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Court File No.: 27790

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR THE PROVINCE OF ONTARIO)

BETWEEN:

MANICKAVASAGAM SURESH

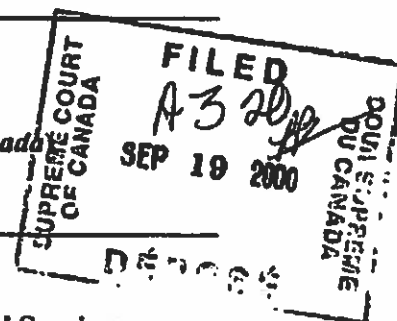
Appellant

- AND -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE ATTORNEY GENERAL OF CANADA**

Respondents

**APPLICATION FOR LEAVE TO INTERVENE
BY AMNESTY INTERNATIONAL
(pursuant to Rule 18 of the Rules of the Supreme Court of Canada)
MOTION RECORD**



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**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

MANICKAVASAGAM SURESH

Appellant

- and -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE ATTORNEY GENERAL OF CANADA**

Respondents

NOTICE OF MOTION

TAKE NOTICE that Amnesty International (Canadian Section) will apply to a judge of this Court, at a date to be fixed by the Registrar, pursuant to Rule 18 of the *Rules of the Supreme Court of Canada* for an order

1. granting the Applicant leave to intervene in the present appeal;
2. permitting the Applicant to file a factum of up to 20 pages in length,
3. permitting the Applicant to present oral argument of such duration as the Court may order;
and
4. such further or other order as the presiding Judge may direct.

- 2 -

AND FURTHER TAKE NOTICE that the following documents will be referred to in support of this motion:

1. the affidavit of Gloria Nafziger, sworn September 14, 2000, with attached exhibits, on behalf of Amnesty International;
2. the Memorandum of Argument of Amnesty International for Leave to Intervene;
3. such further or other material as counsel may advise and may be permitted.

AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:

1. Amnesty International has an expertise in the area of international human rights, and has worked for decades to promote international standards against torture, and therefore has a direct and substantial interest in the issues in this appeal;
2. Amnesty International's mandate is to ensure that no one is returned to a country where he or she may face human rights violations such as torture, and therefore the outcome of this appeal will directly affect the work of Amnesty International and its members;
3. Amnesty International has demonstrated its interest in this case since 1996, through its submissions to the Canadian government, and in its application to intervene before the Federal Court of Appeal;
4. As a non-governmental international human rights organization, Amnesty International will provide the Court with a unique perspective which will assist the Court in analyzing issues presented by this appeal.

- 3 -

5. Rule 18 of the Rules of the *Supreme Court of Canada*.

Dated at Toronto this 15th day of September, 2000.

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Amnesty International

TO: THE REGISTRAR OF THE SUPREME COURT OF CANADA

AND TO: Jackman, Waldman & Associates
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AND TO: THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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NOTICE TO THE RESPONDENT TO A MOTION BEFORE A JUDGE OR THE REGISTRAR:

A respondent may serve and file a response to this motion within 7 clear days after service of the motion. If no response is filed in that time, the motion will be submitted for consideration to the judge or the Registrar, as the case may be.

MANICKAVASAGAM SURESH

- AND -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE ATTORNEY GENERAL OF CANADA

Appellant

Respondents

IN THE SUPREME COURT OF CANADA

NOTICE OF MOTION

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Amnesty International

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

MANICKAVASAGAM SURESH

Appellant

- and -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE ATTORNEY GENERAL OF CANADA**

Respondents

AFFIDAVIT OF GLORIA NAFZIGER

(in support of the application for intervention of Amnesty International)

**I. Gloria Nafziger, of the City of Toronto, in the Province of Ontario, hereby MAKE OATH
AND STATE THE FOLLOWING TO BE TRUE:**

- I. I am a Refugee Coordinator for Amnesty International (Canadian Section) and as such I
have knowledge of the matters deposed to.**

2. I began employment with Amnesty International (AI) in 1996 as Refugee Coordinator for the Canadian Section and I have held that position since that time.
3. As Refugee Coordinator for Amnesty International's Canadian Section I am responsible for overseeing the work done on behalf of refugees within AI Canada. This includes training and supporting a national network of volunteers to assess and assist failed refugee claimants, making interventions on behalf of persons in need of protection who may fall within AI's mandate, working with other Canadian refugee organizations on refugee issues, coordinating interventions on Canadian refugee policy, and responding to enquiries concerning AI and refugees.

AMNESTY INTERNATIONAL

4. Amnesty International is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations to people's fundamental human rights. The main focus of our work is to:
 - free all prisoners of conscience (people detained for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status who have never used nor advocated violence)
 - ensure fair and prompt trials for political prisoners.
 - abolish the death penalty, torture and other cruel treatment of prisoners,
 - end extrajudicial executions and "disappearances".

