



LAW AND SOCIETY TRUST

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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 and legal 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 continue to cover Human Rights Documents. First we publish the mandate appointing a Sri Lankan, Radhika Coomaraswamy, as Special Rapporteur to the UN Human Rights Commission on violence against women, monitoring conditions in all UN member states. Next we publish the Sri Lankan Delegation's statement delivered at the 1994 meeting of the UNHRC, on the current state of human rights in Sri Lanka. The PSC proposals on the ethnic conflict in Sri Lanka follow. Lastly we feature the mandate of the Special Rapporteur to the UN Human Rights Commission on the Independence of the Judiciary.

HUMAN RIGHTS DOCUMENTS, 1994

Securing Human Rights

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Special Rapporteur on Violence Against Women

The Chairman of the U.N. Human Rights Commission, Ambassador Peter P. Van Wulfften Palthe, has appointed Radhika Coomaraswamy as the Special Rapporteur on Violence Against Women for a period of three years. The appointment was in pursuance of a Resolution adopted without vote at the Fiftieth Session of the U.N. Human Rights Commission concluded recently in Geneva on the elimination of violence against women. This Resolution followed the Vienna Declaration and Programme of Action of the World Conference which called for the elimination of gender based violence and all forms of sexual harassment and exploitation. The appointment of a Special Rapporteur has been widely regarded as a milestone in the struggle for the universal application of human rights to all women.

The mandate of the Special Rapporteur requires her to report on an annual basis to the U.N. Human Rights Commission on violence against women including its causes and consequences. She will be required to seek and receive information from governments, intergovernmental bodies and women's organisations on violence against women, and to respond effectively to such information. She will also be required to undertake missions either separately or with other special rapporteurs and working groups. She will be required to recommend measures at the international, regional and national level to eliminate violence against women, its causes and to remedy its consequences. The Secretary General has been requested to provide the Special Rapporteur with the staff and resources required to perform all her mandated functions, and to further ensure that her reports are brought to the attention of the Commission on the Status of Women.

Radhika Coomaraswamy is the Director of the International Centre for Ethnic Studies based in Sri Lanka. She was educated at Yale College, Columbia Law School and Harvard Law School. She is a lawyer and social scientist of international standing and has had many years of experience in addressing the human rights of women. She is the author of numerous articles and reports on gender equality, gender based violence, women and religion, and international human rights issues. She is author of 'Sri Lanka, The Crisis of the Anglo-American Legal Tradition in a Developing Country' (1983) and has co-edited 'The Judiciary in Plural Societies' (1986) and 'An Introduction to Social Theory' (1994). She was a member of the Presidential Commission on Youth and Member of the Sri Lanka National Commission on Women. She is also a joint-Secretary of the Nadesan Centre on Human Rights, and a member of the Civil Rights Movement. She is also a Steering Committee Member of the Asia Pacific Forum for Women, Law and Development. She headed a study on minority protection issues undertaken for the UN Transitional Authority in Cambodia, and was a member of the international panel to award the UNESCO Human Rights Prize.

April 18th, 1994

The question of integrating the rights of women into the human rights mechanisms of the United Nations and the elimination of violence against women

The Commission on Human Rights

Recalling its resolution 1993/46 of 8 March 1993 on integrating the rights of women into the human rights mechanisms of the United Nations, in which it also decided to consider the appointment of a special rapporteur on Violence Against Women at the fiftieth session.

Also recalling that the World Conference on Human Rights welcomed the decision of the Commission on Human Rights to consider the appointment of the Special Rapporteur on violence against women at its fiftieth session.

Welcoming the adoption by the General Assembly, in its resolution 48/104 of 20 December 1993, of the Declaration on the Elimination of Violence Against Women, which recognizes that violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms, and expresses concern about the long-standing failure to protect and promote these rights and freedoms in relation to violence against women..

Deeply concerned at continuing and endemic violence against women, and noting that the Declaration on the Elimination of Violence against Women sets out various forms of physical, sexual and psychological violence against women.

Mindful that the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, affirmed that gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person and must be eliminated.

Alarmed by the marked increase in acts of sexual violence directed notably against women and children, as expressed in the Final Declaration of the International Conference for the Protection of War Victims (Geneva, 30 August 1 September 1993), and reiterating that such acts constitute grave breaches of international humanitarian law.

Bearing in mind that the Vienna Declaration and Programme of Action calls for action to integrate the equal status and human rights of women into the mainstream of United Nations system-wide activity, stresses the importance of working towards the elimination of violence against women in public and private life and urges the eradication of all forms of discrimination against women.

Recalling the outcome of the World Conference on Human Rights as reflected in the Vienna Declaration and Programme of Action, which affirmed that the human rights of women and of the

girl child are an inalienable, integral and indivisible part of universal human rights and that the full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community.

Also recalling that the Vienna Declaration and Programme of Action affirmed that the human rights of women should form an integral part of United Nations human rights activities, including the promotion of all human rights instruments as they relate to women, and urged Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of the human rights of women and the girl child.

