Scrutiny Board(P.S.B) was set up with the inception of this Law. MIS officers were always appointed as Ex-officio Director of P.S.B. Though censorship was generally practised in most countries, they greatly differed in purpose and degree of punishment from Burmese practic which has special emphasis on national security aspect.(Pls, see the papers enclosed).

D. The fourth and most effective kind of agencies enforcing NSLs are various levels of law and Order Restoration Councils. There are community level, Township level, Division level and finally State level ie: State Law and Order Restroation Council(SLORC). Each level is responsible to its immediate upper level. The most hardworking is the community level L.O.R.C that register and report the movement of local residents and strangers; implement government orders, try minor cases with arbitrary powers and cooperation with local police departmant and township level and so on.

E. Military Tribunals; The past Burma Socialist Programme Party(BSPP) government had used Military Tribunals in times of state of emergencies as well as in case of special importance, and such cases of special importance are, up to now, countlessly many for the last three decades. They are still using in Burma by SLORC for three purposes, namely.

(1) to give their victim the maximum punishment allowed by the existing Law or in most cases punishments much more than allowed by the existing law.

(2) to hear the trial secretly. So that the public and media are kept away. All secret trials are set up inside prison walls or compounds (mostly inside the wall of Insein Jail, the major political prison in Burma) or sometime in a security detechment compound of a sort.

(3) to hear and sentence speedy and summary trials. In all those hearings the accused was never given the nights of legal counselling by a lawyer nor his own defence. The accused was to answer all the questions of the government prosecuter who is always a sergeant-clark from Special Branch(S.B).

Note: (a) All cases which fall within the jurisdiction of NSLs are tried by military tribunals not by civilian courts. It even became a tradition in Burma for the past thirty years. The person who wrote this letter had been tried by the military tribunal No.(4) in 1975 in Burma under 1950 Emergency Provisions Act Section 5(D) (E) and was sentened a ten years imprisonment with hard labour in Insein Jail. A case a civilian count may normally give a five years sentance as the maximun term.

(b) Military tribunals are still in operation in Burma up to now though move secretly and more rarely as the tide of mass movements were crubed successfully in five years.

F. Various Auxiliary Bodies Enforcing NSLs in Burma

(1) The first kind of this category was the notorius Lone-Htein or Para-military Police Regiments which had clashed first with student protesters in Burma in 1988. These units are established as permanent forces and trained specially for demoblisation purpose in mass movements as in other countries. It can be exactly, said that they are created for enforcing NSLs. It was where the army moved-in first in the excuse of aid to civil power at the places where Lone Hteins were defeated by the student led masses despite their tear gas, shield and batons and finally M-16 rifles in 1988 in Burma. Since then they were no more used in mass crack-downs in the cities and were posted in the border line as the Border Patoral Police Forces currently in the west Bangladesh Border when the Rohinga issue came out.

(2) Semi official, part time paying non-armed forces. They are,
- (a) War Veterans Organization;
- (b) Auxiliary Fire Extinguishing Units; and/or
- (c) Red Cross Organizations

They are used as government informers and displine maintainers in wards and

communities as well as in mass gathering of all kinds permitted by SLORC authorities. Even the internationally prestigeous Red Cross units were used in the service of SLORC for the above mentioned functions assigned by army officers. In fact Burma Red Cross Society was the first victim as a part of an international non governmental organization utilised, by a despotic government, against its noble aims. The first enactment by SLORC since it came to power was The Amendment of Burma Red Cross Act. thus enabling them to put army officers as top executives of the Board of B.R.C which was the only institution remained in the early days of the coup still receiving foreign donations on humanitarian ground.

(3) International bodies monitering and responding Burma issue in NSLs aspect

Since all Burmese opposition groups are outside Burma(mostly in Thailand) and cannot effectively responed to the offences of Human Rights violations by Burmese government, they play, as far as we know, as auxiliary or monitering groups to international Human Rights advocating organization such as A.I.Asia watch or Article 19 plus world media.

We would like to answer your questionares ranging from D down to J in your letter by

(4) of this reply.

* D/E.. We recomanded the following case studies-

(i) State of Fear by Mattin Smith, writer and Burma expert, published by Article 19 group as a country report.

(ii) Asia Watch reports on Burma especially September 6, 1992 Volume I issue 24.

(iii) Burma Rights Movement for Action (B.U.R.M.A) reports.

