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OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events of legal interest and personalities associated with the Trust. Our publication is aimed at raising public awareness on all issues concerning the legal rights of citizens, and at gaining wider recognition of law as society's instrument for peaceful change.

In this issue we feature two 1993 Reports highlighting areas where human rights need to be defended. The first is the Asia Watch Report on repatriation of Sri Lankan Tamils from Tamil Nadu, involving peaceful civilians who abruptly became displaced persons. The second is a survey of the current status of human rights in all parts of the Commonwealth, prepared for the Commonwealth Prime Ministers Summit Conference of October 1993. Equally topical is our final feature, the interim assessment of the SAARC Observer Mission to the elections just concluded in Pakistan.

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ASIA WATCH: HALT REPATRIATION OF SRI LANKAN TAMILS

(A Report of an Asia Watch mission to Sri Lanka and Tamil Nadu in April/May 1993)

I. Introduction

On August 12, 1993 the Indian government is expected to begin repatriating some 7,000 of the more than 80,000 Sri Lankan Tamils currently residing in government-run refugee camps in the southern state of Tamil Nadu. Asia Watch calls on the governments of both India and Sri Lanka to halt the repatriation unless there are firm guarantees that refugees are going back voluntarily, that they are sufficiently aware of the ongoing conflict in Sri Lanka to be able to make an informed decision about returning, and that they will not be subjected to any form of persecution on their return. There are strong grounds for believing that these conditions will not be met.

On the Indian side,

- * Refugees have faced direct and indirect coercion to return home, including arbitrary arrest, withdrawal of stipends and food rations, and pressure to sign forms indicating their desire to return without knowing the contents of what they were signing.
- * No international agency has been permitted access to refugee camps in Tamil Nadu to monitor whether the registration of refugees to return is indeed voluntary. Since August 1992, the United Nations High Commissioner for Refugees (UNHCR) has been able to interview refugees only after they have already registered and had been moved to a transit camp for repatriation.
- * Refugees have no reliable means of getting information about conditions in their home districts on which they can base their decision to return.

Once they reach Sri Lanka, the returnees, particularly young Tamil males, may be viewed with suspicion by both government forces, as LTTE supporters, and by the LTTE, as possible government informers. Both sides have been responsible in the past for serious abuses, including disappearances and executions of suspected informers.

The information in this report is based primarily on interviews conducted among refugees and relief workers in Tamil Nadu, India and in Sri Lanka in April 1993, supplemented and updated by press reports and additional information from the field.

II. Background

Since the early 1980s Tamil militants, chief among them the LTTE, have fought for a separate state of Eelam in northern and eastern Sri Lanka, where the majority of Sri Lankan Tamils live. As the insurgency degenerated into civil war after 1983, the Sri Lankan security forces adopted increasingly repressive measures against suspected militants. Tamil militants retaliated, massacring Sinhalese and Muslim civilians.

Violence during the first phase of this conflict, Eelam War I, peaked between 1983–1987. On July 29, 1987, the Indian and Sri Lankan governments signed the Indo-Sri Lankan Accord, which provided for an end to armed conflict, substantial local autonomy for the Northern and Eastern provinces, an amnesty for political prisoners and an end to the state of emergency. Most importantly, the accord provided for an Indian Peace Keeping Force (IPKF) to replace Sri Lankan troops in the north and east to disarm Tamil militants. But the IPKF itself proved to be abusive and contributed to the instability by supporting a rival Tamil faction, the Eelam People's Revolutionary Liberation Front (EPRLF) against the LTTE.

As the presence of the Indian troops became a political liability for the Sri Lankan government, the latter began negotiating with the LTTE in April 1989; by June a ceasefire was declared. By July 1989, both the LTTE and the Sri Lankan government had demanded the withdrawal of Indian troops. In September, the Indian government agreed, and by the end of 1989 the IPKF had withdrawn from all but two Northeastern districts, Trincomalee and Jaffna. As they withdrew, the LTTE began to take over primary responsibility for policing the Northeast. They collected taxes, established checkpoints, and systematically executed members of rival Tamil groups who had been supported by the Indian army.

In March 1990, the last Indian troops finally left Sri Lanka. Fearing an LTTE backlash, most of the EPRLF leadership fled the Northeast Province. Following a brief respite, fighting between the Sri Lankan government and the LTTE resumed.

The renewal of hostilities in June 1990 marked the beginning of what became known as Eelam War II. Military offensives against the LTTE were accompanied by indiscriminate bombing and shelling of civilian areas in the north; detentions, torture, killings and disappearances of young Tamil males; and massacres and reprisal attacks on Muslim, Sinhalese and Tamil villagers by the LTTE, the security forces, armed village defense units and vigilante groups. By April 1993, international humanitarian agencies estimated that Eelam War II had claimed 30,000 lives.

The war has created what is perhaps Sri Lanka's most pressing humanitarian problem, its refugees. In successive waves over the past decade, more than 200,000 Sri Lankan Tamil and Muslim refugees have fled their homes in the Northeast Province and sought safety in India. Another 300,000 have fled to western countries and over 600,000 are currently displaced within Sri Lanka itself, out of a total population of about 17 million.

A legacy of government policies and initiatives which tolerated and at times encouraged gross violations of human rights, and the continuing lack of accountability for past abuses lie behind this crisis. For refugees and the displaced, security has been further diminished by resettlement into what are effectively war zones.

Sri Lankan refugees are extremely vulnerable to abuses by local officials, the police and army, militant

groups and criminals. They are easy targets of human rights violations. The right to *non-refoulement* is a fundamental principle of international law and the basis of refugee protection. Refugees must not be compelled to return to areas where they would face further danger. At the same time, safeguards must be put in place to ensure that life in refugee facilities does not become so insecure that people are willing to risk physical danger rather than remain.

III. The Indian Side

Most refugees fleeing Sri Lanka in 1990 fled by boat to Rameswaram, an outcropping of land off the southeastern coast of Tamil Nadu, the closest point between Sri Lanka and India. From there, refugees were transported to camps throughout the state of Tamil Nadu. To cope with the enormous and unexpected flow, refugee camps sprang up in every available structure and in many open areas. As of April 1993, there were 132 refugee camps in Tamil Nadu. There were also several facilities used as temporary 'transit' centers – the embarkation point for repatriation to Sri Lanka. Similar transit facilities exist in Sri Lanka for newly returning refugees.

The Indian government has provided rations, a living stipend and shelter for Sri Lankan refugees since the first wave arrived in 1983. Following the assassination of former Prime Minister Rajiv Gandhi in May 1991, the woman who later became Tamil Nadu's Chief Minister, Jayalalitha Jayaram, launched a personal and political campaign against Sri Lankan Tamils. Repatriation plans began soon afterward. On May 14, the Indian government agreed to demands from the Tamil Nadu state government to ban the LTTE, and police in Tamil Nadu arrested several thousand suspected LTTE militants in a matter of days.

On January 6, 1992, the Indian government announced a bilateral agreement with the Sri Lankan government to begin repatriation of refugees on January 20. The UNHCR was excluded. By May 1992, some 23,000 refugees had been returned to temporary transit camps in Sri Lanka.

In May, after the head of UNHCR, Madame Sadako Ogata, raised concerns about security threats in Sri Lanka and the repatriation process in a letter to Prime Minister Narasimha Rao, the program was temporarily suspended. Negotiations ensued between UNHCR and the Indian government and in July 1992, they reached an agreement which allowed the agency a token presence in Madras, with access to refugees at the point of departure, in the transit centers, but not in the camps themselves. In August, UNHCR began assisting the repatriation program. A total 29,102 refugees were returned to Sri Lanka before the program was suspended due to monsoon rains and rough seas in October 1992.

After the suspension, a number of NGOs again raised concerns about the repatriation process, and urged UNHCR to reassess its role. In November 1992, Asia Watch expressed concern that the agency's acceptance of its limited mission in Tamil Nadu would lend legitimacy to the repatriations, while allowing the Indian government to bar the UNHCR from fulfilling its protection mandate.

UNHCR Access

UNHCR has never been allowed to visit any of the more than 80,000 refugees who reside in the Tamil Nadu camps. UNHCR has been unable either to provide adequate information about security conditions in Sri Lanka to the refugees in the Tamil Nadu camps or to monitor their well-being and security.

On May 27, 1993, the Indian government banned all NGOs from its refugee facilities in Tamil Nadu. Without their services, conditions in the camps in Tamil Nadu are in danger of rapid deterioration.

Because UNHCR staff are not permitted to visit the camps themselves, the refugees can only complain to the UNHCR office in Madras. However, many of the camps in Tamil Nadu lie hundreds of kilometers away. Few refugees ever see a UNHCR representative. Many are illiterate and most have little understanding of their rights, or of UNHCR's responsibility for their protection. The only other opportunity refugees have had to contact UNHCR is at the point of departure, after they have made (or been pressured to make) a decision to return.

According to UNHCR officials, the agency views security information about the country of origin to be commentary of a political nature; its staff is thus forbidden to disseminate it. However, a key requirement in the promotion of voluntary repatriation is that refugees are well-informed about the conditions they will face upon return.

Repatriation had been scheduled to resume in February 1993, but difficulties negotiating transport delayed repatriation until UNHCR agreed to supply the necessary boats to ferry small groups of refugees from Rameswaram to Mannar Island, an island off Sri Lanka's northwest coast that has been the site of fighting between the LTTE and the Sri Lankan army and police since early 1993. This plan changed in July, when the Indian government succeeded in negotiating a contract with a private shipping company for larger ships that could take refugees to Trincomalee.

Problems of Coercion in the Repatriation Process

Through August 1992, when UNHCR gained access to refugees at the point of departure, Asia Watch received complaints of coercion by Tamil Nadu officials attempting to force refugees to return to Sri Lanka. In January 1992, the Indian government reported that some 30,000 refugees had signed forms indicating their willingness to return home. There are credible reports of camp officials giving refugees false information and denying them rations or stipend money or threatening them with physical violence or arrest if they did not sign.