Bearing in mind that the programme of action for the equal status and human rights of women adopted in the Vienna Declaration (Part II, B, 3) sets out a series of measures to be taken to further the full and equal enjoyment by women of all human rights as a priority for Governments and the United Nations, and recognizing the importance of the integration and the full participation of women as both agents and beneficiaries in the development process.

Welcoming the report of the Secretary-General (E/CN.4/1994/34) submitted in response to the request contained in resolution 1993/46 to consult with all United Nations human rights bodies, including the treaty bodies, on the implementation of the resolution and in particular the action taken to create a focal point in the centre for Human Rights for the human rights of women.

Considering that the Vienna Declaration and Programme of Action called on the United Nations to encourage the goal of universal ratification by all States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000 and to avoid, as far as possible, the resort to reservations.

Reaffirming that discrimination on the basis of sex is contrary to the Charter of the United Nations, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and other international human rights instruments, and that its elimination is an integral part of efforts towards the elimination of violence against women.

Stressing that the effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women will contribute to the elimination of violence against women and that the Declaration on the Elimination of Violence against Women strengthens and complements this process.

Recognizing the need to promote and strengthen national and international efforts to improve the status of women in all areas in order to foster the elimination of discrimination and gender-based violence against women.

Looking forward to the Fourth World Conference on Women, Action for Equality, Development and

Peace to be held in Beijing in 1995, and urging that human rights of women should play an important role in its deliberations.

Recognizing the important role of the women's movement and of non-governmental organizations in promoting the human rights of women.

1. Condemns all violations of the human rights of women, including acts of gender-based violence against women.
2. Calls for, in accordance with the Declaration on the Elimination of Violence against Women, the elimination of gender-based violence in the family, within the general community and where perpetrated or condoned by the State and emphasizes the duty of Governments to refrain from engaging in violence against women and to exercise due diligence to prevent, investigate and, in accordance with national legislation, to punish acts of violence against women and to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons, and to provide access to just and effective remedies and specialized assistance to victims.
3. Condemns all violations of the human rights of women in situations of armed conflict, recognizes them to be violations of international human rights and humanitarian law, and calls for a particularly effective response to violations of this kind, including in particular murder, systematic rape, sexual slavery and forced pregnancy.
4. Calls for the elimination of violence against women in public and private life, of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.
5. Urges Governments to intensify their efforts to promote and protect the human rights of women and eliminate violence against women, in accordance with the Vienna Declaration and Programme of Action and the Declaration on the Elimination of Violence against Women, through the adoption of all appropriate means and measures, at the national, regional and international levels.
6. Decides to appoint, for a three-year period, a special rapporteur on violence against women, including its causes and its consequences, who will report to the Commission on an annual basis beginning at its fifty-first session.
7. Invites the Special Rapporteur, in carrying out this mandate, and within the framework of the Universal Declaration of Human Rights and all other international human rights instruments including the Convention on the Elimination of All Forms of Discrimination against Women and the Declaration on the Elimination of Violence against Women, to:

- (a) Seek and receive information on violence against women, its causes and its consequences from Governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations, including women's organizations, and to respond effectively to such information;
 - (b) Recommend measures, ways and means, at the national, regional and international levels, to eliminate violence against women and its causes, and to remedy its consequences;
 - (c) Work closely with other special rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities and with the treaty bodies, taking into account the Commission's request that they regularly and systematically include in their reports available information on human rights violations affecting women, and cooperate closely with the Commission on the Status of Women in the discharge of its functions;
8. Requests the Chairman of the Commission, after consultation with the other members of the Bureau, to appoint as Special Rapporteur an individual of recognized international standing and experience in addressing the human rights of women.
9. Requests all Governments to cooperate with and assist the Special Rapporteur in the performance of the tasks and duties mandated and to furnish all information requested.
10. Requests the Secretary-General to provide the Special Rapporteur with all necessary assistance, in particular the staff and resources required to perform all mandated functions, especially in carrying out and following up on missions undertaken either separately or jointly with other special rapporteurs and working groups, and adequate assistance for periodic consultations with the Committee on the Elimination of Discrimination against Women and all other treaty bodies;
11. Also requests the Secretary-General to ensure that the reports of the Special Rapporteur are brought to the attention of the Commission on the Status of Women to assist in the Commission's work in the area of violence against women.
12. Calls for intensified effort at the international level to integrate the equal status of women and the human rights of women into the mainstream of United Nations system-wide activity and to address these issues regularly and systematically throughout relevant United Nations bodies and mechanisms.
13. Recognizes the particular role of the Commission on the Status of Women in promoting

equality between women and men.