* F.. Answered already in our (2)(3), Pls. see it for F(c)(d) we would say ordinary investigatory agencies are of course, the police, but for cases concerning NSLs in Burma, police made a hand off and give way to M.I.S. Only after the victim was beaten to a pulp and forced to confess, he was brought to the judge for conviction. This is the actual relation between the security organizations(M.I.S.S.B etc..) and the ordinary civil law enforcement agencies.

* G.. Criminal procedure is not, practically, applied in the cases of NSLs in Burma. Nobody who is taken into custody under NSLs could afford a bail, legal counseling and visits by friends and relatives. So all NSLs cases became non bailable cases though there are two categories of bailable and non bailable offences in the Criminal Procedure.

* H.. Already mentioned in our (2)(3) NSLs/Agencies Pls. see them.

* I.. Such organizations are many, but those practicaly dealing in Burmese issue are mainly, Asia Watch, Article 19(U.K), Lawyers for Human Rights etc.. We are sure you know their addresses.

* J.. Inside Burma-No. Abroad, those above mentioned in I.

(4) Our special recomandation for our Vienna meeting agendas

The idea of Universalty of Human Rights was first heard in Bangkok Asia Pacific Meeting though we, the Burmese oppositionists had come to feel its importance inside Burma as early as 1989. We believed that it is the only key to solve the questions of the timidity or reluctance of governments around the world to promote the cause of Human Rights at home and abroad.

As you have known, the principle of non interference is still the basic ethics of all governments enshrined in the U.N Charter. This is the one and the only excuse of despotics governments like Burma's SLORC around the world, using in their defense. Though this principle was originally meant for a noble purpose half a century ago, it was now misused by those bad governments. It was like Satan is quoating the lines from the holy Bible to his advantage.

We hoped that a time will come, for all of us, to stage a historic and classic fighting in the world tribunal. The case of Human Rights vs. Non-interference which would eventually made us the victors.

So, we would like to propose you that we lobby it again in the Vionna Meeting thus making the worlds' noble and responsive humanity to review the old precept of non interference in the light of Human Rights greivances and find a workable hypothesis out of these two conflicting principles.

We wish you great success in Vienna, Your success is ours too!

On behalf of Burma Human Rights Committee.

Sincerly,

Please, Keep in touch with us.

****

〈 REFERENCE 〉

Questionnaire on the National Security Laws in Asian Countries

A. Is your organization planning to hold any events in Vienna?

If yes, please describe the event.

B. If you have not participated in the discussion on this event, are you interested in participating in this event?

C. Information on the NSLs in each country

. title of the laws

. information on promulgation, amendment, repeal or new enactment of the laws

. Please send English version of the texts of the laws, if possible.

D. Are there any articles, reports, essays, statistics and/or case studies on the laws and/or human rights violations under NSLs written in English?

(1) if yes, please list down the titles and authors of the materials and send a copy of some of the representative materials.

(2) if no, can you prepare such materials?

(3) if yes to (2), until when can you prepare them?

E. Are there any materials made by the international NGOs or organizations on this law? (for example, Amnesty International, ICJ or Asia Watch)

if yes, please name organization, title of the materials and date of publication.

F. Are there any special (or secret) investigatory agencies related to these laws or dealing national or internal security cases?

(1) if yes, (a) what are the official title of these agencies?

(b) are there any special laws, decrees or regulations on which these special agencies base on? Please send the text of such laws, decrees or regualtions hereto.

(c) what is the main difference between such agencies and ordinary investigatory agencies both in the structure and in the procedure of investigation?

(d) what is the relation, both legal and practical, of such agencies with th the prosecutors' office?

G. With regard to criminal procedure, what is the main difference between the cases under these laws ordinary criminal cases?

H. What kind of laws are major source of human rights violations in your country?

I. Are there any organizations or institutions which are expected to praticipate in bove mentioned events or support in one way or another, especially those composed f lawyers, scholars or experts specialized in law?

If yes, please describe how to contact them.

J. Are there any organizations or information which have compiled materials on this law in your country or abroad?

K. Who do you think are the most representative victims, specialists, activists who will address on this issue?

L. How many persons will participate in the World Conference from your organization and from your country?

M. What kind of event concerning national security legislation do you think would be most appropriate to organise in Vienna? Could you describe your idea in detail?

N. What kind of role is your organization willing to play concerning the above mentioned events?

O. Please comment on any points of this proposal.

National Security or Peoples' Security? ; Suggestions for Human Rights and against National Security Laws

Yong Whan Cho

1. INTRODUCTION

In many countries around the world, serious human rights violations continue to occur under the pretext of preserving national or internal security. These laws sometimes also pretends to protect people from terrorists' attacks. However, considering the draconian chacteristics of national security legislations, we can infer that the real purpose of these laws is not to ensure national security and thereby to protect the human rights of the people, but to check and restrict the basic rights and freedoms of the people, especially if they are seen to be unsympathetic those in power or the established political, economic, and social structures of the country.

