

of Defence to have up to four armed security guards each. According to the report: these provisions have resulted in a competition between the regular police and the privately armed guards, leading to political violence that particularly increases during election time; despite the fact that the police have been present when incidents have occurred, very few of the cases were investigated and none were brought before the court; impunity in cases of political violence appears to prevail throughout Sri Lanka; and members of Tamil political parties opposed to the LTTE continue to be armed and, without any clear legal basis for their actions, carry out functions which are part of the overall responsibility of the security forces, particularly in the north and east.

Addressing relevant provisions in international humanitarian law, the SR acknowledged that the LTTE controls several parts of the country in the north and north-east and, further, that the conflict is of such a nature as to have reached the threshold of applicability of article 3 common to the four Geneva Conventions of 1949. The SR stressed that: in the case of armed conflict, the response of the government must always be relevant and proportionate so that the standards of human rights may be respected for every individual in every case; the existence of an armed conflict does not permit a *carte blanche* response; and any violations on the part of the insurgents (LTTE) cannot be used as an excuse for violations by the government.

The report notes that the death penalty is permitted in Sri Lanka although no executions have been carried out since June 1976 and, in those cases where the courts were compelled to pass sentences of death, the sentence has always been commuted by the President. That being said, the report refers to laws and procedures that may, under certain circumstances, facilitate violations of the right to life. These laws and measures include, but are not limited to: emergency regulations that still provide for indefinite preventive detention on renewable, three-monthly detention orders, overriding safeguards contained in normal law; inadequacies in the procedures governing post-mortems and inquests, leading to failures in the investigative process and, possibly, impunity for those committing extrajudicial executions; the Prevention of Terrorism Act with unusually broad provisions that have exacerbated rather than alleviated tensions, including those allowing any police officer above the rank of Superintendent, without warrant, to arrest any person, enter and search any premises, stop and search any individual or vehicle of any kind, and seize any document connected with or concerned in any unlawful activity; provisions in the ETA allowing for confessions made to police under torture or threats to be admissible in evidence; and the Emergency Regulations Act, including provisions derogating from those in normal laws related to inquests into deaths resulting from police actions or actions by members of the armed forces.

The actions taken by the government in response to cases of summary/arbitrary executions are noted in the report as including, *inter alia*: investigations by the Criminal

Investigation Department into reported cases of disappearances; initiation of proceedings by the Magistrate's Court, and subsequent transfer of the case to the High Court of Colombo; the arrest of police officers attached to the Special Task Force who were implicated in cases of disappearances; and the decision of the Attorney-General to forward a direct indictment in one case, involving eight army soldiers and one police officer, to the High Court of Sri Lanka, marking only the fourth time in Sri Lankan history that a trial-at-bar has been instituted, in this case to prevent a trial by jury that could aggravate communal tensions and to ensure an expeditious course of justice.

The report notes that the Human Rights Commission of Sri Lanka was established by law in 1996, and has monitoring, investigative and advisory powers related to human rights. On the Commissions of Inquiry into Involuntary Removal and Disappearances, the report notes that they were created in January 1995 to inquire into and report on cases of removals and disappearances occurring from 1 January 1988. The report also notes that, despite provisions stating that the final reports of the Commissions, submitted to the President in September 1997, would be published and action taken on their recommendations, these reports had not been published by the time of the SR's report, and there were no indications that the government had followed up on the findings and recommendations.

On the issue of impunity, the SR stated that effective impunity encourages political violence and is a serious destabilizing element in all contexts of the Sri Lankan socio-political system. The report notes: there have been periodical extrajudicial executions, but few perpetrators have been brought to justice; impunity is an obstacle to democratic development and peace negotiations, and makes reconciliation difficult; the culture of impunity has led to arbitrary killings and has contributed to the uncontrollable spiralling of violence; the systematic absence of investigation, either civil or military, into violations of the right to life facilitates impunity; investigations are rarely conducted, and when they are, they do not lead to the appropriate convictions or penalties; many members of the security forces and others allegedly responsible for grave human rights violations in the recent past continue to hold official posts in the same areas where the violations took place and may try to interfere with the investigations; and, the government has expressed its willingness and intention to bring to justice members of the security forces believed to be responsible for human rights violations but little progress has been reported in those cases submitted by the SR since the creation of the mandate.

The report notes that in those cases where investigations were conducted and cases tried, it appears that the most severe punishment ever handed out to human rights violators is suspension from duty, despite the gravity of the offences. The SR recalled that while civilians who peacefully exercise their fundamental civil and political rights are charged and sentenced to years of imprisonment, sol-