14. Encourages the strengthening of cooperation and coordination between the Commission on Human Rights, the Commission on the Status of Women, the Committee on the Elimination of Discrimination against Women and other treaty bodies, the United Nations Development Fund for Women, the United Nations Development Programme and other United Nations Agencies.
15. Calls for closer cooperation and coordination between the Centre for Human Rights and the Division for the Advancement of Women.
16. Renews its call to Governments to include gender-disaggregated data including information on the de jure and de facto situation of women, in the information they provide to special rapporteurs, treaty bodies and to all other United Nations bodies and mechanisms concerned with human rights, and notes that the Vienna Declaration and Programme of Action calls on all special rapporteurs, working groups, the treaty bodies and other mechanisms of the Commission and the Sub-Commission to make use of such data in their deliberations and findings.
17. Renews its request to the Secretariat to ensure that special rapporteurs, experts, working groups, treaty bodies and other mechanisms of the Commission and the Sub-Commission are fully apprised of the particular human rights violations suffered by women, and noting in view of the fact that the Vienna Declaration and Programme of Action encourages training for United Nations human rights and humanitarian relief personnel to assist them to recognize and deal with the human rights violations particular to women and to carry out their work without gender bias, and requests the Centre for Human Rights to take action in this regard.
18. Requests all special rapporteurs, experts, working groups, treaty bodies and other mechanisms of the Commission and the Sub-Commission, in the discharge of their mandates, regularly and systematically to include in their reports available information on human rights violations against women.
19. Requests Governments and the United Nations to include in their human rights education activities information on the human rights of women.
20. Notes that the Fourth World Conference on Women: Action for Equality Development and Peace to be held in Beijing in 1995, may consider the question of means of integrating the human rights of women into the mainstream of United Nations system-wide activity.
21. Decides to continue its consideration of the question as a matter of high priority at its fifty-first session.

22. Recommends the following draft decision to the Economic and Social Council for adoption:

"The Economic and Social Council, taking note of the Commission on Human Rights resolution 1994/45 of 4 March 1994, approves -

- (a) The Commission's decision to appoint a special rapporteur on violence against women, including its causes and its consequences;
- (b) The Commission's request to the Secretary-General to provide the Special Rapporteur with all necessary assistance, in particular, the staff and resources required to perform all mandated functions, especially in carrying out and following up on missions undertaken either separately or jointly with other special rapporteurs and working groups, and adequate assistance for periodic consultations with the Committee on the Elimination of Discrimination against Women and all other treaty bodies;
- (c) The Commission's request to the Special Rapporteur to report to the Commission on an annual basis, beginning at its fifty-first session".

**The Sri Lankan statement to the U N Human Rights
Commission delivered on 7 March 1994
by Tilak Marapana**

Mr. Chairman,

This 50th session marks several decades of work, in which the Commission has contributed significantly to the promotion and protection of human rights since the adoption of the Universal Declaration. Sri Lanka is privileged to have participated in this process, having been a member of this Commission at regular intervals since 1957.

Over the years, the Commission's work, both in structure and content has demonstrated its success in adapting to the changing international context in which it functions. This flexibility has enabled it to overcome its own limitations. In the same spirit of cooperation that has enabled the Commission to overcome difficult issues in the past, we remain optimistic that the current concerns relating to the agenda of the Commission, and the rationalization of its work, could be resolved through dialogue, mutual trust and accommodation.

Mr. Chairman,

Let me now turn to the situation in Sri Lanka, since I addressed the 49th Session of this Commission in March last year.

On 1st May, a tragic blow against our democratic institutions was struck by the terrorists when President Ranasinghe Premadasa, the elected President of Sri Lanka was brutally assassinated in Colombo. The ongoing inquiry indicates that this diabolical and senseless act was the work of the Liberation Tigers of Tamil Eelam (LTTE).

The manner in which the government, the opposition, and the people of Sri Lanka reacted in the aftermath of the assassination was exemplary. Foreign observers were impressed with the resilience displayed by the people and the peaceful process of transition by which President D.B. Wijetunga was unanimously elected and installed in office. Throughout this traumatic period complete law and order was maintained and communal harmony prevailed. There were no reprisals of any kind against groups who may have been suspected of involvement in the assassination. The intention of the terrorists to instigate violence on racial lines and cause political turmoil was thereby defeated.

In his inaugural address to the nation, President Wijetunga expressed his commitment to democracy and human rights as follows:

"I wish to stress again the commitment of myself and my government to the preservation of democracy and all the democratic freedoms enshrined in our Constitution..... The

maintenance of discipline, law and order and respect for human rights will receive the considered attention and support of my government".

The resilience of our democratic institutions is further evidenced in the peaceful conduct of the Provincial Council elections on 17th May 1993, barely two weeks after President Premadasa's assassination. Nine political parties and ten independent groups participated in these elections in seventeen districts of the country. An international observer team, including representatives of some of the members of this Commission witnessed the peaceful, free and fair conduct of these elections.

Mr. Chairman,

Members of this Commission will recall that on 11th March 1993, I made a statement indicating certain measures the government would implement to further improve the human rights situation in Sri Lanka.

These measures were identified in recognition of the allegations of human rights violations reported to have occurred in Sri Lanka. We have assumed full responsibility to investigate these reported violations and take remedial action wherever necessary.

I wish to highlight the significant progress we have made in this regard:

- Sri Lanka has acceded to the UN Convention Against Torture.
- A mechanism has been set up to ascertain the fate and whereabouts of persons reported missing prior to 1991, as recommended by the UN Working Group.
- The Emergency Regulations pertaining to arrest and detention procedures have been reviewed and revised. Steps are underway to identify Emergency Regulations, which could be revoked or replaced by legislation.
- The recommendations of the UN Working Group on Disappearances subsequent to their two visits to Sri Lanka, are under implementation.
- Several prosecutions against human rights violators have been launched.
- The invitation extended a few years ago to the Un Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions has been accepted. He will visit Sri Lanka at a mutually convenient date in the course of this year.