These national security legislations label many categories of activities as special types of crimes to be punished. Some of these activities are those deemed punishable already by the normal criminal laws and some activities are those which are not deemed to be punishable at all in a democratic society. Simply put, the actual purpose of these special legislations based on the so-called 'national security' is to restrict the activities of political opponents, to intimidate the public in general, and to separate the political dissenters from the people. It is no coincidence that these laws punish activities that challenge those in power. The laws are created to nominally justify the political prisoners and prisoners of conscience. These laws are used to preserve not the nation or the people, but the government that legislated them. Whether that government be civil or military or even feudalistic, capitalistic or socialistic, the aim of the national security legislations is the same - to stay in power and to keep the established order which is not based on the support of its people. Sometimes the political interests of the Cold War superpowers also play a role behind the scene in those countries whose governments are dependent on the superpowers good favor.

It is absurd and surprising that many of the national security laws were based on the model of similar laws in colonial states, laws which have been used as tools for depriving the people of basic human rights and freedoms including the right to self-determination. Considering this, we can see that the issue of purging the remnants of colonialism or imperial militarism is related to the issue of eradicating national security laws.

2. GOVERNMENT-SPONSORED HOSTILITY

Just as 'national secrity' is used as justification for all kinds of human rights infringements, it is often abused as a cause for overthrowing the democratically elected government by military *coups d'etat* in some countries. Then by concocting an outside threat on the nation and/or an national emergency situation, these governments, without exception, reinforce already existing national security laws and/or enact new harshier laws to maintain their power. One or more types of government-sponsored ideology are usually employed to muffle the people and forcibly mobilize the consent of the people. The most familiar form of them is the anti-communist ideology, but its face is able to change from time to time into a threat of imperialism, a hostility against a neighboring state, ethno-centrism or simply glaring racism, or sometimes a 'war on crimes'. People who simply assert democracy or reform of corrupt social structures and people who dream a future image of their country different from that of those in power are regarded as the 'enemy' endangering the security of the nation.

3. LAWS WITHOUT PEOPLE'S CONSENT

The way these national security laws are enacted should raise suspicion. Some are enacted not by the people's representatives but by the nominees of the government or puppet organ of military *coup d'etat*. Even when the laws are passed through the legislative body, normal procedures are laid aside. Absence of debate and bypassing the usual voting process are not unusual. Furthermore, the administrative branch of the government in power is given an inordinate amount of discretion in the application of the laws, including the power to promulgate supplementary decrees. These laws lack the essential features of the laws of a democratic society, both in content and in the process of legislation.

4. 'PROCRUSTEAN BED' - VAGUENESS AND DOUBLE STANDARD

Vague terminology is used purposefully so that these laws may be used as the user pleases. What could be the exact meaning of "anti-state organization," "anti national activities," "praising, encouraging, or siding with the enenmy," "prejudicial to the security of the country", and so on ? The ambiguity leave too much room for manipulation by judicial interpretation. If the courts were independent of the government, perhaps the vaguness would not be such a problem. But we all know the real situation. The judiciary ends up creating a double standard, one to check and restrain political opponents and another to legitimize the same activities, when they are done by the proponents of the government. In other words, these national security laws are not instruments for the common good but weapons used by those in power to put down those who challenge them. The vague and far-reaching articles of these laws constitute a 'spider web' to catch or a *'Procrustean bed'*

to sophisticate all 'suspicious' activities of innocent people in accordance with their absurd double standard.

An example of distorted interpretation by the courts can be seen in the court judgement of a certain country that even information which is readily available, enough to be considered common knowledge, can be regarded as state secret. People can be punished for espionage by transmitting common knowledge.

5. ENDLESS CIRCLE OF PUNISHMENT

Those caught under these unjust laws have to suffer through further injustice. Investigation of suspects often begin with illegal arrest, incommunicado detention, and forced confession. Various kinds of mistreatments, including torture, are regularly committed during extraordinarily long term detention for interrogation. Denial of access to defense counsel, unfair trials, and unjustified convictions are the norm. The accused are deprived of the right to be presumed innocent, rather they are assumed to be guilty from the very start of the process under these laws.