5. Amnesty International works to promote all the human rights enshrined in the *Universal Declaration of Human Rights*, the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and other international human rights treaties and standards. We do this through education programs and campaigning for the ratification of human rights treaties.
6. Amnesty International is impartial and independent of any government, political persuasion or religious creed. Amnesty International is financed by subscriptions and donations from its worldwide membership, and receives no government funding.
7. Amnesty International has formal relations with the United Nations Economic and Social Council (ECOSOC), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Council of Europe, the Organization of American States, the Organization of African Unity, and the Inter-Parliamentary Union. In 1977 Amnesty International won the Nobel Peace Prize for our work in promoting international human rights.
8. There are currently more than 1 000 000 members of Amnesty International in over 162 countries. There are more than 7,500 Amnesty International groups, including local groups, youth or student groups and professional groups, in more than 90 countries and territories throughout the world. In 55 countries and territories these groups are coordinated by national sections like the Canadian section.
 - a) **Amnesty International's fight against torture**
9. Shortly after AI was formed in the 1960's, it drew attention to specific cases of torture as an administrative practice. At that time, the United Nations (UN) was drafting norms and operating procedures through which to fight systematically against institutionalized torture. The international regime establishing the non-derogable right to be free from torture was

in the early stages of development. AI sought to mobilize political will among governments to invoke and apply norms against torture.

10. During the 1970's, when torture was universally deplored but widely prevalent, AI gathered and verified information on the practice of torture from reliable sources. AI analyzed the existing legal instruments necessary to deter and stop torture; it also worked to bring about new international instruments that were necessary but not yet in existence.
11. In 1972, AI launched its first Campaign for the Abolition of Torture. This campaign -- the first of its kind -- mobilized interest about institutionalized torture among government officials and politicians, as well as at the UN and among other non-governmental organizations (NGOs). AI adopted a three-part strategy for the campaign: publicity, international legal efforts, and new action techniques. AI set high standards for the gathering and dissemination of information, and those standards in turn facilitated collaborative efforts with governments, the UN, and grassroots organizations.
12. Two years after the completion of AI's Campaign for the Abolition of Torture, the UN General Assembly adopted the Declaration Against Torture.
13. In 1983 AI launched another Campaign for the Abolition of Torture. During this campaign we promoted Amnesty International's 12-Point Program for the Abolition of Torture. Attached to this affidavit and marked as Exhibit "A" is a true copy of a document summarizing our 12-Point Program for the Abolition of Torture. It includes measures that could be taken by all governments to halt torture.
14. In 1987, the UN General Assembly adopted the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

15. Today, AI continues its work for the establishment and implementation of international norms aimed at the abolition of torture. In October 2000, AI will launch another International Campaign Against Torture.
 16. As a result of our longstanding and ongoing work to end torture, Amnesty International has developed a unique expertise regarding the concept and practice of torture, its worldwide prevalence, and international prohibitions on its use.
- b) **Amnesty International and refugees**
17. As part of our work, Amnesty International opposes the forcible return (refoulement) of any person to a country where he or she would be at risk of imprisonment as a prisoner of conscience, torture, "disappearance", extrajudicial execution or the death penalty. This is an important element of preventive human rights work - acting to prevent human rights violations, not just responding after they have occurred. We demand that no asylum-seeker be forcibly expelled without having had his or her claim properly examined. We also call upon states to ensure that they do not expel anyone to a country which may itself forcibly return the person to a danger of human rights violations such as torture.
 18. Much of AI's work on behalf of refugees is carried out by the movement's national sections based in the countries where people seek protection. Amnesty International members provide information about human rights violations in asylum-seekers' countries of origin to governments, to those who make decisions on asylum claims, and to lawyers and others working on behalf of asylum-seekers. Amnesty International's sections also monitor governments' asylum policies and practices to ensure they are adequate to identify and protect those at risk. In some cases Amnesty International members intervene directly with the authorities to prevent the refoulement of a refugee.

19. For over twenty years, the Canadian Section of Amnesty International has expressed its concerns regarding Canada's laws, policies and procedures affecting refugees, and we have called upon the Canadian government to prevent the removal of refugees from Canada to countries where we believed they would be at risk of abuses within our mandate. We have expressed these concerns to the government of Canada to several Prime Ministers, to several Ministers of Immigration, cabinet ministers, and Members of Parliament. On numerous occasions we have made submissions and appeared before Parliamentary Standing Committees and Senate Committees studying changes to the Immigration Act. In 1997, Amnesty International developed a 10-Point Program for the Protection of Refugees in Canada. Attached to this affidavit and marked as Exhibit "B" is a true copy of a summary of that document.
 20. At the start of 1997, Amnesty International launched a worldwide campaign on protection for refugees. The organization highlighted the human rights violations that force refugees to flee their countries, and the perils or obstacles they face in trying to seek asylum in another country.
- c) **Amnesty International's involvement in the present case**
21. Amnesty International has been monitoring the case of Manickavasagam Suresh since 1996. We believe that he would be at risk of torture if he were to be returned to Sri Lanka. As such, we have made a number of representations to the Canadian government regarding the risk that will be faced by Mr. Suresh if he were to be returned to Sri Lanka. We have expressed our opinion that the return of Mr. Suresh to Sri Lanka would violate Canada's obligations under Article 3 of the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and we have called upon the Canadian government to refrain from doing so. Attached to this affidavit and marked as Exhibit "C" is a selection of correspondence from Amnesty International to the

Canadian government regarding Mr. Suresh's case.