Mr. Chairman,

Clearly the most significant of the measures that were proposed by the government to this

Commission last year was the achievement of a **negotiated political settlement** to the problems involving the North and the East of the country. Over the last ten years, constitutional changes have been effected in order to meet the legitimate demands of the Tamil people on critical issues like devolution, and language rights. These have been arrived at after thorough and painstaking dialogue and negotiation. These measures have resulted in persuading even extremist Tamil groups to join the democratic mainstream. The LTTE alone has refused to enter the democratic process, attempting to achieve its aim of creating a separate mono-ethnic one party state in the North and the East of Sri Lanka by violent means.

The government has expressed its resolve that the LTTE should not be permitted to bypass the democratic process. Several opportunities were given in the past to the LTTE to engage in discussions with the government, the latest being the fourteen month period between April 1989 and June 1990 when former President Premadasa had talks with the LTTE. Despite the unreliability that the LTTE has manifested in the past, on 15th January 1994. Prime Minister Ranil Wickremasinghe extended an invitation to the LTTE to talks and to participate in the ongoing discussions on constitutional reforms by submitting its proposals to the Parliamentary Select Committee on Constitutional Reforms. As the Commission would recall, the LTTE had earlier been given an opportunity of participating in the Parliamentary Select Committee which had been established in August 1991 to arrive at a political solution to the question involving the devolution of power to the Northern and the Eastern Provinces. The LTTE however failed to accept this invitation.

There is one basic fact that must be borne in mind in the consideration of the endeavours by the government to achieve a **negotiated political settlement**. The LTTE, whilst consistently denying cherished democratic freedoms to the people whom they claim to represent, is espousing a claim for self determination ostensibly on their behalf. The Tamil people comprise only 12.5 per cent of the population. They too are not confined to the North and the East of the country. The LTTE has no proven mandate to represent them. The LTTE is demanding a separate state, constituting as much as one third of the territory of Sri Lanka and two thirds of the island's coastline. They have based this demand on a spurious interpretation of historical facts. The illogicality and complete unreasonableness of this demand which is sought to be extracted by violence and terrorism is abundantly clear. Yet, in spite of the irrational nature of the claim, the government is prepared in the interest of peace and welfare of ordinary people who are helpless victims of this conflict, to search for a peaceful solution, without total disregard of the concerns of the LTTE.

The government has reiterated that any talks with the LTTE would only be held on the basis of four fundamental conditions:

- first, the renouncing of violence by the LTTE;
- second, discussions being held at the highest level of the leadership and not through intermediaries;

- third, that all recognized political parties, especially of the Tamil community, must also be represented at the discussions;
- fourth, the salient features of such a negotiated settlement are made known before talks commence.

The government is awaiting the response of the LTTE to this invitation.

We are gratified that the international community looks forward to the resolution of the North-East problem through a negotiated political settlement. This is our objective too. The international community can undoubtedly assist in the achievement of this objective. The international community should exert influence on the LTTE to renounce violence, accept democracy, jettison unreasonable demands and come to the negotiating table. It is well known that the LTTE draws most of its financial sustenance through illegal activities, and coercion and intimidation of the expatriate Tamil community now resident in Western Europe, the USA, Canada, Australia etc. In fact, in some of these countries, the LTTE has established offices for the purpose of conducting these covert operations. We are indeed grateful to the Government of the United Kingdom for expelling an LTTE leader who had been indulging in illegal activities. These activities were a direct threat to the security of Sri Lanka and were prejudicial to its unity and integrity. It is this type of action that can best serve our common interest in eliminating terrorism and restoring peace and normalcy in Sri Lanka. In our view, such action would be an important measure that our well-wishers could take to improve the human rights situation in our country. The international community should also be mindful of its obligation to help eradicate terrorism.

Mr. Chairman,

In the meantime, the government has taken steps to restore normalcy in the Northern and the Eastern Provinces. In fact, elections to local government bodies in all three districts of the Eastern Province and in the Vavuniya district of the Northern Province were held on 1st March. Over 2000 candidates from seven registered political parties and 50 independent groups contested these elections for a total of 431 seats. An electorate of 762,930 persons who had been denied political representation for so long owing to the disruption caused by terrorism exercised their cherished political rights. Election results indicate that polling had been high, at an average of 70 per cent of the registered voters and that the elections were keenly contested. With these elections, the process of building up the civil administrative infrastructure and the democratic institutions will be accelerated.

The return of normalcy to these areas is reflected in the continuing repatriation from India, of displaced persons. Approximately 40,000 persons have now returned and are being assisted to resettle in areas cleared of terrorist violence. An Agreement has been entered into with the Government of Switzerland to enable the return to Sri Lanka of asylum seekers whose claims have been rejected. Other Western countries saddled with such asylum seekers who had left Sri Lanka claiming to have done so due to the unsettled conditions, now have the opportunity to repatriate them.