A pamphlet distributed in March 1992 to refugees by the District Collector of Thiruvannamalai Sambuvaravar illustrates the extent of animosity by local officials towards Sri Lankan refugees at that time. Translated into English, the pamphlet reads:

An Appeal to the Sri Lankan Tamils

The Sri Lankan Government has made all arrangements to provide security to you in Sri Lanka itself with the help of the International Committee of the Red Cross. However many of you have spurned the efforts of your government and remain here.

There are inadequate employment opportunities available here in Tamil Nadu for its own youth. So how can it be made available to the Sri Lankan refugees? Furthermore, if you return to Sri Lanka, employment in sectors such as construction of roads, houses, government office buildings etc. will be available for another 3 years. Those among you who have attained degrees in education may

even be able to obtain government jobs. These opportunities will only be available to those who arrive early.

Many of you say life is not safe there for Tamil people. Those who say such things are nothing but cowards of the Tamil race. The Sri Lankan Tamils who have come to Tamil Nadu number about 1.75 lakh (175,000). Besides, these, lakhs and lakhs of Tamils continue to live in Sri Lanka. Don't they fear for their lives? Are only your lives valuable?

By spurning the efforts of your government today, you will not continue to live in Tamil Nadu. Some day you will have to go back to Sri Lanka. On that day if the Sri Lankan government spurns you, what will be your fate?

You have a future in Sri Lanka. Only time will tell whether it will be a bright or a cloudy one. But in Tamil Nadu there is absolutely no opportunity for you or your children to study or progress in life and obtain employment.

During the last two months how many of those approximately 500 refugees who left here have died or are suffering more than the suffering they endured here? Therefore, shed your cowardice. Overcome your status as an unwanted guest by accepting the efforts taken by your government and return to your homeland.

Overt pressure continued to be reported until the following August. In April 1993, for example, Asia Watch talked to one repatriate, now in Uppuveli Camp in eastern Sri Lanka. "Muthusamy", 35, was a widower originally from Trincomalee District. He left Sri Lanka on July 27, 1990 and returned on March 3, 1992. In India, he had stayed in Kamarajan District, with his sons, mother-in-law and 300 families.

He told Asia Watch he agreed to go back when he was given an English form to sign. Since over 100 other families had signed it, he signed too. "You didn't have to know English, just how to sign, and there was nothing to fill out. I was afraid to come back, but I had filled out a form." He told Asia Watch that from the radio he had heard there was fighting in Sri Lanka and that Tamils were being arrested, but that conditions were so hard in India that he felt he had to leave. He said knowing what he knows now, he would have stayed in India.

In another case, a relief worker told Asia Watch that in May 1992 in Bhavani Sagar camp in Periyar District, local police came to the camp seeking to arrest 30 LTTE members. There were none to be found. The police then called out the male refugees from the camp, and announced that they needed 30 men to do day labor. The men were jailed in Erode Sub-jail, a special camp, for eight months. They were very badly fed and went on a hunger strike in protest. Eventually, nine escaped, were caught and returned to the jail. They were finally released when they agreed to go to Sri Lanka in September 1992.

After August 1992, the direct coercion was replaced by more subtle forms of harassment, mostly involving deliberate delays of rations and stipend money or official refusal to make or permit essential repairs in the camps. Refugees in August 1992 complained to local NGOs of waiting as long as four months for stipend money and being told by officials that if they agreed to leave India they would be paid.

Refusal by officials to undertake repairs or allow NGOs to do so has been a problem in Tamil Nadu's camps since repatriation began. At Harur Camp in Dharmapuri District a fire around June destroyed 40 refugee huts. Three days later, according to a local relief organization, authorities began to block NGO assistance and attempted to relocate refugees to another camp for repatriation. Refugees whose homes were destroyed were told that the government would not rebuild them. The District Collector for the camp told concerned NGOs that the refugees should leave India on August 15. Later, officials relented, telling refugees they could rebuild using their own resources so long as NGOs did not help.

Access to Information

Inadequate information about conditions in Sri Lanka remains the most serious problem for refugees compelled to make a decision about returning. There is no responsible body in Tamil Nadu willing or able to ensure that information is available.

Many repatriates in camps in Sri Lanka told Asia Watch they had little idea about the conditions to which they were returning. Many were given the false impression that they would be able to go back to their villages. Most indicated that they left India because conditions in the camps had become intolerable.

One such case was "Lakshmi", aged 32, from Irrakandy, Trincomalee District, who fled Sri Lanka for India in June 1990. She and her husband returned to Sri Lanka in February 4, 1992. They were given no forms to sign. Instead, Indian officials called refugees by name and asked if they were willing to go home. Lakshmi told Asia Watch that her family had no information about conditions in Sri Lanka before they left, although villagers in Tamil Nadu had warned her not to go back. But she said,

We felt compelled to go back because the conditions in the camps were so bad. We came [back to Sri Lanka] with the impression that we would be taken back to our villages. The Indian police at the camp assured us that the Sri Lankan army and police could protect us. We had no radio, no letters, no direct contact with Sri Lanka.

IV. The Sri Lankan Side

Over 20,000 refugees were returned from Madras to transit camps in Trincomalee in 1992. Almost 9,000 more returned from Rameswaram to Talaimannar on Mannar Island. Most of the repatriates have since moved on to more permanent facilities or have attempted to resettle in their home communities. Other repatriates have joined the ranks of the internally displaced in some 531 government "welfare centers".

The UNHCR funds nine camps for repatriates in Sri Lanka – three camps on Mannar Island, three camps in Vavuniya, and three camps in Trincomalee. UNHCR also oversees two large camps in Madhu which function as Open Relief Facilities, housing 31,000 returnees and displaced persons who can move in and out as they wish. All UNHCR camps are administered by the Sri Lankan government.

The problem faced by all repatriates to the Northeast is war. With poor security conditions transit camps had become severely overcrowded. The crowding was exacerbated in August 1992 when the government of Sri Lanka began prohibiting returnees with homes in LTTE-controlled areas from leaving welfare centers in government territory. The Sri Lankan military has made it plain in press interviews that it would prefer

the civilians remain on government-controlled land.

By September 1992, only half of the refugees repatriated since January had been able to return home and the internally displaced population dependent on government aid was over half a million. The government announced on September 1 that due to economic pressures it was cutting dry rations to the displaced in half—a move that would have had devastating effects had it not been for intervention from many concerned agencies. The government increased its efforts to promote resettlement and the UNHCR began constructing additional facilities.

By late April 1993, most of those who returned in 1992 had either attempted to resettle in their own villages, were living with relatives, or had moved to other facilities closer to their homes. Many early returnees have become mingled with the displaced population in the sprawling UNHCR Open Relief Center at Madhu or in government welfare centers designed for the internally displaced.

Repatriates, like other displaced persons in the Northeast, face risks from all parties. Refugees in Trincomalee District complained of harassment by police, abusive language and beatings, arbitrary arrests and frequent round-ups as the case material in Part V below illustrates.

On April 20, 1993, the day before Asia Watch visited Trincomalee, soldiers and police surrounded a sector in Trincomalee town and asked residents to assemble at St. Joseph's College premises. When they got to the College, the refugees were ordered to parade before masked informants used by the security forces to identify LTTE suspects. Several people were detained for questioning. Between June 1990 and the end of 1991, over 1,000 people reportedly disappeared from Trincomalee district, many of them in army cordon-and-search operations. Male repatriates who have been forced because of the war to stay in camps for displaced people, have been obliged to provide free labor to police.

Refugees seeking to leave camps for villages in LTTE territory also face the dangers of military assaults, which involve aerial bombardment, shelling by the navy, and sometimes armored support of ground troops. Based on the testimony of area residents and on reports of military activity that appear in the press, they occur once or twice a week. These bombing raids are usually preceded by the declaration of a short-term civilian curfew. Larger operations in which the military attempts to take substantial territory are less frequent, but can involve thousands of ground troops with armor and air support. There now tend to be fewer civilians casualties during large-scale operations than in earlier years because civilians have learned to flee ahead of the advancing troops. Throughout the Northeast, fighting is sporadic. An area may remain calm for weeks, and then suffer a surprise attack by military planes attempting to root out LTTE militants.

In April, Asia Watch was told by a refugee worker of 39 families who had been living in camps on Mannar Island who were sent to a UNHCR camp on the mainland for resettlement. UNHCR transported them from the island to the Mannar mainland, and planned to have them stay in Palampiddi Camp for one or two weeks before they resettled. The informant told Asia Watch that in mid-April, there had been an aerial bombing close to Murunkan that would probably delay the resettlement.

Particularly in border areas between the LTTE and the army, residents also face threats from the LTTE, who use the presence of civilians to secure territory. In June 1993, fighting intensified in the Cheddikulam area. On June 3, the residents of the village of Kristokulam were told that the LTTE would begin training

them in the use of firearms to defend their village, and that each family was required to provide one recruit for the civil defense force. As government troops backed by helicopters pushed into the no-man's-land west of Cheddikulam, over 163 civilians fled into army-controlled territory. Residents of Kristokulam said they fled because they feared intensified LTTE recruitment, and because an impending army offensive threatened to overrun the village.

The army welcomed the exodus. A senior army officer said on June 16, "It is a good sign. We must encourage more people to come to our side but at the same time ensure there is no rebel infiltration." The army launched an offensive in the Cheddikulam area the following day.

Civilians attempting to travel north from Vavuniya into LTTE territory also face dangers in border areas and have frequently been caught in violence between the LTTE and the military. The Nochchimoddai checkpoint has been the site of regular clashes between the LTTE and armed PLOTE (People's Liberation Organization for Tamil Eelam) fighters used by the army to man the checkpoint. The crossing is open one hour a day in either direction. Everyday thousands of civilians can be found waiting on either side to cross, including refugees wishing to return to homes in northern Sri Lanka.

Threats from Pro-Government Militants

Pro-government militant groups have also been responsible for abuses against civilians. Three such groups are TELO (Tamil Eelam Liberation Organization), PLOTE (People's Liberation Organization for Tamil Eelam) and EPDP (Eelam People's Democratic Party). Because the government has tended to view large concentrations of displaced Tamil civilians as a security threat, it has employed these anti-LTTE militant groups as counterinsurgency forces and in the case of the EPDP, to oversee the administration of some refugee camps.