22. In July 1999 AI applied for leave to intervene in this matter before the Federal Court of Appeal. However, on August 6, 1999, the Court (per Linden J.A.) denied the application.
23. For years, AI has monitored and reported on the widespread practice of torture in Sri Lanka. AI has conducted several research missions to Sri Lanka, in which we have received testimonies from torture victims corroborated by medical certificates. We have also met with Sri Lankan government representatives and law enforcement authorities, to whom we have presented our recommendations designed to stop the use of torture in Sri Lanka. In June 1999 AI released a comprehensive report on the practice of torture in Sri Lanka, as well as the legal, institutional and political factors which contribute to its prevalence. Attached to this affidavit and marked as Exhibit "D" is a true copy of the summary of that report.

SUBMISSIONS TO BE MADE BY AMNESTY INTERNATIONAL IF GRANTED LEAVE TO INTERVENE

24. This appeal raises the issue of whether there is a non-derogable prohibition under Canadian and international law against the return of a person to a country where he or she faces a risk of torture. It asks the Court to determine whether the return of Mr. Suresh to Sri Lanka would violate Canada's domestic and international obligations.
25. If granted leave to intervene, Amnesty International proposes to make the following submissions:
 - a) there is a non-derogable obligation in international law not to return someone to a country where there is a risk of torture;

- b) returning someone to face a risk of torture constitutes a violation of the *Canadian Charter of Rights and Freedoms* which can never be justified;
- c) given the human rights situation in Sri Lanka, there are substantial grounds for believing that Manickavasagam Suresh would be in danger of being subjected to torture, and therefore the return of Manickavasagam Suresh to Sri Lanka would be a violation of Canada's domestic and international obligations.

AMNESTY INTERNATIONAL AS PROPOSED INTERVENER

26. In many countries including Canada, Amnesty International has been granted intervener status in court proceedings which involve human rights issues. Most recently, in October 1998 AI was granted leave to intervene in the appeal to the British House of Lords regarding the extradition of Chile's General Augusto Pinochet to face charges involving crimes under international law. AI presented arguments relating to the interpretation and scope of the international prohibition on torture.

a) **the significance of this case to Amnesty International**

27. Amnesty International has a legitimate interest in the issues raised by this appeal. The fight against torture is a core element in Amnesty International's mandate and work. The Court's determinations regarding the issues in this appeal will have a significant impact on AI's work, within Canada and internationally, to stop torture and to prevent the return of people to countries where they may face torture.

28. Amnesty International has demonstrated its interest in this case through its longstanding work to end torture, its submissions to the Canadian government regarding this case, and its application to intervene in this case before the Federal Court of Appeal.

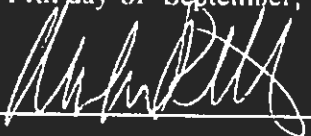
b) the unique perspective of Amnesty International

29. I believe that Amnesty International brings a unique perspective and approach to the issues which are raised in this appeal. I am aware of the position taken by the Appellant as well as other organizations seeking intervener status, and to my knowledge none of the other parties or interveners propose to address the issues from the perspective of a non-governmental international human rights organization with our unique experience, expertise and history of involvement in this specific case.

30. If granted leave to intervene, Amnesty International seeks to make oral and written submissions at the hearing of the appeal. Amnesty International will be mindful of submissions made by parties and other interveners and will seek to avoid duplication of argument and materials before the Court.

31. I make this Affidavit in support of the Amnesty International's application to intervene and for no other or improper purpose.

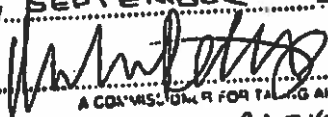
Sworn before me at the city of Toronto)
in the Province of Ontario)
this 14th day of September, 2000.)



Michael F. Battista
A Commissioner, etc



Gloria Nafziger

This is Exhibit "A" referred to in the
affidavit of GLORIA NAFZIGER
sworn before me, this 14TH
day of SEPTEMBER 2000.

A COMMISSIONER FOR TAKING AFFIDAVITS
MICHAEL BATTISTA

Amnesty International

TWELVE-POINT PROGRAM FOR THE PREVENTION OF TORTURE

Torture is a fundamental violation of human rights, condemned by the General Assembly of the United Nations as an offence to human dignity and prohibited under national and international law.