Mr. Chairman,

The events of last year have amply demonstrated the fact that, despite grave and provocative terrorist threats, our democratic institutions have been resilient, electoral processes have continued, the human rights of our people have been promoted and protected and the rule of law maintained.

In spite of the conflict in the North, the government has continued to discharge its humanitarian responsibilities to the people in the affected areas. A fleet of vessels has been chartered by the government to supply essential items of food, fuel, text books and medical supplies to the North under the flag of the ICRC. The thousand bed Hospital in Jaffna, is being kept fully staffed and maintained by the government so that the medical needs of the largely civilian population can be adequately met. It is monitored and assisted by the ICRC.

In October 1993, Dr. Francis Deng, the Special Representative of the Secretary-General of the United Nations visited Sri Lanka at the invitation of the government. Dr. Deng was witness to the massive efforts deployed by the government at the cost of US \$ 55 million in 1993, and in collaboration with local and international NGOs, in providing relief for those affected by the conflict. Dr. Deng has observed that "Sri Lanka presents the unusual situation of a central government providing relief aid to persons under the control of the main opposition group. In a world replete with examples of governments and rebel groups using food as a weapon against civilian populations, the situation in Sri Lanka is one that deserves closer attention, if not more publicity as an important precedent". With regard to the issues of the internally displaced, my delegation has made a separate statement under the item dealing with Dr. Deng's Report.

Regrettably, some confidence building measures initiated by the government with the support of the UNHCR and the ICRC such as the establishment of a "humanitarian corridor" in the North to provide 'safe passage' for civilians between the Jaffna peninsula and the mainland, and an attempt to seek the release of those illegally detained by the LTTE for almost four years, failed on account of the intransigency of the LTTE. The government will nevertheless continue with such initiatives in the interest of innocent civilians.

Mr. Chairman,

I would now like to share with the members of the Commission, the main elements of the programme of work which the government proposes to carry out during the course of the next twelve months. This signifies the continuation of the process described in some detail in our previous statements at this Commission.

Bearing in mind the improved situation in the country, steps will be taken to further revise the Emergency Regulations. These revisions will include:

- restricting the use of preventive detention by imposing a reasonable maximum time limit for such detention without judicial intervention;

- removal of provisions which permit suspects to be held for long periods in police or military custody without access to judicial authorities;
- ensuring strict compliance with the provisions requiring detention only at authorized places of detention by increasing the penalty and vigorously prosecuting the offenders;
- imposition of heavier penalties for the failure to issue receipts at time of arrests;
- removal of provisions which dispense with post mortems and inquests when deaths have occurred in custody or as a result of official action of the security forces.

Vigorous action will be taken to ensure that procedural safeguards contained in the Emergency Regulations are strictly complied with and implemented in practice.

Provisions in the Emergency Regulations promulgated in December 1993, which confer special powers in dealing with the offence of promoting feelings of hatred or hostility among inhabitants of Sri Lanka will be removed at the earliest opportunity.

The exercise underway to identify and consolidate all existing Emergency Regulations will be completed.

The Unit established to monitor pre-1991 disappearances will be strengthened with adequate staffing and funding and where appropriate its findings will be forwarded to the authorities with a view to prosecuting any offender.

Legislation for the issuance of death certificates in respect of missing persons will be enacted and provincial mechanisms for the implementation thereof will be established.

As a commitment to the promotion of accountability through pursuit of legal mechanisms, effective steps will be taken to prosecute human rights violators by undertaking vigorous investigations and the institution of prosecutions in court.

Legislation to fulfil Sri Lanka's obligations under the Convention on Torture will be enacted. Enhanced punishment for torture will also be provided for in this legislation.

Instructions will be given to the relevant authorities to take all possible steps to prevent injury to innocent civilians and damage to civilian property, such as places of religious worship and schools, in the course of military operations conducted against terrorists.

The Emergency Regulation concerning NGOs will be replaced by legislation and any representations made by the NGOs will be given due consideration in the preparation of such legislation.

Sri Lanka will continue its co-operation with humanitarian and human rights organizations in their endeavours to improve the situation in Sri Lanka.

Action will be taken to continue implementation of the recommendations made by the UNWG on Disappearances following its two visits to Sri Lanka in 1992 and 1993.

Sri Lanka will continue its dialogue and co-operation with the Commission on Human Rights.

Efforts will be continued to seek a negotiated political solution to the problems affecting the North and the East.

Mr. Chairman,

At every international forum dealing with human rights issues, including this Commission, Sri Lanka has reiterated its policy of co-operation with the United Nations. On behalf of the President D.B. Wijetunga, my delegation reaffirms this policy of openness and co-operation, and the continuation of the commitment to fulfil the proposed programme of work.

Thank you Mr. Chairman.

**STATEMENT OF ACKNOWLEDGEMENT TO BE MADE BY
THE CHAIRMAN FOLLOWING THE STATEMENT BY
THE DELEGATION OF SRI LANKA**

The Commission acknowledges the statement of the representative of Sri Lanka concerning the situation of human rights in Sri Lanka, and welcomes the government's continuing cooperation with the Commission.