Many people with whom Asia Watch spoke complained that PLOTE and TELO members regularly harass people they suspect of LTTE sympathies. Persons who provide aid to Sri Lanka's refugee community face particular risk. In mid-March a Sri Lankan doctor who had travelled to villages with physicians from an international relief agency was arrested in Mutur, one of the areas that has been targeted for resettlement, after TELO accused him of treating LTTE members during those visits. He was released on March 20. A local teacher, Pakiyarajah, was also detained in March after members of TELO accused him of supporting the LTTE.

At least two volunteer health workers in Periyakulam, a village near Trincomalee, have resigned since January 1993 after being warned by unidentified persons not to provide medical aid or dispense medicine in the sensitive areas where they worked.

Both the Sri Lankan military and the LTTE have shown a strong strategic interest in controlling resettlement in areas they are trying to secure. A civilian population provides an anchor for both parties' territorial advances and some deterrent to large-scale assaults by its adversaries. Thus, the Sri Lankan army actively encourages refugee resettlement into newly "cleared" areas and publicly welcomes the flight of refugees out of LTTE-held areas as a military victory. The danger of this kind of effort is that it plays on the desperation of the displaced and uprooted and may encourage them to return to unsafe areas. Refugees are told what they most want to hear - that it is safe to go home.

Refugees in Colombo

Some have argued that the dangers faced by returning refugees would be substantially lessened if they were returned to Colombo. In fact, they are exposed to other dangers related to the perception by security forces of Tamils as security threats. Those dangers include arbitrary arrest and detention, and the associated risk of mistreatment in police custody, which is pervasive throughout Sri Lanka.

Over the course of the war, thousands of Tamil civilians have been arrested in round-ups in Colombo. In June, many hundreds were arbitrarily detained in connection with investigations into the assassinations in April and May of opposition politician Lalith Athulathmudali and President Ranasinghe Premadasa. Some may still be in detention. In many cases, the arrests seem to have been made solely on the basis of ethnicity. The issue of the arbitrary nature of these round-ups has yet to be addressed.

The refugee camps in Colombo are some of the worst in Sri Lanka, partly because of the appalling physical conditions, partly because of the menacing presence of the EPDP, the anti-LTTE, paramilitary force delegated by the government to guard the camps.

V. Case Studies

1. *Uppuveli Technical College – Trincomalee District*

Uppuveli Technical College Welfare Centre is a government-run camp for displaced persons, about five kilometers north of Trincomalee town. In the Uppuveli Camp, as in other camps designed for the internally displaced, Asia Watch found repatriates from India whose homes were in unsafe regions of Trincomalee District living alongside other displaced local residents.

In Uppuveli, returnees from India complained of round-ups by the Sri Lankan security forces, the most recent of which had occurred on April 1, 1993. The camp residents said that they were also being pressured to perform free labor for the police and had been beaten for refusing.

Sami aged 42 told Asia Watch that in September a number of policemen, low-ranking constables, came and called the men in the camp for "voluntary" work weaving *cadjan* (palm fronds). When they called Sami, he refused. He told the police that no one in the camp was available to work, and said he was not well and was staying home. A policeman cursed at him in Sinhala, "everyone understands those words.." and asked him his name. Then they went away.

Three days later, at about 7.30 p.m., while the men were watching a video, 15 policemen cordoned off the camp and went to the room where Sami's family stays looking for him (Sami walks with a limp so he is easily identifiable). Sami was seated outside watching a video when he heard the commotion. When he went and announced himself to the police, they attacked him, punching him in the mouth and knocking out a tooth. Then they hit him with rifle butts on the back and chest, until they knocked him down. Then they began kicking him. They also assaulted an elderly man who tried to intervene.

Sami complained to UNHCR about the assault. UNHCR contacted the police and a more senior officer came and spoke with him. Sami was given a medical report and taken to the hospital for treatment.

UNHCR followed up the case and asked Rs.2,000 (\$ 42) compensation, which Sami received.

The refugees told Asia Watch that the police regularly come twice a month and call them for "voluntary" labor. They are not happy to work without pay. They have also come to fear physical assaults.

Refugees throughout out the Northeast also complained of abuses by the LTTE. Unlike complaints about the police and army, which were expressed freely, refugees were very cautious about references to the LTTE and anti-LTTE militant groups. In every district Asia Watch visited, the fear of being overheard complaining about militant abuses was palpable.

When asked why they remained in the Uppuvelli Camp, two refugees quietly told Asia Watch they feared militant activity in their villages where killings thought to have been perpetrated by LTTE cadre had occurred.

In Sampaltivu, north of Trincomalee, in late February 1993, a Muslim man, Iqbal, 27, and his Tamil wife, Udayakumari, 24, were shot to death and their bodies were found hanging from a telegraph post. They were reportedly abducted by unidentified assailants thought to be LTTE members who suspected them of being informers for the security forces.

On March 18, the body of another suspected informer, Rajaratnam, 45, from Alles Garden, was found hanging from a tree near Sampaltivu bridge junction. He had facial lacerations.

2. *Madhu Open Relief Center*

The Madhu Open Relief Center is a sprawling, UNHCR-financed facility on the grounds of a Catholic shrine in Mannar District. There are two camps, one at Madhu Shrine, and another at Palampiddi, about 10 km. north of Madhu shrine. The combined population of the camps is about 31,000. UNHCR designed these "open" facilities to provide temporary refuge to both repatriates from India and the internally displaced of the region, allowing them to move freely in and out and obtain assistance as the security situation in Mannar District permits. The Madhu camps are located in LTTE-held territory.

Refugees use Madhu Camp as a permanent base, going north to their villages and coming back again to get rations, because army bombings in the district are common and unpredictable. Food availability in the north is also a problem and because of the army's blockade kerosene and fertilizer are difficult to get and expensive. Residents are unable to earn a living and unable to find food.

Although the army has respected the camp as a zone of security, there have been bombing attacks very close by. Army shelling from the coast threatens all villages in Mannar District. Residents of Madhu's camps who travel back and forth from their villages are at risk from these attacks.

The attitude of the LTTE toward Madhu Camp has been more complicated. LTTE convoys and fighters pass through the camp, to visit relatives, go shopping or visit the shrine. Starting in September 1992, Madhu became more and more an LTTE camp. The LTTE opened a soft drink stand and an information center on camp land. They flew the LTTE flag, disposed of dead bodies and began entering the camp armed and in uniform.

In late 1992 the UNHCR finally threatened to suspend aid and leave Madhu. The LTTE was in the process of negotiating with the government for the opening of the Sangapetty causeway, a route from Jaffna south, and needed the UNHCR to mediate. They agreed to abide by the rules set down by UNHCR. These included banning guns and uniforms from the camp.

Based on interviews Asia Watch conducted with refugees and others familiar with Madhu camp, the LTTE clearly controls the movement of refugees in and out of its territory and permits or forbids resettlement as a means of pursuing military objectives. Repatriates from India are the object of suspicion by the LTTE and are frequently forbidden to leave Madhu Camp. Refugees in Madhu Camp are likewise forbidden to resettle to villages which are under army control.

"Devan", 38, a refugee in Madhu Camp from a village near Cheddikulam on the army side of the front line said that although he was tired of camp life, he had not tried to go to his village because it was not safe to ask the LTTE for permission. He said he knew of a group of refugees who got passes from the LTTE to go to Vavuniya for some business and used the opportunity to visit their villages. "Devan" said the group never came back to Madhu.

Returnees from other areas along the border between LTTE and army territory have been caught in a similar predicament. They went to Madhu because it was a large, UNHCR-run camp, close to their home villages, only to find that their villages were in areas to which they could not safely return.

Refugees wishing to go to Vavuniya or Colombo must get a pass, meet with the Government Agent for certification, and pay a sizable fee to the LTTE. Although a typical toll charge is Rs.100, there have been reports of the LTTE charging Rs. 400 - Rs. 500 for refugees headed from Mannar District to army-controlled territory. From the Jaffna peninsula the fee can be as high as up to Rs. 15,000 (\$ 312).

Interviews with refugees in the Madhu Open Relief Center clearly illustrate the dilemma faced by Sri Lanka's returning refugees. Many refugees from Cheddikulam who returned from India (and originate from villages in both army-controlled and LTTE-controlled areas) had thought they would be able to return home - an impression reinforced by officials in Tamil Nadu. Once back in Sri Lanka many found they were unable to leave refugee facilities.

"Sundar" left Sri Lanka for India in July 1990. In June 1992, he was returned by boat to Trincomalee. He told Asia Watch he had heard that Vavuniya had been "cleared" and assumed that his village, west of Vavuniya near Cheddikulam, was controlled by the army. But when he came back he found that his village was held by the LTTE and that his relatives were living in Madhu Camp. He joined them there but is unwilling or unable to try to resettle in LTTE-held territory.

"Kumar", a refugee from an army-controlled village near Cheddikulam is a repatriate from India who sought refuge in Madhu. He said it would be unsafe for him to try to go home. He told Asia Watch, "the 'Party Concerned' [a common euphemism for the LTTE] will not give me permission to go. They think people coming from India are carrying messages [for the security forces]".

3. *Mannar Island*

The Sri Lankan government's resettlement drives have sometimes had tragic consequences. Mannar Island, the destination of many of the 7,000 refugees scheduled for repatriation in August, is an area which had been declared "cleared" by the Sri Lankan army in 1992. But it lies very close to LTTE-held territory. In January it was deemed safe to begin resettling Muslim refugees there.

According to displaced persons in Colombo and officials from the Ministry of Rehabilitation, the resettlement program was well publicized, and people began to go back.

After several peaceful months, violence erupted on Mannar Island on April 13, 1993, when LTTE forces launched four separate attacks on army sentries and police posts. In response, the army hammered the island with heavy gunfire and shelling. Many people took refuge in nearby churches and mosques.