Yet torture persists, daily and across the globe. In Amnesty International's experience, legislative prohibition is not enough. Immediate steps are needed to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally.

Amnesty International calls on all governments to implement the following 12-Point Program for the Prevention of Torture. It invites concerned individuals and organizations to join in promoting the program. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to abolish torture and to work for its abolition worldwide.

1. Official condemnation of torture
The highest authorities of every country should demonstrate their total opposition to torture. They should make clear to all law enforcement personnel that torture will not be tolerated under any circumstances.

2. Limits on incommunicado detention
Torture often takes place while the victims are held incommunicado—unable to contact people outside who could help them or find out what is happening to them. Governments should adopt safeguards to ensure that incommunicado detention does not become an opportunity for torture. It is vital that all prisoners be brought before a judicial authority promptly after being taken into custody and that relatives, lawyers and doctors have prompt and regular access to them.

3. No secret detention
In some countries torture takes place in secret centres, often after the victims are made to "disappear". Governments should ensure that prisoners are held in publicly recognized places, and that accurate information about their whereabouts is made available to relatives and lawyers.

4. Safeguards during interrogation and custody
Governments should keep procedures for detention and interrogation under regular review. All prisoners should be promptly told of their rights, including

the right to lodge complaints about their treatment. There should be regular independent visits of inspection to places of detention. An important safeguard against torture would be the separation of authorities responsible for detention from those in charge of interrogation.

5. Independent investigation of reports of torture
Governments should ensure that all complaints and reports of torture are impartially and effectively investigated. The methods and findings of such investigations should be made public. Complainants and witnesses should be protected from intimidation.

6. No use of statements extracted under torture
Governments should ensure that confessions or other evidence obtained through torture may never be invoked in legal proceedings.

7. Prohibition of torture in law
Governments should ensure that acts of torture are punishable offences under the criminal law. In accordance with international law, the prohibition of torture must not be suspended under any circumstances, including states of war or other public emergency.

8. Prosecution of alleged torturers
Those responsible for torture should be brought to justice. This principle should apply wherever they happen to be,

wherever the crime was committed and whatever the nationality of the perpetrators or victims. There should be no "safe haven" for torturers.


9. Training procedures
It should be made clear during the training of all officials involved in the custody, interrogation or treatment of prisoners that torture is a criminal act. They should be instructed that they are obliged to refuse to obey any order to torture.

10. Compensation and rehabilitation
Victims of torture and their dependants should be entitled to obtain financial compensation. Victims should be provided with appropriate medical care and rehabilitation.

11. International response
Governments should use all available channels to intercede with governments accused of torture. Inter-governmental mechanisms should be established and used to investigate reports of torture urgently and to take effective action against it. Governments should ensure that military, security or police transfers or training do not facilitate the practice of torture.

12. Ratification of international instruments
All governments should ratify international instruments containing safeguards and remedies against torture, including the International Covenant on Civil and Political Rights and its Optional Protocol which provides for individual complaints.

The 12-Point Program was adopted by Amnesty International in October 1983 as part of the organization's Campaign for the Abolition of Torture.

This is Exhibit.....^{"B"}.....referred to in the
affidavit of GLORIA NAFZIGER
sworn before me, this.....^{14TH}.....
day of SEPTEMBER.....^{13, 2000}.....
.....
A COURT REPORTER AND LITIGANT
MICHAEL BATTISTA

Amnesty International's 10-POINT PROGRAM

for protection of refugees in Canada



During 1997, Amnesty International's Refugee Campaign focuses attention on the protection of refugees in a world facing tremendous challenges. Fifteen million refugees have fled their countries of origin; a further 20 million people are internally displaced. Over 70 countries have refugee populations of at least 10,000 people.

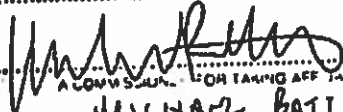
This situation is getting worse. No effective action is being taken to bring about genuine improvements. In the meantime crises deepen, cycles of impunity repeat themselves, and the victims are forgotten amidst arguments over statistics, territory, and responsibilities.

Amnesty International calls on all governments to meet their international human rights obligations with respect to refugees.

While Canada has done much to earn its reputation as a protector of refugees, it nevertheless fails to live up to its commitments in some important ways. AI calls on the Canadian government to re-examine its policies and practices with respect to refugees: 10 key recommendations are listed below. We further urge the government to incorporate our recommendations for legislative reform into the review of the Immigration Act recently commissioned by the Minister of Citizenship and Immigration.