The Government of Sri Lanka has outlined a programme of work which is to be implemented in the course of the coming year which *inter alia*, includes commitments to: The further revision of the Emergency Regulations; The promotion of accountability through the vigorous undertaking of investigations and institution of prosecutions against human rights violators; taking all possible steps to prevent injury to civilians in the course of military operations; implementation of the recommendations made by the Working Group on Disappearances.

The efforts of the Government to arrive at a negotiated political settlement to the problems in the North and the East of the country should be encouraged.

As requested by the delegation of Sri Lanka, this acknowledgement will be included in the final report of the Commission and the statement of the delegation of Sri Lanka in its entirety in the summary records of this session.

The Parliamentary Select Committee on the Ethnic Conflict

Your Committee was constituted following the unanimous adoption by Parliament on 9th August, 1991 of the following motion moved by Mr. Mangala Moonesinghe and seconded by Mr. Stanley Tillekeratne:

"That this Parliament is of opinion that a Select Committee of Parliament be appointed -

- (a) to arrive at a political solution to the question involving the devolution of power to the Northern and Eastern Provinces;
- (b) to prevent -
 - (i) the disintegration of the nation;
 - (ii) the killings of innocent civilians, members of the Armed Forces and the Youths fighting for a cause;
 - (iii) the increased militarization of the culture of violence in our country; and
- (c) to achieve peace and political stability and utilize the reduced defence expenditure for rapid economic growth and national development.

That the Committee shall -

- (a) have the power to fix its quorum;
- (b) have the power to summon any person to appear before it, to require any person to produce any document or record, to procure and receive all such evidence, written or oral, as the Committee may think it necessary for the fullest consideration of the matters referred to above, and
- (c) have the power to report from time to time and to sit notwithstanding any adjournment of Parliament".

While moving the Motion Mr. Moonesinghe proposed an amendment to delete the word "national" which appeared in the notice between the words "the" and question in paragraph (a). The House agreed to the amendment.

Hon. Speaker thereafter appointed a Committee of 45 Members representing all parties in Parliament

As your Committee continued its deliberations, it became clear that misunderstanding and mistrust prevailed on issues pertaining to colonization of lands, law and order and delays in implementation of legislation relating to devolution. The Committee decided that public servants who had access to information and specialized knowledge of the subject should be summoned to give evidence.

Public Officers were examined on the following subjects:

Colonization

The Land Commissioner, the Secretary, Ministry of Lands, Irrigation and Mahaweli Development and the Director, Planning in the Mahaweli Development Authority were summoned to give evidence and produce documents pertaining to relevant data on land settlement in the Northern and Eastern Provinces. Their evidence related to land settlement in those Provinces since independence in 1948 together with an ethnic classification of those settled in the colonization schemes (vide Appendix II).

Law and Order

The Inspector-General of Police gave evidence on the relevant aspects of law and order. He explained that there were provisions in the Constitution under the 13th Amendment to establish a National Police Service and Provincial Police Services (Vide Appendix III).

Finance

Members of the Finance Commission outlined the principles upon which financial disbursements are made to Provincial Councils for capital outlays and recurrent expenditure. The Secretary, Ministry of Finance indicated to the Committee that the objective of the Commission was to encourage the Provincial Councils to expand their revenue base and take an initiative in revenue collection in order to be financially viable.

Aid

Your Committee also summoned the Director, External Resources who held the view that it would be useful to allow the Chief Ministers to take preliminary steps to procure foreign loans and aid to develop their respective Provinces provided that the Central Government also participated in the negotiations (vide Appendix IV).

It was apparent from the evidence of these public servants that the devolution contemplated in the legislation relating to Provincial Councils has not been fully implemented.

A majority of Your Committee was of the view that there should be a greater devolution of power and that such devolution should be put into effect within a specified time. Your Committee was also of the view that not only should more power be devolved in conventional subjects such as health and

transport, but also in matters such as foreign aid and foreign concessionary loans and that the Chief Executive of a Province must be encouraged to take the initiative in negotiating external financial assistance to develop the Province provided that the Central Government also participated in the negotiations.

In the course of the deliberations on the conflicting issues, a Concept Paper was tabled embodying a compromise which provided for two separate Councils and an Apex Assembly consisting of Members of the two Councils to plan common policies and co-ordinate programmes. The Paper presented a flexible framework for discussion.

The Paper was rejected by Members of the Committee belonging to the Ceylon Workers' Congress and the Tamil United Liberation Front.

Subsequently an Option Paper was tabled incorporating the salient features contained in

- (a) The Bandaranaike - Chelvanayakam Pact
- (b) The Dudley Senanayake - Chelvanayakam Pact
- (c) The Manifesto of the Democratic Peoples' Alliance
- (d) The Memorandum of the Mahajana Eksath Peramuna
- (e) The Memorandum of Mr. S.L. Gunasekera, MP.
- (f) The Memorandum of the Sri Lanka Muslim Congress
- (g) The Concept Paper and
- (h) The "Four Point Formula" of the Tamil United Liberation Front.

Your Committee, in order to expand the area of devolved subjects, examined closely the papers presented by the Ceylon Workers' Congress and the Four Point Formula of the Tamil United Liberation Front.