One twelve-year-old child bled to death after being injured by a shell that fell on the family home, which was about a mile from the base hospital on Mannar Island. Three others who were seriously injured by shelling were transferred by helicopter to Anuradhapura hospital. One of the casualties was a Muslim student whose leg was severely injured and subsequently had to be amputated. His mother said the 19-year-old had returned to Mannar Island to continue schooling at a Muslim secondary school when the government began publicizing that it was safe to return.

These incidents had a profound effect on the Muslim refugee community, who are even more vulnerable than their Tamil compatriots. Hundreds of Muslim civilians were massacred by the LTTE in 1990. As a result many Muslim communities in the north remain deserted.

4. *Batticaloa District: Vivekananda Camp*

On June 30, 1993, over 300 displaced persons who had been residing in Colombo's Vivekananda Hall Welfare Center since 1991 were forcibly relocated to Batticaloa District ten days after the army concluded a major military offensive in the region.

Batticaloa District has been the site of some of the most intense warfare in Sri Lanka and the security situation for civilians is precarious. A massive operation against the LTTE, code named 'Sea Breeze', employing 3,000 ground troops assisted by the air force and navy was launched in northern Batticaloa on June 10, 1993 - the same day officials informed residents of Vivekananda Camp that they would be relocated to Batticaloa, which they claimed had been declared a safe and "cleared" area.

Protests from refugees delayed the transfer, but relocation commenced on June 30. Thirty-eight families who agreed to resettlement boarded the buses first. Some forty families who protested were told to board the waiting buses anyway, so they could be transferred to Crow Island, another Welfare Center in Colombo. They resisted, fearing this was a ruse to send them to Batticaloa, but were physically forced on by the police. Some were physically assaulted. None were in fact, transported to the Crow Island Camp. Instead, on July 1 at 10.30 p.m., some 75 families arrived at Navalady Camp, Batticaloa, where they were housed in two thatched communal shelters with sand floors and insufficient facilities.

On June 20, the army announced to the press that it had cleared the main population centers of Batticaloa of "LTTE elements" and that all Tamils and Muslims who fled the Eastern Province, should come back and "resume normal life".

"There is no reason for [the refugees] to stay in Colombo when they can come back to Batticaloa", declared an officer speaking to *The Island* from Polonnaruwa.

Military officers also said Muslims who fled fighting in Batticaloa-Ampara and sought protection in Polonnaruwa District could return and resume normal life in their villages.

They said certain "interested parties" were trying to block resettlement of Tamil and Muslim refugees. The army has urged the civilian authorities to do whatever possible to speed up the resettlement programme.

The military's active promotion of resettlement, and the use of physical force to promote the relocation of refugees into an area where there has been very recent and intensive conflict, exposes Sri Lankan citizens to abuses of the most basic of their human rights, including the right to life, the right to the Protection of noncombatants against "violence to life and person", enshrined in Common Article 3 of the Geneva Conventions, and the right to freedom of movement and freedom to choose a place of residence, guaranteed in Article 12 of the International Covenant on Civil and Political Rights.

VI. The Applicable Law

Article 33 of the 1951 Convention and its 1967 Protocol relating to the Status of Refugees prohibits the repatriation of refugees to countries where life or fundamental freedoms would be endangered. This fundamental principle of international law, the right of *non-refoulement*, is the basis of refugee protection. *Non-refoulement* provisions are also included in article 3 of the Declaration on Territorial Asylum, and in other UN documents. Although the Indian government has not acceded to the 1951 Convention, the right of *non-refoulement* is accepted as customary international law, regardless of a country's accession to UN instruments.

International law permits the return of a refugee to his or her country of origin only if the return is voluntary. The 1950 Statute of the Office of the United Nations High Commissioner for Refugees charged the High Commissioner with the duty to "assist governmental and private efforts to promote voluntary repatriation". In 1985, the UNHCR reiterated its concern for voluntary repatriation, stating that "... repatriation of refugees should only take place at their freely expressed wish...."

As the Lawyers Committee for Human Rights concluded in a 1992 briefing paper, "The logic is straightforward: presumably a refugee would genuinely volunteer to return only if he or she would not face persecution after returning. It is thus essential that refugees are able to exercise their free and unconstrained will. To be voluntary the decision to return must be intelligent and informed. It is clear that Tamil refugees in India do not have access to the information that would enable them to make such decisions.

The decision to return must therefore be made without explicit or implicit coercion. Obviously, a refugee who "volunteers" to return home after being threatened, beaten or otherwise mistreated, has not truly made a voluntary decision and should not be repatriated. Pressure of this kind largely ceased in August 1992.

But the other, subtler forms of pressure exerted on refugees are still going on. These forms of "implied coercion" include instances where conditions in a refugee camp are allowed to become so perilous, dehumanizing or desperate that the refugee chooses to risk persecution rather than remain in the camp. Manipulation of food rations and stipends, barring NGOs which provide essential relief services from refugees camps, denial of permission to work outside the camp, arbitrary arrest and detention and other forms of harassment by police or other officials, failure to allow essential upkeep of refugee facilities, and denial of health care and other essential services are all common methods of implied coercion. Refugees who choose to return to Sri Lanka because life has become unbearable in India as a result of these actions cannot be considered voluntary repatriates.

To protect against such pressure, the UNHCR has emphasized "the essential need for persons to whom temporary refuge has been granted to enjoy basic humanitarian standards of treatment.

Conclusions

The Indian government should not proceed with repatriation of Sri Lankan refugees until it is willing to guarantee full access by the UNHCR to all refugees and refugee facilities. Interviewing potential repatriates at the point of departure, after registration to return has already taken place, is not sufficient.

The ban on NGOs working in the refugee camps in Tamil Nadu should be lifted, The barring of organizations which provide essential protection and support for refugees, and the deliberate denial of relief are forms of implicit coercion.

It is essential that refugees be provided with full and up-to-date information about the nature of the ongoing conflict in Sri Lanka. Mail deliveries to the camps in Tamil Nadu should be facilitated, not hindered, in the interests of ensuring that such information reaches the refugees. (Lifting the ban on NGOs would also improve the information flow). At present, refugees do not have the facts to be able to make informed decisions.

Sri Lankan refugees in Tamil Nadu face implicit, and sometimes explicit, coercion to return. That pressure, which includes keeping the camps in a deliberate state of disrepair and withholding stipends and food rations, makes repatriation more attractive. If the refugees knew that they would be returning to the kind of camps described in this report, providing free labor for police, threatened by the LTTE and pro-government paramilitary organizations, fleeing from bombing and shelling, many would decide not to go.

Until the voluntariness of their return can be assured, any repatriation would be tantamount to *refoulement*.

ACT RIGHT ON

(A Report by the Advisory Commission, The Commonwealth Human Rights Initiative, 1993)

The first report of the Commonwealth Human Rights Initiative (CHRI), *Put Our World to Rights*, was published on the eve of the Commonwealth Heads of Government Meeting (CHOGM) in Harare in October 1991. It was prepared in part to influence the Heads of Government to commit the Commonwealth and their own governments explicitly to the promotion and protection of human rights by according human rights a central place in the policies and institutions of the Commonwealth.

Violations of Human Rights: Some Illustrations

It would take us too long to provide a complete guide to human rights violations; summaries can be found in annual or special reports of various organisations, like Amnesty International, the Watchers, the US State Department etc. Our account here is illustrative of the nature and scale of these violations. We have selected a few important rights and have examined the situation of the more vulnerable members of society.

a) **Administrative Detention and Prison Conditions**

In our previous report, we commented on legislation which permitted administrative detention and their frequent use in a number of countries, embodying standards and regulations which fell well short of international rules, particularly as established in the International Covenant on Civil and Political Rights. Since Harare, no amendments to such legislation has been made to reduce its severity or conform to international standards (except in Mauritius which has abolished the Public Order Act under which detention without charge or trial was allowed). In a number of countries, including Malaysia, India, Malawi, Sri Lanka, Nigeria, the UK and Bangladesh, persons were detained at the discretion of the executive, without charge or trial. In numerous other instances, persons are held for unreasonably long periods under the ordinary criminal law before being brought before a court, and then released without being charged with an offence.

The conditions under which detainees and prisoners are held continue to be appalling, and in contravention of international standards. Claims that such detainees are subject to torture have been made in relation to practices in India, Kenya, Malawi, Northern Ireland, Papua New Guinea, and St. Lucia. Everywhere it seems prisons are overcrowded and insanitary. It was reported that in 1992, 300 detainees were squeezed into one small cell; in Nigeria as in many other places, there is lack of clean drinking water, cells are insanitary and poorly ventilated, and disease is rampant. A Council of Europe Committee described conditions in some UK prisons as "inhuman and degrading" in 1991, and condemned over-crowding, lack of sanitation, and the confinement of many inmates to cells for upto 22.5 hours a day. In many countries there is a high incidence of deaths in police or prison custody, often disproportionately among members of disadvantaged groups. Deaths of aboriginals in Australia were noted in our previous report; unfortunately they still continue. In 1991 the Nigerian Civil Liberties Organisation estimated that 2,000 prison inmates die annually; even the Minister of the Interior told a press conference that the figure for 1991 was 5,000,

about 8 per cent of the prison population. A high proportion of prison deaths were also reported in Tanzania, Uganda, and Zimbabwe.

b) Immunity, Extra-judicial killings and Disappearances

We have already mentioned that deliberate state lawlessness (frequently on the part of police and security forces) is a major cause of human rights violations. The violations occur across a wide spectrum of rights, but those which have attracted particular attention are extra-judicial killings and disappearances. These violations go unpunished, either because of Executive complicity or its unwillingness or inability to bring these perpetrators to account. This phenomenon is not confined to the Commonwealth, and has given rise to great concern in the UN, where a Working Group has been established on Enforced or Involuntary Disappearances. Under various international conventions as well as domestic legal systems, it is the duty of the state to punish all perpetrators of such offences. Sometimes formal immunity is granted to these perpetrators, but even where an immunity does not apply, the practice is not to prosecute them. The UN Working Group has stated that "Immunity is the single most important factor contributing to the phenomenon of disappearances. Perpetrators of human rights violations ... become all the more irresponsible if they are not held to account before a court of law".