Punishment for such political crime convictions is also harsher and heavier than for other convictions. Moreover, political prisoners often suffer brutally at the hands of prison authorities. As we said before, these national security laws often serve as tools for political control, for political revenge, not as instruments of social protection or justice. This is clearly seen in the 'conversion-system' employed by a certain state. In this state, those convicted under the national security laws are labeled as communists, and until they show themselves to be fully 'rehabilitated', that is, they renounce their beliefs in writing, they are not allowed any privileges in prison, let alone release on parole.

The suffering does not end with release from imprisonment. They are often subject to administrative detention and kept under surveillance. They are obligated to make regular reports on their activities and "other matters which the chief of the relevant police station has instructed them to report."

6. 'THE NIGHT AND THE FOG' - SPECIAL ORGANS

So far we have talked about the national security laws but we would also like to point out that usually supplementing these laws, there are one or more special investigatory agencies or special sections in the police and in the military. They are secret from the public and thus invulnerable to any form of democratic control. However their official title may differ, they are alike in their functions of terrorizing the public and committing of gross and systematic human right violations to control political opponents. These special agencies are *'the Night and the Fog'*, which exist but can not be grasped by the people.

Role of the special courts established by law or administrative decrees are one of main features of the national security legislations. Camera trials by these courts are not uncommon. The 'special court', whether it is composed of civilian judges or military officers, goes through the judicial process just as a matter of formality, pretending to follow the due process of law while actually suffocating the accused and preventing him or her from defending him or herself, in the name of a 'speedy trial'. There is no room for the right to a fair trial in these special courts.

7. PRICE OF 'NATIONAL SECURITY'

It is clear that the national security laws are in contravention to the principle of 'nullum crimen, sine lege'. And because of these laws, fundamental freedoms and rights are regularly and systematically infringed upon. Subjects caught under these laws are denied the freedom of thought, the freedom of opinion, the freedom of expression, the freedom of association and peaceful assembly, the freedom from torture, the right to liberty and security of person, the freedom from arbitrary arrest and detention, the right to a fair trial, and so on. Basically, these laws deprive the people of the right to dissent and the right to choose their own government, which are the essence of democracy. It is important to note that even states that claim to be democratic and states with democratically elected governments have such national security laws and also commit the above-mentioned human rights violations.

8. RECOMMENDATION TO THE UNITED NATIONS AND HUMAN RIGHTS NGOS

International human rights laws such as the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment have been inadequte defense against human rights violations which are being commited under national security laws. That is because, though the national security laws are in contravention of the spirit of the universally accepted human rights standards, the international instruments allow the derogation of state parties' obligation to protect human rights in order to maintain 'national security' without defining its content and condition of application. Thus, the 'national security' becomes a sacred 'magic sack' in which any kind of human rights violations can be put and thereby justified. Moreover, the United Nations has not tried to restrict the application of national security laws in order to protect human rights. This has to be changed.

In this context, we would like to request the UN and all its member states in the world, especially those in Asia, to support a UN recommendation to reform or repeal the national security laws so that they are compatible with the international human rights laws and standards. Measures, including the immediate release of political prisoners, should be taken

by all member states to redress any wrongdoings conducted up to now under the national security laws. Of course these reforms should be accompanied by the ratification of the principal human rights instruments. We also urge the Commission on Human Rights to establish a Working Group or to appoint a Special Rapporteur on human rights violations under the national security laws. The mandate of the working group or the special rapporteur would be manifold. First it would have to undertake extensive research. Whole legal systems relating to national security and the notion of the 'national security' in the laws of each country should be examined. The relationship between national security and human rights in each country, the procedures and functions of the organs including the secret police and special courts involved in the application of these laws, and the judicial interpretations of the laws are further areas which need research. Then the working group or Special Rapporteur could make suggestions on how to improve the human rights situation and afterwards monitor the countries for progress. If necessary, suggestions would be not only for national governments but for the international human rights bodies as well.

We call for all NGOs and human rights experts in the world to form a network for a peoples' solidarity against human rights violations under the national security laws. The network is urgently needed as a forum where we can gather and exchange information on human rights infringements under the laws and on experiences of peoples' struggles against these laws, where we can do comparative research on the compatibility of laws of various countries with the international human rights laws and standards, and where we can gain perspectives for reforming the national security laws and for furthering human rights movements. Increased awareness and knowledge of people about their rights and freedoms under the international human rights norms can be the strongest bulwark for peoples' struggle against human rights violations. Reform or repeal of these draconian national security laws is an essential part of the endeavor to establish a more democratic, human and equal world. This World Conference on Human Rights is the best chance for us, human rights NGOs, activists and experts, to take a concrete step toward creating a world where human dignity and human rights are guaranteed.