- 1. Access to Canada:** *Amnesty International calls on the government of Canada to remove unfair restrictions which prevent refugees from exercising their human right to seek asylum outside their country.*
- 2. Access to Canada's refugee determination system:** *Amnesty International calls on the government of Canada to amend the Immigration Act to allow all refugee claimants in Canada to have their claim formally ... considered.*
- 3. "Safe Third Country" Agreements:** *Amnesty International calls on the government of Canada to abandon all negotiation of "safe third country" or "burden-sharing" agreements until minimum standards of refugee protection are observed in all countries involved.*
- 4. Independence of decision-makers:** *Amnesty International calls on the government of Canada to maintain and improve the independence and quality of decision-making in the refugee determination process.*
- 5. Access to legal counsel:** *Amnesty International calls on the Canadian government to ensure that all refugee claimants have access to legal counsel in presenting their claim.*
- 6. Appeal on the merits of the case:** *Amnesty International calls on the Canadian government to introduce into the refugee determination system an appeal on the merits.*
- 7. Inclusion of human rights instruments in the Immigration Act:** *Amnesty International urges the Canadian government to amend Canadian immigration legislation to incorporate the relevant international human rights conventions which Canada has signed and ratified.*
- 8. Gender issues:** *Amnesty International urges the Canadian government to maintain and enhance its efforts to respond to the differences in experiences and needs of women and men refugees.*
- 9. Treatment during removals:** *Amnesty International calls on the Canadian government to review current policies and practices to ensure that all persons being removed have their basic rights respected.*
- 10. Barriers to family reunification:** *Amnesty International calls on the Canadian government to take measures to ensure that family members of refugees in Canada are not left in situations of great danger.*

This is Exhibit.....'C'..... referred to in the
affidavit of.....GLORIA NAFZIGER
sworn before me, this.....14TH.....
day of.....SEPTEMBER 19, 2000

.....
A COMMISSIONER OF THE SUPERIOR COURT OF THE STATE OF NEW YORK
MICHAEL BATTISTA



7 July 1999

The Honourable Lucienne Robillard
Minister of Citizenship and Immigration
Jean Edmonds Tower South, 21st Floor
365 Laurier Ave. West
Ottawa, Ontario K1A 1L1

Dear Minister:

Re: Manickavasagam Suresh

Further to our letters to you and to your predecessor Mr Rock of November 1996, October 1997, and November 1997, Amnesty International is concerned to learn that Manickavasagam Suresh is at risk of imminent deportation after the 11 June 1999 decision in the Federal Court. The Court found *inter alia* that Mr Suresh had not provided a "factual basis upon which one could find there are substantial grounds for believing he would be in danger of being tortured if he is returned [to Sri Lanka]."

Upon reviewing once again the public allegations against Mr Suresh and the findings of the Federal Court, Amnesty International's position continues to be that there are substantial grounds for believing that Manickavasagam Suresh would be at risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment if he were returned to Sri Lanka.

Amnesty International continues to receive reports of torture of individuals, arrested particularly in the north and east of the country and in the capital, Colombo, on suspicion of being members or sympathizers of the Liberation Tigers of Tamil Eelam (LTTE). Most of the allegations of torture concern members of the security forces including the army and police and members of armed Tamil groups fighting alongside the security forces against the LTTE.



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Amnesty International

Amnesty International is a global movement of people who believe that everyone has the right to live in freedom and dignity. We work to ensure that these rights are protected and that everyone is treated with dignity and respect.

■ **free** all prisoners of conscience
release political prisoners and stop
practices which violate the right to
freedom of expression

■ **ensure** the right to a fair trial
for all prisoners

■ **abolish** the death penalty
and other cruel, inhuman or degrading
punishments

■ **end** all forms of torture
including sexual and gender violence

Amnesty International

Amnesty International is a global movement of people who believe that everyone has the right to live in freedom and dignity. We work to ensure that these rights are protected and that everyone is treated with dignity and respect.

Amnesty International believes that, in the event that Manickavasagam Suresh were returned to Sri Lanka, due to the repeatedly published allegations of his integral association with the LTTE, he would certainly come to the attention of the Criminal Investigation Department (CID), the Crime Detection Bureau and Terrorism Investigation Department (TID), specialized police agencies in Colombo entrusted with the investigation of politically motivated crimes.

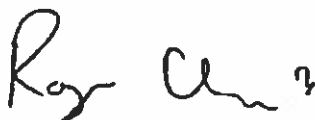
Local human rights organizations and lawyers in Sri Lanka report that people who are suspected of having links with the LTTE risk being subjected to torture during their initial interrogation. Amnesty International has documented many reports of torture during its mission to Sri Lanka in 1998. (See Amnesty *Sri Lanka: Torture in Custody* AI Index: 37/10/99, published in June 1999.)

As signatory to the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* Canada is under an international, if not a domestic, legal obligation to comply with the *Convention's* absolute prohibition against returning persons to countries where they may be tortured. We draw to your attention the 13th paragraph of the *Concluding observations of the [UN] Human Rights Committee* released 7 April 1999:

The Committee is concerned that Canada takes the position that compelling security interests may be invoked to justify the removal of aliens to countries where they may face a substantial risk of torture or cruel, inhuman or degrading treatment. The Committee refers to its General Comment on article 7 and recommends that Canada revise this policy in order to comply with the requirements of article 7 and to meet its obligation never to expel, extradite, deport or otherwise remove a person to a place where treatment or punishment that is contrary to article 7 is a substantial risk.