There is ample evidence that extra-judicial killings and disappearances continue to occur in Commonwealth countries, without those responsible being made accountable. In Kenya and Lesotho, for example, the government rarely makes any attempt to investigate complaints of torture, and prosecutions of those responsible are hardly ever conducted. In Nigeria police brutality to detainees continues without any accountability; and attempts to make the police responsible for extra-judicial killings have been largely ineffective. Human rights groups report that Nigerian government practice in such cases is to establish investigative commissions and then to ignore their findings. In Bangladesh, over 100 persons were reported to have been injured and at least 10 killed as a result of the unlawful or unnecessary use of force by government security personnel. In 1992 the numbers of people reported injured and killed as a result of such action increased. We are not aware of any measures to bring those responsible to justice. In Jamaica in 1992 a number of people held in police custody died in circumstances which strongly suggested extra-judicial killings. The Jamaica Council on Human Rights is reported to have stated that this pattern represents the continuation of long standing practices by the Jamaican Constabulary Force. In India there is a general failure to prosecute police and security forces implicated in the ill-treatment of detainees, including fake "encounter" killings, a similar lack of accountability is imposed for violence towards members of particular ethnic groups during communal disturbances. Although extra-judicial killings of detainees received increased attention in 1992, there is little evidence of increased attempt at prosecutions. In Pakistan where beating, whipping the soles of the feet with rubber whips, sexual assault and prolonged isolation occur in prisons, little is done to hold the police accountable for these abuses.

It is easy to multiply these examples, but two more will suffice. The conflict in Sierra Leone's eastern and southern provinces along the Liberian frontier has been characterised by severe violations of human rights on all sides. Rebel troops are reported to have massacred civilians. Government forces are reported to publicly humiliate captives, parade them naked, disfigure them, and execute them without trial - with total immunity. **The largest number of disappearances in any Commonwealth country in recent years have occurred in Sri Lanka.** The UN Working Group received 3,841 new cases from Sri Lanka for consideration in 1991 alone. The government has recently set up several commissions into different incidents and

atrocities, although in a number of instances these bodies are unsatisfactory, as a commission's mandate may not enable enquiry into the period of most flagrant abuse of rights. We are glad to report that the government has recently shown more willingness to discuss human rights violations and in 1992 significantly fewer disappearances and extra-judicial executions were committed in the south of the country, although the situation in the north and east continued to be serious.

(c) **The Freedom of Expression**

The freedom of expression, particularly that of the press, has improved with the restoration of democracy in many states, as we note above. However, the freedom does not always last beyond the departure of the last election monitoring team, and there exist numerous ways of patronage or intimidation that serve to curb the freedom of expression. Threats of one sort or another to the freedom exist in most countries. Mandatory licensing and/or registration of journalists and newspapers, and government control of the supply of journalists and newspapers, and government control of the supply of newsprint are common methods by which governments control the media and promote self-censorship. Several governments use their customs laws to exclude foreign publications which they find offensive (for example, the import of an Indian journal, *Deah*, was recently banned in Bangladesh, and the ban on *Satanic Verses* remains in effect). The control over broadcasting media gives rise to considerable concern as almost everywhere in the developing world this is state owned. In many countries the control extends to excluding virtually all views critical of the government and denying broadcasting time to political opponents even during election periods. For example, Commonwealth observers in Kenya for the general elections in December 1992 reported that the ruling KANU party received six times as much air-time as the opposition combined (and since the government has "persuaded" the only privately owned television company, which had tried to provide fair coverage, to stop broadcast of local news, leaving the state owned corporation, which is heavily state biased and controlled, with a monopoly). In Malawi private newspapers continue to be banned and seized, and in the run up to the recent referendum on the political system, opposition supporters were attacked and denied access to the media.

We have no space to relate the numerous instances of restrictions on the press that was uncovered in our research. However, we would like to bring to the attention of Commonwealth leaders the harassment to which fair and independent journalists, and others exercising their right to expression, are subjected. In Pakistan thousands of supporters of the Pakistan Democratic Alliance were arrested in different parts of the country in November 1992 before and during a demonstration called by the party, solely for the peaceful exercise of their right to express their political views. A number of journalists covering the arrests and several opposition members were reported to have been tortured. In Sri Lanka there has been a series of investigative visits by government agents to the offices of independent publishers. Editors and journalists have been questioned, attacked, and arrested; presses have been sealed; and copies of publications have been seized. In Nigeria, known for the outspokenness of its journalists, the harassment and persecution of journalists has continued, recent examples being the acid thrown in the face of Alifa Daniel, head of *Concord* in Kogi state, and the arrest of an editor-in-chief and journalist of the *Tribune* for writing an article critical of the police. The situation in Kenya, Lesotho and Malawi is worse. In Kenya recently the offices of a small publication, *Society*, was fire-bombed, the publisher and his wife arrested and charged with sedition, and the publisher's passport confiscated. Thousands of copies of publications carrying articles critical of the government have been seized, offending presses have been dismantled, and journalists' notes confiscated.

Attacks on the freedom of expression come not only from the government but also from terrorist groups. This has been a particular problem for Indian journalists, covering events in the Punjab or Kashmir, or communal riots following the recent religious conflict. In Northern Ireland many newsagents ceased stocking the Sunday World after death threats from the Ulster Volunteer Force. In Sri Lanka severe restrictions, in some instances amounting to censorship, are imposed by the Tamil militant group, the LTTE. One instance only of the consequences of voicing views perceived to be non-supportive of the LTTE is cited here. Mr. Soosapali Norbet, a Tamil author and journalist, disappeared after being taken forcibly from his home in Jaffna late on 7 May 1991. Mr. Norbet, who had earlier been a member of PLOTE (another Tamil group), had consistently been critical of the advocacy of violence by the Tamils. The abductors were reported to be in uniform and to have identified themselves as members of the LTTE.

(d) Social and Economic Rights

Although the opposition to civil and political rights is based on the primacy of social and economic rights, we have found little evidence of the improvement in these rights over the last few years in the Commonwealth. We discuss below the rights of women, children and indigenous peoples and minorities, and find that their socio-economic position has steadily worsened. This is attributable in part to policies of structural adjustment imposed on several countries in financial difficulties and in part due to the new importance attached to the market as an organiser of the economy (which was also endorsed by the Harare Chogm). While we appreciate that state owned enterprises have not, on the whole, been particularly efficient or profitable and that bureaucratic controls on economic activities have frequently led to corruption and inefficiency, we are sceptical of the ability of the unregulated market to meet the basic needs of the ordinary people, much less the poor and the disadvantaged. Market processes in many countries are still crude and primitive, and there is a particular need for governments to ensure adequate protection of workers, consumers and other, vulnerable, groups against their ravages. Otherwise we fear that the misery of the people will be deepened, in order to ensure profits for the new entrepreneurs. We have not had the time to do a complete survey of the consequences of new policies for social and economic rights. We are heartened that the Harare Chogm endorsed the Ottawa Commonwealth declaration on the adverse consequences for women of structural adjustment. Here we only examine the position of workers' rights since our last report. The picture here is very grim, with the outlawing of strikes, the executive determination of what is "essential services", withholding of passports of trade unions and other forms of harassment, exempting export processing zones from the application of labour laws and prohibiting trade union activity, and legislating away wages and social benefits won by workers at the bargaining tables.

According to the Annual Survey of Violations of Trade Union Rights in 1992, published by the International Confederation of Free Trade Unions (ICFTU), 260 trade unionists were killed and 2500 were arrested for legitimate trade union activity. The report singles out Malawi as one of the most dangerous countries for trade unionists, and points out that 38 people were killed in May 1992 while demonstrating outside the Supreme Court to demand the release of Chakufwa Chihana, the Secretary-General of the Southern African Trade Union Co-ordination Council (SATUCC). SATUCC offices were closed down by the government, and the running of its activities from Malawi prohibited. Shortly after Chihana's arrest, his wife was dismissed from her job at the University of Malawi, and evicted from her home. The passport of Chihana's lawyer was impounded, and they were both attacked outside the court. In a related incident, the mother of an SATUCC employee was tortured to disclose her daughter's whereabouts.

While Malawi might be the worst case, other Commonwealth countries (Australia, Bangladesh, Canada, India, Malawi, Malaysia, Namibia, New Zealand, Pakistan, Papua New Guinea, Solomon Islands, Sri Lanka, the United Kingdom, Zambia and Zimbabwe) are also cited for violating, to varying degrees, the fundamental trade union rights that are recognised and formulated in the ILO conventions. The harassment of union officials occurred elsewhere too. In July 1992, 16 people were killed in India while demonstrating to demand the implementation of labour laws, including the Minimum Wage Act (and a month earlier thousands of workers were taken into custody as a precautionary measure in an attempt to lessen the effects of a 24 hour strike to protest at the government's economic policies). In 1991 and 1992 the Lesotho government used its powers under the Internal Security Act to charge trade union officials for holding meetings of union members, and in August 1991 an official of a construction workers union was shot and killed by the police. In Sri Lanka trade union activities, including the right to strike, have been seriously restricted by the indiscriminate application of anti-terrorist laws. It is estimated that, for the Commonwealth, more than 40,000 workers were dismissed simply for demanding better wages or working conditions.

A number of countries restrict the right to join a trade union; for example, workers in the public sector, professional and managerial staff, and workers in the Chittagong Export Processing Zone are not allowed to belong to a union, and the Malaysia government has continued to refuse electronic workers their right to organise unions of their choice, or to allow the ICFTU-affiliated MTUC to organise a national union in the industry. Others have restrictions on the formation of unions (for example, Pakistan and Kenya) or allow governments extensive powers of interference in the affairs of unions.

In a number of other ways the benefits of trade union legislation are denied to various workers. The 1992 Finance Bill in Pakistan seeks to exempt industries exporting more than 70% of their products from all labour legislation. Until August 1992 a law in Sri Lanka made incitement to strike in the export sector an offence carrying a minimum sentence of 10 years. In the Solomon Islands, two of the country's biggest plantations, in palm oil and forestry, pressurised workers to become sub-contract workers rather than permanent employees, effectively removing them from protection under the collective agreement negotiated by the Solomon Islands National Union of Workers, and seriously undermining the union. Illegal employment also denies the benefit of the law; in Pakistan for example, illegal bonded labor—in brick, carpet, glass and fishing industries, is widespread. Bonded labour reach over 20 million, several million of whom are children (although Pakistan did pass the Bonded Labor System (Abolition) Act in 1992).