A majority of Your Committee agreed the subjects in List III (Concurrent List) of the Ninth Schedule to the Thirteenth Amendment to the Constitution should be minimized or even that the list should be dispensed with.

Mr. K. Srinivasan, M.P. for the Jaffna District subsequently presented a proposal on 11th November 1992 entitled "A Realistic Solution to the National Crisis". A majority of members of Your Committee on 11th December 1992, agreed to adopt Item 2 in that proposal namely that "the

Northern and the Eastern Provinces shall each be treated as a distinct unit of devolution". The Members representing the Ceylon Workers' Congress and the Tamil United Liberation Front did not agree.

Item I of the proposal states -

"The Unitary nature of the Sri Lankan Constitution be converted into a federal one.

Provided however that subject to the undertaking by the Parties to the Select Committee that they shall not canvass and/or participate, the question whether Sri Lanka should have a Federal Constitution or not may be put to the determination of the people of Sri Lanka through the democratic mechanism of a referendum".

While not accepting this item in its entirety the majority of Your Committee agreed that the devolution of functions may be on lines similar to those found in the Indian Constitution.

The member of Your Committee representing the Mahajana Eksath Peramuna did not agree to Item I of the Srinivasan Proposal.

Your Committee on 6th July 1993 summoned the Secretary, Ministry of Defence, the Army Commander, The General Officer Commanding Joint Operations Command, Major General Commanding three Divisions, the Inspector General of Police and the Army and Police support staff; in order to assess the feasibility of holding a referendum in the Eastern Province in about five months time.

Although the preponderance of evidence of the armed services and the Police indicated that the security situation in the Eastern Province had improved considerably and that they could prepare the area to hold a referendum in five months time the Committee was of the view that it was premature to recommend a referendum at the moment.

Your Committee, however, decided that it would be suitable to commence preparation to hold local election wherever the security situation permitted. In coming to this conclusion the Committee was of the opinion that elections had not been held in the Eastern Province for over six years and that it would be useful to prepare the people to participate in the electoral process. It would also provide them with an opportunity to elect their representatives to govern their habitats such as the Pradeshiya Sabas, Town Councils, Urban Councils etc. and elect a political leadership of their choice.

MATTERS AGREED UPON BY A MAJORITY OF THE MEMBERS

1. On 11th December 1992, Members of Your Committee representing the United National Party, Sri Lanka Freedom Party, Sri Lanka Muslim Congress, the Communist Party, Lanka Sama Samaja Party as well as the independent Members, Mr. K. Srinivasan, Member for

Jaffna District and Mr. Basheer Segudawood, Member for Batticaloa District, reached agreement:

- (a) on the establishment of two separate units of administration for the Northern and the Eastern Provinces;
- (b) to adopt a scheme of devolution on lines similar to those obtaining in the Indian Constitution; and
- (c) to devolve more subjects that are in List III (Concurrent List) or to dispense with the List.

2. On 21st July 1993 Members of Your Committee agreed that wherever the security situation permitted, preparations to hold local elections in the Eastern Province should commence.

Mr. Mangala Moonesinghe (Chairman)	Sgd.
Hon. Ranil Wickremasinghe	
Hon. Gamini Atukorale	Sgd.
Hon. S. Thondaman	
Hon. P. Dayaratne	Sgd.
Hon. Festus Perera	Sgd.
Hon. E.P. Paul Perera	Sgd.
Hon. Tyrone Fernando	Sgd.
Hon. K.D.M.C. Bandara	Sgd.
Hon. Abdul Razak Munsoor	Sgd.
Hon. Weerasinghe Mallimarachchi	Sgd.
Hon. Wijayapala Mendis	Sgd.
Hon. W.J.M. Lokubandara	Sgd.
Hon. (Dr.) Wimal Wickramasinghe	Sgd.
Hon. A.C.S. Hameed	Sgd.
Hon. Harindra Corea	Sgd.
Hon. Chandra Ranatunga	Sgd.
Hon. A.H.M. Azwer	Sgd.
Hon. Dharmadeva Jayasinghe	Sgd.
Hon. Harindranath Dunuwille	Sgd.
Hon. H.R. Piyasiri	Sgd.
Hon. (Mrs.) R.M. Pulendran	Sgd.
Hon. M.S. Sellasamy	
Mr. S.S.M. Abu Bakr	
Mr. M.H.M. Ashraff	

Mr. M. Haleem Ishak	Sgd.
Mr. K. Karunakaram	
Mr. L.B. Kiriella	Sgd.
Mr. Buddhika Kurukularatne	Sgd.
Mr. Raja Collure	Sgd.
Mr. M.K.A.D.S. Gunawardena	Sgd.
Mr. Lakshman Jayakody	Sgd.
Mr. T.A.K. Thevarapperuma	Sgd.
Mr. Somasara Dassanayake	Sgd.
Mr. K. Premachandran	
Mr. Anura Bandaranaike	Sgd.
Mr. K.B. Ratnayake	Sgd.
Mr. T.W. Rajaratnam	
Mr. K. Srinivasan	
Mr. Hudson Samarasinghe	Sgd.
Mr. Athauda Seneviratne	Sgd.
Mr. Basheer Segudawood	
Mr. Mavai S. Senathirajah	