Amnesty International calls upon Canada to refrain from removing Mr Suresh to Sri Lanka where he is at a substantial risk of being subjected to torture.

Yours sincerely,



Roger Clark
Secretary General

6 October 1997

The Honourable Lucienne Robillard
Minister of Citizenship and Immigration
Jean Edmonds Tower South, 21st Floor
365 Laurier Ave. West
Ottawa,
Ontario K1A 1L1
Canada

Dear Minister,

I am writing in follow-up to the decision of 29 August 1997 by the Federal Court in the case of Manickavasagam Suresh, a Tamil from Sri Lanka, who was recognized as a refugee by the Canadian authorities in 1991.

We understand the Federal Court found there was sufficient evidence to conclude that the issuance of the security certificate by the Canadian authorities was reasonable; and that therefore Mr Suresh is a person "inadmissible into Canada" under Section 19 of the Immigration Act.

We also note the court was satisfied on the evidence that was heard that there were reasonable grounds for the Minister to believe that Mr Suresh was a member of the Liberation Tigers of Tamil Eelam (LTTE).

Amnesty International is concerned that subsequent to the order of 29 August 1997, Mr Suresh may be returned to Sri Lanka at any time.

Amnesty International calls on the Canadian authorities to ensure that Manickavasagam Suresh is not returned to Sri Lanka, as this would put him at risk of serious human rights violations, in particular torture. Under Article 3 of the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, to which Canada is a party, no person can be returned to another state where "there are substantial grounds for believing that he would be in danger of being subjected to torture."

CANADIAN SECTION


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AMNESTY INTERNATIONAL is a worldwide voluntary movement that works to prevent some of the gravest violations by governments of people's fundamental human rights. The main focus of its campaigning is to:

- free all prisoners of conscience. These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth, or other status - who have not used or advocated violence.
- ensure fair and prompt trials for political prisoners.
- abolish the death penalty, torture and other cruel treatment of prisoners.
- end extrajudicial executions and "disappearances"

AMNESTY INTERNATIONAL has consultative status with the United Nations (ECOSOC), UNESCO and the Council of Europe. It has cooperative relations with the Inter-American Commission on Human Rights of the Organization of American States and is a member of the Coordinating Committee of the Bureau for the Placement and Education of African Refugees of the Organization of African Unity.

This is Exhibit D referred to in the
affidavit of GLORIA NAEZIGER
sworn before me, this 14TH
day of SEPTEMBER, 2000.


A COMMISSIONER OF THE SUPERIOR COURT
MICHAEL BATTISTA



Amnesty International - Summary of Report - ASA 37/10/99
June 1999
Sri Lanka
Sri Lanka. Torture in Custody

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[EMBARGOED FOR: 1 June 1999]

Public

amnesty international

SRI LANKA
Torture in custody

June 1999

SUMMARY

AI INDEX: ASA 37/10/99

DISTR: SC/CO

For years, torture has been among the most common human rights violations reported in Sri Lanka. It continues to be reported almost (if not) daily in the context of the ongoing armed conflict between the security forces and the Liberation Tigers of Tamil Eelam (LTTE), fighting for an independent state, Eelam, in the north and east of the country. In addition, police officers regularly torture criminal suspects and people taken into custody in the context of local disputes over land or other private issues.

The scale of this problem is borne out by many testimonies obtained by Amnesty International from victims of torture, by medical certificates corroborating these testimonies, by judgments of the Supreme Court in fundamental rights cases, as well as by reports of commissions of inquiry and various investigative bodies set up by the government. For instance, the Committee to Inquire into Unlawful Arrests and Harassments received 47 complaints of torture between July and December 1998.

The prevalence of torture is intrinsically linked with other human rights violations, particularly the long-term pattern of "disappearances" reported from the country. Many of the thousands of cases of "disappearances" reported in Sri Lanka since the early 1980s concern detainees alleged to have died under torture in police or army custody whose bodies were subsequently disposed of in secret.

In May 1998, Sri Lanka appeared for the first time before the Committee against Torture, the international body of experts monitoring the implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, UN Convention against Torture). The government's delegation acknowledged torture was a problem in the country and pledged that "every effort would be made" to put into effect the conclusions and recommendations of the

Committee.

Amnesty International has welcomed several measures taken over the last few years which, if fully implemented, could go a long way towards assisting the eradication of torture in Sri Lanka. Among them are the ratification of the UN Convention against Torture in January 1994, the passing in November 1994 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act which gave effect to Sri Lanka's obligations under the UN Convention against Torture, the establishment of the Human Rights Commission of Sri Lanka and the issuing of specific presidential directives aimed at safeguarding the welfare of political detainees.