Many governments justify these restrictions on the basis that trade union rights, particularly those of collective bargaining, adversely affect economic development. Export-processing zones have become a popular strategy for development, and it is in these zones, as we have already indicated, that most pronounced violations of workers' rights occur. Forced to compete against each other for foreign investment, developing countries have fallen over themselves to offer "attractive" conditions to multinational corporations, including complete prohibitions on trade unions, low wage levels, appalling working conditions, and the "super-exploitation" of predominantly female work forces. Malaysia and Sri Lanka show unfortunate examples of this tendency.

Workers in developing countries have suffered most from the vicious cycle of debt, low commodity prices, structural adjustment and frustrated development which characterised the past decade. However, the ICFTU report makes it clear that attacks on trade union rights are not restricted to the developing world.

Governments from Australia, Canada, New Zealand and the United Kingdom are criticised for their anti-trade union legislation, and hostility to collective bargaining. New Zealand and Australia in particular are viewed with concern. New legislation in the former "represents probably the most comprehensive legal attack on trade union freedoms in the world and has already attracted imitators at the state level in Australia". In the United Kingdom legislative proposals introduced in 1992 add to the range of grave legislative obstacles to basic trade union rights which have been introduced by governments successively since 1980.

(e) Rights of Women

In our previous report we discussed at length the social, economic and legal disabilities that women suffer from. They have fewer opportunities than men for education; few women are elected to the legislature or appointed to senior positions in the public or private bureaucracies; their nutrition is worse than that of men; their working hours are longer; and there are several legal rules regarding evidence, succession, and the right to own property that discriminate against them. They are subjected to a great deal of violence both at home and outside. Programmes of structural adjustment which have been forced on many countries have served to impose additional hardships on women, proportionately more than on other members of the community. The Commonwealth, in common with the world community, has made a firm commitment to the improvement in the status and rights of women; the UN adopted a Convention on the Elimination of all Forms of Discrimination Against Women in 1979 and the Commonwealth meeting in Harare specifically mentioned improved rights of women as a particular objective, expressly endorsing the 1990 Ottawa Commonwealth statement on the reform of social, administrative and legal structures to give women full and effective rights to land, finance, and other resources, with a view to their equal participation in education, the economy, and public decision making.

Regrettably, despite some progress, there has been a significant failure in translating intentions into action. 27 members of the Commonwealth have failed to ratify the Convention, and several of those who have ratified it, have entered serious reservations that in some cases negate its very purpose, as in Bangladesh where the continued application of personal laws take precedence over the obligation in Article 16 to take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations. Commonwealth members have also been deficient in reporting on progress towards the objectives of the Convention as required under it. The position on the ground has scarcely improved, and in fact there is reason to believe that it has worsened. Between 1988 and 1991, 15,891 deaths of women in India were recorded as "dowry deaths"; and such incidents are also common in Bangladesh, particularly in the rural areas. The vast majority of these cases appear to be unreported to those responsible. Female bondage, forced prostitution and child marriage remain common in parts of Indian society. In Bombay alone there are reported to be approximately 100,000 prostitutes, many of them minors, who are held in bondage at brothels. The revival of religious fundamentalism, as reflected in the law and practice, has caused further suffering to women, as is evident from the treatment of women in Pakistan, who for example find themselves charged with adultery if they report a rape or file for divorce. Female genital mutilation continues unabated in many parts of Africa, despite the legal prohibition against it in some states.

(f) **Children**

Children are another vulnerable group whose plight has been recognised in various declarations and conventions. The exploitation and abuse of children occurs, in different forms, in all Commonwealth countries – the form varying according to different stages of development, conditions and cultures. Our previous report provided extensive documentation of the exploitation of children. Unfortunately we have found little evidence of improvement since then, despite frequent Commonwealth declarations. Child sexual abuse, prostitution and pornography appears to be on the increase, especially in the more developed countries. **Child labor**, without any of the safeguards of the law against working hours, minimum wages, safety at work, unionisation, **has undoubtedly increased**, especially in Pakistan, Sri Lanka, Bangladesh and India, the last alone considered to employ one third of the world's child labour. The work children do too is dangerous (some times involving drug trafficking, and in certain instances, as in Uganda and Sri Lanka, **service in the armed forces of the state or rebels**) and liable to cause permanent disabilities (in chemical factories or carpet weaving). A further consequence is the neglect of the education of the children; unfortunately even when not employed, many children have no access to education, due to the absence of schools or the inability to pay fees, locking them into a vicious circle of poverty. A large number of Commonwealth children live in abject poverty, frequently without a roof over their head, suffer from malnutrition, and have inadequate health facilities. A 1992 report on children in Northern Ireland found that they are subjected to harassment on the street by the security forces, physically and psychologically abused in detention centres, and held in shameful conditions in adult prisons. Several have died at the hands of paramilitary and security forces, a phenomenon common in other parts of the Commonwealth as well. Past and contemporary civil conflicts have left a terrible legacy as far as the plight of children is concerned. Here is a major challenge for the Commonwealth.

(g) **Refugees**

There are over 17 million refugees in the world and untold millions of others in "refugee-like circumstances" (including internally displaced persons), according to estimates of the UN High Commission for Refugees (UNHCR). There is a particularly close connection between human rights and refugees; it is the denial of human rights that frequently is the cause of people seeking asylum elsewhere, while once refugees, many of their human rights are in jeopardy, the international regime for their protection being weak and faulty. Refugees are a major concern of the Commonwealth, both as the cause of the flight of people from their countries and as the recipient of people seeking asylum and safety. The UNHCR lists Sri Lanka, Sierra Leone, Bangladesh and Uganda as among states producing the most refugees, while Pakistan, India, Tanzania, Zambia, Zimbabwe, Uganda, Kenya, Malawi, Canada, Cyprus, UK, Australia, Swaziland and Hong Kong are among the major asylum countries (hosting over 6 million refugees). There are over 268,000 internally displaced persons in Cyprus, 145,000 in Sierra Leone, 600,000 in Sri Lanka and 300,000 in Uganda. It is unlikely that the number of refugees and displaced people, in the world or the Commonwealth, will decrease in the near future; the evidence is to the contrary.

Half of the world's refugees are children (80 per cent of them are women and children). Many of the children are "unaccompanied minors" who, separated from their families in the events causing their flight, arrive across borders in search of asylum totally alone. Almost all refugees and displaced persons have been traumatised – detained and tortured for their social origin, religion or race, witness to severe political

repression and human rights abuses, to arbitrary murders or brutality in warfare, starvation and other hardships. The average refugee camp is not a satisfactory solution to their problems. Female refugees are commonly subjected to violence and physical abuse both during flight and in camps. Armed attacks are deliberately made on some refugee camps. Conditions in camps are often appalling in other ways as well. Death rates in refugee camps in Kenya increased alarmingly in 1992 (mainly due to inadequate relief supplies and poor camp sites); and conditions in some of the detention centres for asylum seekers in Hong Kong are more squalid than local prisons (and considerably less safe). Children are born into and grow into adolescence in these appalling conditions.

The primary international instruments for regulating the right of asylum and the situation of refugees are the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol (which several Commonwealth countries have still to ratify). They define the term "refugee"; provide a charter of rights which bind the ratifying states; and make provision for their implementation. They are inadequate to deal with the scale and complexity of the numbers and problems of refugees and displaced persons (and are in urgent need of reform). Even then, many traditional asylum countries show increasing reluctance to abide by their terms, and are introducing additional qualifications on asylum seekers. For many refugee status applicants there is no full and early access to fair determination procedures. In December 1991 Australia's backlog of undecided applications for refugee status stood at 23,000; in late 1992 the High Court upheld the government's right to hold asylum-seekers in detention (often for long periods) pending determination of their cases. The UK also regularly places asylum seekers in detention while assessing their claims. In many countries, including the UK and Australia, the imposition of visa requirements coupled with heavy fines for airlines bringing in passengers without proper documentation, prevents many from arriving to make asylum claims. There have been recent reports of forcible repatriation to Burma from Bangladesh without the UNCHR being allowed to interview the returnee prior to departure and there have been various defects in the application of the screening process in Hong Kong for Vietnamese asylum seekers. Malaysian authorities are reported to have sent back to sea 4 vessels carrying 110 Vietnamese asylum seekers in 1991 and 1 vessel with 12 asylum seekers in 1992, while Zimbabwe forcibly returned refugees to Mozambique after questionable procedures for determining their status. All too often political considerations enter into a country's negative treatment of refugees (as in the allegations against India regarding Burmese refugees).

On the other hand, many Commonwealth countries, with population problems and few resources of their own, have shown great generosity to refugees. Malawi has nearly 1 million refugees on an a GNP per capita of US\$ 160; in the early months of 1992 an average of 5000 refugees a day were crossing the border from Myanmar into Bangladesh, one of the poorest countries in the world; and Zambia hosts 140,000 refugees with a GNP of US\$ 240. Tanzania has made grants of land to refugees. Nevertheless, there is need for concerted international and Commonwealth action to deal with one of the most pressing and pitiful cases of human rights abuses.

(h) **Indigenous Peoples and Other Ethnic Minorities**

Both the Harare Chogm and the Vienna Conference recognised racial, religious and ethnic discrimination and intolerance as a primary cause of the denial of human rights. Since the end of the cold war, ethnic tensions have increased, either because of the collapse of the Soviet empire or east European states, or because of the end of the firm tutelage or control by one of the two superpowers over a number of

heterogenous states. In the contemporary period, ethnic conflict is responsible for the most visible, extensive and horrendous violations of human rights. The international community is slowly coming to terms with this situation, and beginning to think in terms of group or ethnic rights and special machinery to protect them (in a reversal of the traditional UN position which had focussed exclusively on individual rights, except in the context of colonialism). There is now renewed discussion of the scope of the right to self-determination outside the colonial context, although the matter remains controversial. In December 1992 UN General Assembly adopted a Declaration on the Rights of Persons Belonging to National, Ethnic, Religious and Linguistic Minorities, and work has now begun on a convention to give binding effect to it. The EEC and the Council of Europe have made the furthest progress in recognising ethnic rights, and the Conference on Security and Co-operation in Europe has appointed a Commissioner for Minorities.