Special Rapporteur on Independence of the Judiciary

The post of the Special Rapporteur on the Independence of the Judiciary was created by the UN Commission on Human Rights on 4th March 1994, in pursuance of a resolution adopted without vote at the Fiftieth Session of the UNHCR in Geneva. The way for this appointment was paved by the successive reports of Mr. Louis Joinet, the French expert to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. Dato' Param Cumaraswamy, a Malaysian, has been chosen to hold this office for three years. The appointment is to be confirmed by the UN Economic and Social Council meeting in May 1994. The International Commission of Jurists and the Centre for the Independence of Judges and Lawyers in Geneva, who have been instrumental in the formulation and the adoption of the resolution establishing this post, call upon the UN Centre for Human Rights to provide Dato' Param Cumaraswamy with adequate and meaningful resources to enable him to fulfil this critical assignment.

Dato' Param Cumaraswamy is a courageous fighter for the independence of the judiciary and the legal profession. A Malaysian advocate, he is a member of the ICJ and the President of LAWASIA. He is also former Chairman of the Standing Committee on Human Rights of the International Bar Association. His appointment as a Special Rapporteur is an encouragement for judges and lawyers throughout the world.

His mandate is threefold:

- to monitor, investigate and report on individual cases of harassment and persecution of judges and lawyers;
- to examine the contexts in which these violations occur and identify the structural defects responsible for them;
- to study topical questions central to a full understanding of the independence of the judiciary, such as justice in emergency situations.

Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers

The Commission on Human Rights

Guided by articles 7, 8, 10 and 11 of the Universal Declaration of Human Rights and articles 2, 4, and 26 of the International Covenant on Civil and Political Rights.

Convinced that an independent and impartial judiciary and an independent legal profession are essential prerequisites for the protection of human rights and for ensuring that there is no discrimination in the administration of justice.

Bearing in mind the Vienna Declaration and Programme of Action (A/CONF.157/23), in particular paragraph 27 of part I and paragraphs 88, 90 and 95 of Part II.

Recalling its resolutions 1989/32 of 6 March 1989, 1990/33 of 2 March 1990, 1991/39 of 5 March 1991, 1992/33 of 28 February 1992 and 1993/44 of 5 March 1993.

Recalling also General Assembly resolution 45/166 of 18 December 1990, in which the Assembly welcomed the Basic Principles on the Role of Lawyers and the Guidelines on the Role of Prosecutors adopted by the English United Nations Congress on the Prevention of Crime and the Treatment of Offenders and invited Governments to respect them and to take them into account within the framework of their national legislation and practice.

Bearing in mind the principles contained in the draft Declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/1988/20/Add.2 and Add.1/Corr.1), Prepared by Mr. L.M. Singhvi, the importance of which was noted by the Commission on Human Rights in its resolution 1989/32 of 6 March 1989.

Noting both the increasing frequency of attacks on the independence of judges, lawyers and court officials and the link which exists between the weakening of safeguards for the judiciary and lawyers and the gravity and frequency of violations of human rights.

1. Welcomes the final report on the independence of the judiciary and the protection of practising lawyers (E/CN.4/Sub.2/1993/25 and Add.1), prepared by Mr. Louis Joinet, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities;
2. Endorses the recommendation of the Sub-Commission, as contained in its resolution 1993/39 of 26 August 1993, to create a monitoring mechanism to follow up the question of the

independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officials, and the nature of potential threats to this independence and impartiality;

3. Requests the Chairman of the Commission to appoint, for a period of three years, after consultation with the other members of the Bureau, a special rapporteur whose mandate will consist of the following tasks:
 - (a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;
 - (b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;
 - (c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers;
4. Urges all Governments to assist the Special Rapporteur in the discharge of his or her mandate and to transmit to him or her all the information requested.
5. Requests the Special Rapporteur, starting with the fifty-first session, to submit a report on the activities connected with his or her mandate.
6. Requests the Secretary-General, within the limits of the resources of the United Nations, to provide the Special Rapporteur with any assistance needed for the discharge of his or her mandate.
7. Decides to consider this question at its fifty-first session.
8. Recommends the following draft decision to the Economic and Social Council for adoption.

"The Economic and Social Council"

Taking note of Commission on Human Rights resolution 1994/41 of 4 March 1994, endorses the decision of the Commission to confirm the proposal of the Sub-Commission to create a monitoring mechanism to follow up the question of the independence and impartiality of the judiciary, particularly with regard to judges and lawyers, as well as court officials, and the nature of problems liable to attack this independence and impartiality, and recommends that

this take the form of a special rapporteur whose mandate will consist of the following tasks:

- (a) To inquire into any substantial allegations transmitted to him or her and report his or her conclusions thereon;
- (b) To identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence, and make concrete recommendations including the provision of advisory services or technical assistance when they are requested by the State concerned;
- (c) To study, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers;

The Council also approves the request of the Commission to the Secretary-General to provide the Special Rapporteur with all the assistance necessary for the completion of his or her task".

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