This report describes the different facets of torture, rape and death in custody in Sri Lanka. It seeks to identify the legal, institutional and political factors which allow these human rights violations to happen and impede victims and their relatives from obtaining redress. It concludes with a set of recommendations to the Sri Lankan authorities which complement those of the Committee against Torture, and, if implemented, would help to check these serious human rights violations.

KEYWORDS: TORTURE/ILL-TREATMENT / DEATH IN CUSTODY / POLICE / POLITICAL PRISONERS / WOMEN / CHILDREN / CONFESSIONS / SEXUAL ASSAULT / NATIONAL HUMAN RIGHTS COMMISSION / UN CONVENTION AGAINST TORTURE / IMPUNITY / EMERGENCY LEGISLATION / TORTURE TECHNIQUES This report summarizes a 38-page document (18,246 words), SRI LANKA: Torture in custody (AI Index: ASA 37/10/99) issued by Amnesty International in June 1999. Anyone wishing further details or to take action on this issue should consult the full document.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 8DJ, UNITED KINGDOM

[Summary Index](#) | [AI Publication Index](#) | [Home](#)

MANICKAVASAGAM SURESH

- AND -

THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE ATTORNEY GENERAL OF CANADA

Appellant

Respondents

IN THE SUPREME COURT OF CANADA

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Amnesty International

Court File #: 27790

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

MANICKAVASAGAM SURESH

Appellant

- and -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION
THE ATTORNEY GENERAL OF CANADA**

Respondents

**MEMORANDUM OF ARGUMENT OF AMNESTY INTERNATIONAL
ON MOTION FOR LEAVE TO INTERVENE**

PART I: THE NATURE OF THE MOTION

1. Amnesty International ("AI") has brought this motion to obtain an order for leave to intervene in this appeal.

Notice of Motion, dated September 15, 2000, p. 2.

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PART II: THE FACTS

2. Amnesty International is a worldwide voluntary movement founded in 1961 that works to prevent some of the gravest violations to people's fundamental human rights.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 4.

3. Amnesty International works to promote the human rights enshrined in the *Universal Declaration of Human Rights*, the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* and other international human rights standards through education programs and campaigning for the ratification of human rights treaties. The focus of Amnesty International's work is to:

- free all prisoners of conscience (people detained for their beliefs or because of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status who have never used nor advocated violence),
- ensure fair and prompt trials for political prisoners,
- abolish the death penalty, torture and other cruel treatment of prisoners,
- end extrajudicial executions and "disappearances".

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 4-5.

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4. Amnesty International is impartial and independent of any government, political persuasion or religious creed. Amnesty International is financed largely by subscriptions and donations from its worldwide membership, and receives no government funding.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 6

5. Amnesty International has developed a unique expertise regarding the concept and practice of torture, its worldwide prevalence, and international prohibitions on its use. AI began drawing attention to specific cases of torture shortly after its formation in the 1960's, when the international regime establishing the non-derogable right to be free from torture was in the early stages of its development. AI sought to mobilize political will among governments to invoke and apply norms against torture.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 9

6. For decades, AI has gathered and verified information on the practice of torture from reliable sources. It has also worked to bring about international legal instruments necessary to deter torture. In 1972, AI launched its first Campaign for the Abolition of Torture, which mobilized interest about institutionalized torture among government officials and politicians, as well as at the UN and among other non-governmental organizations (NGOs). In 1983 AI launched another Campaign for the Abolition of Torture, in which it promoted a 12-Point Program for the Abolition of Torture. Currently, AI continues its fight against torture, and in October 2000 it will launch another International Campaign Against Torture.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 11-15, Exhibit "A"

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7. Part of Amnesty International's work to prevent human rights violations involves opposing the return (refoulement) of any person to a country where he or she would be at risk of human rights violations within Amnesty International's mandate. In order to carry out this work Amnesty International provides information about human rights violations in asylum seekers' countries of origin to governments, to those who make decisions on asylum claims, and to lawyers and others working on behalf of the asylum seekers. Amnesty International also monitors governments' asylum policies and practices to ensure that they are adequate to identify and protect those at risk. In some cases Amnesty International appeals directly to governments to prevent the refoulement of a refugee.

10

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 17-18

8. The Canadian section of Amnesty International has expressed concerns regarding Canada's laws, policies and procedures affecting refugees for over twenty years. It has also intervened to prevent the removal of several refugees from Canada to countries where Amnesty International believed they would be at risk of abuses within its mandate. Amnesty International has expressed its concerns to several Prime Ministers, several Ministers of Immigration, Cabinet Ministers, and Members of Parliament. It has also made submissions and appeared before Parliamentary Standing Committees and Senate Committees studying changes to the Immigration Act.

20

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 19, Exhibit "B".