In our last report we analysed the pervasiveness of ethnic tension or conflict throughout the Commonwealth and recommended that the Commonwealth should take a lead in this field, through studies, legislation and the good offices of the Secretary-General. The continuing and seemingly intractable communal disputes in Cyprus, the recent ethnic clashes in Kenya before and after the general elections, and the much published ethnic violence in India after the December 1992 destruction of the Babri Masjid in Ayodhya, to take just three examples, make it all too evident that minority issues and divisiveness are not abating in the Commonwealth, and with it the denial of various human rights. We trust that the Chogm, meeting in the communally divided Cyprus, will give special consideration to its role in the prevention and resolution of ethnic conflicts in its member states.

We also examined the situation of a special kind of minority to be found in many Commonwealth states – indigenous peoples, and we consider that a review of their status by Commonwealth leaders is particularly appropriate in this International Year for the World's Indigenous Peoples. Indigenous and tribal groups have distinctive cultures, a strong linkage to ancestral lands and a high vulnerability to economic and social changes initiated from outside their communities. During the colonial periods persecution of indigenous peoples was often of the crudest type, amounting to genocide in some instances. Elsewhere the assault on indigenous peoples was less vigorous or physical, but populations were substantially reduced, lands were taken away and ways of life and self-respect destroyed. Although most of the worst excesses are a thing of the past, their consequences linger, and frequently public attitudes of majority populations result in continued discrimination. Indigenous peoples are typically the poorest, the most marginalised and most vulnerable groups within their countries.

Considerable progress has been made in recent years both at the international level and specific Commonwealth countries. The ILO Convention on indigenous people (1989) is considered an improvement on the 1957 Convention, recognising, as it does, the value of indigenous cultures and the preservation of their autonomy. In Australia, New Zealand and Canada there is an acceptance of multi-culturalism, which recognises the right of the indigenous peoples to their culture. Canada has gone furthest in accepting the self-determination of indigenous peoples ("the first nations"), of which the best example is the recent agreement to create a political sub-division of the Northwest Territories. The new territory (Nunavut) where 85% of the people are Inuit, covers nearly a fifth of Canada. The land will be owned by the Inuit, and Inuit language will be used alongside English. However, the Supreme Court decisions have not been favourable to indigenous claims, and the people of the first nations are far from satisfied with their political or legal status. In New Zealand pre-school education in the Maori language has been made available to primary school children; in 1992 an agreement was reached between the government and Maori leaders

resolving Maori claims to fishing rights. Some progress has also been made in Australia, with increased funding for aboriginal programmes. Nevertheless the indigenous peoples of Australia and New Zealand remain marginal and economically disadvantaged; and are disproportionately represented as criminals and among the prison population.

Elsewhere the position of the indigenous peoples remains precarious. In India, despite some political progress in the north-eastern parts of the country, there has been considerable encroachment in recent years, on tribal lands in almost all states of eastern India – by illegal immigration and by the exploitation of forest and mineral reserves within supposedly protected tribal boundaries. In Bangladesh government development and agricultural programmes are causing grave ecological damage and destroying the habitat of the tribal people of the Chittagong Hill Tract. Although not so well documented, reports indicate that the indigenous Adivasis of the Bangladesh plains suffer similar ecological problems as a consequence of development and the arrival of new settlers in their traditional areas. In Malaysia, the Orang Asli continue to suffer disastrous loss of land resulting from the insecurity of title to their traditional lands, to government schemes, logging and mining concessions, and highways and dam construction. The Penan in Borneo have also lost their lands to logging, and in Tanzania the Barbaig herders have lost more than 400 square kilometers of land to a mechanised wheat farm. Commercial fishing has depleted the fishing areas of many indigenous groups – for example fishing by Taiwanese fleets in the Torres Strait between Australia and Papua New Guinea.

(i) **Nationality and Statelessness**

There is a special situation – in Hong Kong – that may give rise to serious problems of statelessness and refugees. We wish to draw it to the attention of Commonwealth leaders. After the transfer of sovereignty over Hong Kong to China on 1 July 1997, members of ethnic minorities who are currently British nationals, particularly those originating from India and Pakistan, will suffer a change in their national status. Since under Chinese law nationality is based on Chinese descent, these people will not become Chinese citizens. However, they will cease to enjoy their present status, which for the most part is that of British Dependent Territories Citizens (BDTC). Introduced under the British Nationality Act 1981, a BDTC is not entitled to entry into the UK but does enjoy the right of abode in the relevant dependent territory, in this case, Hong Kong. The BDTC is a watered down version of the full UK citizenship that these people enjoyed before the 1981 Act. Now even that limited status is likely to be taken away. After the transfer of sovereignty, all those who became a BDTC due to their connection with Hong Kong will cease to have that status and will instead become entitled to registration as a British National (Overseas) (BN), provided the application is made by 30 June 1997. If no such application is made, a BDTC who would otherwise become stateless on the transfer of power, would automatically become a British Overseas Citizen (BOC), a category also established under the 1981 Act. So after July 1997, most members of these minorities would become either a BNO or a BOC.

The rights of a BNO or a BOC are significantly inferior to those currently enjoyed by a BDTC. A BDTC enjoys a right of abode in Hong Kong; no such entitlement attaches to a BNO or a BOC. A BDTC expelled from a third country would have to be admitted to Hong Kong; for a BNO or BOC there is no right to be admitted to any country. This consideration will undoubtedly devalue the passport that they are entitled to; and it is not certain that many states will recognise these passports, making travel extremely

difficult. An additional disadvantage of the BNO is that it is not transmissible to a second generation, and under BOC not beyond the second generation, so their descendants are threatened with statelessness. Nor is it entirely clear that BNOs and BOCs will be able to rely upon British consular protection either in Hong Kong or elsewhere since under the Nottenbohm doctrine, they will not be able to establish a sufficiently close connection with the UK. Thus despite their formal status, they will suffer many of the consequences of statelessness, and their descendants will in fact be stateless. Apprehensions about how China will treat these minorities, and more generally whether it will respect human rights in Hong Kong add to their anxieties. The UK has itself recognised that these anxieties are valid as in 1990 it enacted legislation to confer full UK citizenship on 50,000 families in Hong Kong (but failed to make special provisions for these minorities).

As a result of these arrangements, the UK is in breach of its treaty obligations as well as responsible for the denial of fundamental rights of the members of these minorities. Nationality has been recognised as a fundamental right, as stated in Article 15 of the Universal Declaration of Human Rights. The enjoyment of many other rights, like the protection of property, travel, franchise and residence are dependent on having a proper nationality. As a signatory to the Convention on the Reduction of Statelessness (1961) the UK has agreed not to deprive a person of her of his nationality if that would render her/him stateless. It is also required to ensure that a person does not become stateless on the transfer of a territory.

We would urge the UK to grant full UK citizenship to persons affected in this way. The numbers are small, barely 10,000. When the Commonwealth, in conjunction with the rest of the UN, is pressing for the promotion of human rights, and China is being urged to respect human rights, the present UK position is unworthy and counter-productive.

III. Recommendations

At the Harare Chogm, Heads of Government agreed "to do everything practicable, both within their own societies and internationally, to combat discrimination in all its forms and to promote democracy, human rights, mutual tolerance and the rule of law through processes and institutions which have regard to national circumstances" (para 12 of the Communique). They agreed to focus and improve Commonwealth co-operation in the advancement of human rights and to expand their contributions to the Commonwealth Fund for Technical Co-operation so that it could respond to the priorities of the Harare Declaration. The Harare Chogm, as the Vienna Conference, proceeded on the assumption that there is now enough international agreement on the rights (elaborated in several instruments) which need to be protected, and that the priority for the coming years is their implementation. Although the Harare Chogm adopted only a small part of the practical recommendations made in our report, Put Our World to Rights, we welcome the Harare commitment to place greater resources at the disposal of Commonwealth institutions (including NGOs) for progress in human rights and the direction to Commonwealth intergovernmental institutions to further the aims of the Harare Declaration.

Our survey, however, has shown that the Commonwealth and its members have only partially fulfilled pledges made by its leaders. The gap between the Harare rhetoric and practice remains embarrassing and alarming. We realise that two years is too short a time to achieve a transformation in the human rights situation. We fully appreciate the difficulties of governing what are largely heterogenous populations, beset

with dissent and in many cases with rebellion, several in the grip of poverty, stagnating economies and increasing population, and burdened with long habits of authoritarianism. As we noted earlier in our report, some progress has indeed been made. However, what is disturbing is that there are few positive signs of a commitment to human rights by the Commonwealth and its members. The record of the ratification of international conventions and significant new resources have been raised for human rights work. The Commonwealth Secretariat continues to give a low priority to human rights (particularly as exemplified in the staffing of the Human Rights Unit). Although we have little doubt about its commitment to human rights, the same degree of co-operation has not been forthcoming from the officials of the Secretariat, who refused any help in our attempt to compile a list of Secretariat human rights activities.

If the task of the Harare Declaration was to affirm Commonwealth commitment to human rights, the challenge for Cyprus is to set in motion practical measures to achieve the Harare goals. Despite the difficulties that the Commonwealth faces, it is imperative that substantial progress be made in the realisation of human rights over the next few years if the Commonwealth and its leaders are to retain credibility with its people. A number of steps need to be taken now for this purpose, which we set out below. It is important to realise that despite the consensus at Vienna that the UN must strengthen the international machinery for the promotion and protection of human rights and devote more resources for this task, it is unlikely that there would be any significant progress in the immediate future. The UN resources for human rights work are extremely limited; and the machinery for enforcement both under the Charter and the various conventions is skeletal, slow and weak. Nor are many Commonwealth states members of effective regional arrangements for the protection of human rights, whose machinery could be counted upon. It is therefore necessary to establish an effective Commonwealth machinery and to strengthen national will and capacity to promote and assure human rights. In our previous report we made a number of recommendations for this purpose. We consider that those of our recommendations which have not been implemented should be put up into effect. The CHRI stands ready to assist the Commonwealth in their implementation.