9. Amnesty International has been monitoring the case of Manickavasagam Suresh since 1996. AI has made a number of representations to the Canadian government based on its belief that Mr. Suresh would be at risk of torture if he is returned to Sri Lanka. The organization is of the opinion that the return of Mr. Suresh to Sri Lanka would violate Canada's obligation under Article 3 of the United Nations Convention Against Torture and Other Cruel,

- 5 -

Inhuman, or Degrading Treatment or Punishment. In July 1999 AI applied for leave to intervene in this matter before the Federal Court of Appeal.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 21, 22

- 10.
- For many years, AI has monitored and reported on the widespread practice of torture in Sri Lanka. AI has conducted research missions to Sri Lanka, and has met with Sri Lankan government representatives and law enforcement authorities. In June 1999 AI released a comprehensive report on the practice of torture in Sri Lanka.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 23, Exhibit "D"

- 11.
- Amnesty International is seeking leave to intervene in order to provide the Court with its expertise based on its longstanding work against torture, its knowledge of the practice of torture in Sri Lanka, and its previous involvement in this case. This appeal involves many issues of importance which will have a significant impact upon AI's work, within Canada and internationally, to prevent the return of people to countries where they may face torture.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 26-28

- 20
- 12.
- If leave to intervene is granted, AI proposes to make the following submissions:
- a) there is a non-derogable obligation in international law not to return someone to a country where there is a risk of torture;
 - b) returning someone to face a risk of torture constitutes a violation of the *Canadian Charter of Rights and Freedoms* which can never be justified;

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- c) given the pattern of torture in Sri Lanka, there are substantial grounds for believing that Manickavasagam Suresh would be in danger of being subjected to torture, and therefore the return of Manickavasagam Suresh to Sri Lanka would be a violation of Canada's domestic and international obligations.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 25

PART III: THE ISSUES

- 10 13. The issue on this motion is characterized as follows:

- should Amnesty International be granted leave to intervene in this appeal?

PART IV: ARGUMENT

14. A motion for leave to intervene should be granted where:

- a) the moving party has an interest in the subject matter of the proceedings, and
b) the moving party will make submissions which will be useful and different from the
20 submissions made by other parties.

Rules 18(3)(a) and (c) of the *Supreme Court Rules*

***Reference Re: Workers' Compensation Act, 1983 (Nfld.)* [1989] 2 S.C.R. 335 at p. 339**

15. A party is able to satisfy the second branch of the test if it "has a history of involvement in the issue giving the applicant an expertise which can shed fresh light or provide new information on the matter".

***Reference Re: Workers' Compensation Act, 1983 (Nfld.)*, supra at p. 340**

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16. The Rules regarding applications to intervene have been relaxed in appeals which involve the interpretation of the *Canadian Charter of Rights and Freedoms*. Public interest organizations should be granted intervener status, particularly on issues of public importance which affect their members.

Canadian Council of Churches v. Canada [1992] 1 S.C.R. 236 at page 254, 256.

17. The issues in this appeal will have a significant impact on the scope of the international legal obligation not to return someone to a country where there is a risk of torture. These issues will have a substantial impact on the work of Amnesty International in its fight to end torture and in its work to prevent the return of anyone to a country where he or she may face treatment within its mandate. Therefore, AI has a legitimate interest in the issues raised in this appeal.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 27

18. Amnesty International's interest in this matter has been demonstrated by its longstanding work to end torture, its submissions to the Canadian government regarding this case, and in its application to intervene in this case before the Federal Court of Appeal.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 28

19. As a non-governmental international human rights organization with unique expertise on the scope of the international prohibition on torture, Amnesty International brings a perspective which is different from the other parties and interveners in this appeal.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 29

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20. Due to Amnesty International's historical role in mobilizing support for international standards and legal instruments against torture, it is well positioned to provide useful submissions on Canada's non-derogable domestic and international legal obligations not to return someone to a country where there is a risk of torture. Further, AI has unique knowledge and experience regarding the prevalence of torture in Sri Lanka, having released a comprehensive report on the subject in June 1999.

Affidavit of Gloria Nafziger sworn September 14, 2000, para. 23, Exhibit "D".

10 **PART IV: ORDER REQUESTED**

21. Amnesty International respectfully seeks an order from this Court pursuant to Rule 18 of the *Rules of the Supreme Court of Canada* granting it leave to intervene in this appeal, to file a factum and to make oral submissions at the hearing of the appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED BY:

20 Dated: September 15, 2000


Michael F. Battista
Michael Bossin
Solicitors for the
proposed intervener Amnesty International

- 9 -

APPENDIX "A" - Statutes Referred to

Rules 18 of the *Supreme Court Rules*

- 10 -

APPENDIX "B" - Authorities Referred to

Reference Re Workers' Compensation Act, 1983 (Nfld.), [1989] 2 S.C.R. 335

Canadian Council of Churches v. Minister of Employment and Immigration, [1992] 1 S.C.R. 236

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IN THE SUPREME COURT OF CANADA

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