We recommend that an independent body should be established within the Commonwealth to look into allegations of violations of human rights and to recommend appropriate redress. A suitable title for such an office may be the Commonwealth High Commissioner for Human Rights. The Vienna Conference was unable to reach a consensus on the establishment of a UN Human Rights Commissioner, and the matter has been referred to the General Assembly. We consider that a Commonwealth High Commissioner would provide a lead for the international community as well as valuable experience in deciding on the jurisdiction and structure of a UN High Commissioner. Our proposal is in keeping with the Chogm statement in Harare (with which we entirely agree) that the Commonwealth is uniquely placed to serve as a model and as a catalyst for new forms of friendship and co-operation to all in the spirit of the Charter of the United Nations.

Interim Assessment by Non-Governmental Organisations Observer Group from four SAARC Countries

A 40 member non-governmental observer group from 4 SAARC countries has been in Pakistan from 30th September to October 8, to observe the Parliamentary elections held on the 6th of October 1993. The observer group both collectively and in smaller groups, called on the Acting President, the Chief Election Commissioner and other members of the Election Commission, the Sindh Provincial Governor, and the leaders of principal political parties. They also met with representatives of several NGOs, human rights groups, women's groups, professional associations, leading journalists and scholars who have been concerned with the fairness of the electoral process. Two members of the SAARC team, I.K. Gujral and Bekh Thapa were invited to join the Prime Minister in his own observation of the election on election day. The Group divided into 20 sub-groups and were based in the following areas:

Peshawar; Kohat; Abbottabad; Islamabad; Lahore; Faisalabad; Jhang; Bhawalpur; Multan; Karachi;
Hyderabad; Nawabsha; Sukkar; Quetta; Sibi; Turbat.

The group visited 54 constituencies and 256 polling stations in all four provinces where they observed pre-poll arrangements, the voting and the counting process. The group also observed the consolidation and declaration of results.

The 1993 National Assembly Elections are being conducted as a result of the extraordinary sequence of political events arising out of the dismissal of the government and dissolution of the National Assembly after it had completed only 20 months of its five year tenure. This dissolution was a consequence of a confrontation that developed between the President and the Prime Minister. The dissolution was rendered invalid by the Supreme Court and the National Assembly restored after five weeks. With the deepening political crisis in the Punjab and the NWFP, a political deal was reached apparently through the intervention of the Chief of Staff of the Army, in accordance with which the President and the Prime Minister resigned and agreed to holding of a fresh general election under the auspices of a caretaker government.

The caretaker government headed by Mr. Moeen Qureshi took several steps to strengthen public confidence in the integrity of the electoral process. The 1988 voters list was partially revised by the addition of 365,349 names and the deletion of 171,724 voters whose names had been incorrectly included; the administrative personnel at the center and the provinces were reassigned to meet certain concerns of political parties; and the assistance of High Court judges and other members of the judiciary was secured to facilitate the conduct of the election. One of the major steps taken in this regard was the arrangement worked out between the Prime Minister and the Chief of Army Staff for the supervisory role of the armed forces in the conduct of the election. Accordingly 150,000 personnel from the armed forces were deputed to be on election duty on polling day and their presence was particularly intense in 60 polling stations that were judged to be sensitive. The army also established an election monitoring cell and a comprehensive communication facility and provided security during the printing of ballot papers and the transportation of ballot papers from the press to their destination.

Most members of the delegation found that the presence of the army contributed significantly to the absence of violence during polling day and after the declaration of the results. In a few instances, the army

personnel appear to have appropriated the authority of the presiding officers. The principle of civilian control of the electoral process must remain a cornerstone of democratic governance although there may be special circumstances that compelled the caretaker government to invoke the assistance of the army with the consent of political parties.

The observer group was of the opinion that excessive dependence of the electoral machinery on the army could derogate from the autonomy of the electoral system.

The caretaker government also took several other steps to strengthen the electoral process. These included special procedures for entering the identify card number of every voter in the counterfoil of the ballot paper; affixing of an official stamp and the signature of the Assistant Presiding Officer on the back of each ballot paper. In practice, it was noticed that not all ballot papers which were stamped contained signatures of the assisting presiding officers.

All political parties were provided with equal time by TV and Radio and as many as 19 leaders of major political parties and groups were able to take advantage of this facility and present their manifestos.

Several concerns were raised with regard to the electoral process. Firstly, one of the principal concerns related to the effectiveness of the polling agents who are the ultimate watchdogs of the interest of the candidate and the custodians of the integrity of the electoral process. Although in most polling stations the polling agents of the two major political parties were present, there was considerable variation in their effectiveness. In many polling stations, polling agents appeared to be unaware of their role or their responsibilities, or of electoral procedures. In some polling booths, polling agents did not appear to have any strong political affiliations and had probably been paid to perform a function for which they had neither the political motivation nor the training. Some polling agents were underage and were not qualified voters. The absence of women polling agents was observed in some parts of the country. Although this was the fifth election (inclusive of Provincial Assembly elections) within five years at which polling agents would have been required to represent the major political parties, the lack of interest shown by political parties in providing them with training and guidance on electoral procedures is most disappointing.

Most of the returning and assistant returning officers made adequate and effective arrangements for the conduct of the elections, however there were some instances in which polling officials seemed limited by their lack of knowledge of electoral laws and procedures and the inability to handle problems that surfaced particularly during the counting process.

The second concern related to the impact on the legitimacy of the electoral process of the boycott of MQM which has been an important political formation in the country. The impact was particularly felt in the constituencies of Karachi and Hyderabad where the voter turnout was very low in apparent response to the MQM call for a boycott on the ground that the electoral processes lacked legitimacy. The caretaker government reassured the members of the observer group that every effort was being made to address the concerns of the MQM with a view to encouraging them to rejoin the political mainstream. The MQM was emphatic that no such effort had been sincerely pursued. However, both the electoral processes and democratic system in Pakistan would remain incomplete if a significant section of political opinion remains unrepresented.

The turn out of women voters was strikingly lower than that of men in the same area. This brings us to the third concern in this election. Most political parties made no adequate reference to women's issues in their manifestos. This absence of a serious attitude to women was confirmed by the fact that only 11 women candidates were fielded in this election. In some parts of Balochistan and NWFP women were discouraged or positively prevented from voting.

One commentator referred 'to the constraints of culture and patriarchy' and the observer group calls for concerted political actions by all political parties to overcome these constraints and to ensure that the women fully and effectively participate in the electoral and political life of Pakistan. Discrepancies between electoral registers and identity cards particularly of women often resulted in the denial of the franchise to genuine voters.

With regard to minorities, it was observed that the electoral arrangements for the conduct of the poll for minority constituencies were particularly weak.

Human rights groups and legal groups also continue to question the legitimacy of separate registers and of reserved seats for minorities.

Another concern relates to campaign expenditure. The electoral laws were amended to require the candidate to adhere to a limit of Rs.1 million for a constituency as election expenses. There were however concerns that these expenditure limits were being disregarded and the code of conduct violated by several candidates. The Election Commission had also endeavoured to limit certain types of ostentatious expenditure such as erection of arches and cutouts. It remains a continuing dilemma as to how limitations of campaign expenditure could be effectively enforced.

The observer group was satisfied that the elections were conducted in substantial conformity with the election laws and procedures of Pakistan and in an atmosphere that was generally free of violence and of intimidation. The low voter turnout was however disappointing in the case of women and minorities, and the causes need to be addressed. The political parties have a particular responsibility to ensure that all elements within the Pakistan polity are able to participate effectively in the democratic process. On the basis of their direct observation and other information made available to the group, the group was satisfied that the electoral campaign was substantially free and fair. The electoral process was conducted in a peaceful, fair and impartial manner. This observation needs to be qualified by the reservations expressed above and the observations with regard to those constituencies which were adversely affected by the boycott call of the MQM. The observer group was firmly of the opinion that the autonomy of the electoral process and its control by civilian authorities is critical to democratic development in Pakistan.

8th October, 1993.

List of SAARC NGO Observers

Bangladesh

1. Ambassador Fakhruddin Ahmed
2. Ms. Sultana Kamal Chakravarthi
3. Ms. Fowzia Karim Firoze
4. Justice Kemaluddin Hossain
5. Ms. Sara Hossain
6. Ms. Mahabooba Aktar Mahmood
7. Mr. K.G. Mustafa
8. Dr. Gowher Rizvi
9. Prof. Zillur Rehman Sidiqi
10. Justice K.M. Subhan

India

11. Mr. Nikhil Chakravarthy
12. Dr. Vasudha Dhagamwar
13. Mr. Murchkund Dubey
14. Mr. I.K. Gujral
15. Prof. Zoya Hassan
16. Mr. Ajay Kumar
17. Mr. Kuldip Nayar
18. Ms. Malini Parthasarathy
19. Mr. K.V. Ramesh
20. Prof. Amrik Singh

Nepal

21. Mr. Narahari Acharya
22. Mr. R.S. Adhikari
23. Mr. Uddah Bhatt
24. Mr. Kunda Dixit
25. Mr. Tanka Rai
26. Mr. Jai P. Rana
27. Mr. Jan Sharma
28. Ms. Bharati Silwal
29. Ms. Silu Singh
30. Mr. Bekh B. Thapa

Sri Lanka

31. Ms. Manel Abeysekera
32. Ms. Roshan Aboosaly
33. Mr. Kanaga Dharmananda
34. Mr. Mehdi Hussain
35. Mrs. Jezima Ismail
36. Dr. Frank Jayasinghe
37. Ms. Manouri Muttetuwegama
38. Dr. Sasanka Perera
39. Justice Siva Selliah
40. Mr. Jeevan Thiagarajah
41. Dr. Neelan Tiruchelvam

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