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In this issue we publish an article by Fr. Oswald B. Firth and Richard A. Dias on the Executive Committee System. They discuss the Executive Committee System under the Donoughmore Constitution and quote Professor G.L. Peiris who advocates the adoption of a modified form of the Executive Committee system giving several reasons for doing so.

We also publish the report prepared by the UN Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms Radhika Coomaraswamy, pursuant to the Commission on Human Rights Resolution 1995/85. This document contains a framework for model legislation on domestic violence.

A paper on public interest law prepared by International Human Rights Internship Programme staff is also published. This paper is based on a draft working paper prepared by Mario Gomez. It looks at developments in public interest litigation in the South Asian region and discusses tools that are available to implement public interest litigation.

EXECUTIVE COMMITTEE SYSTEM

LEGISLATION ON DOMESTIC VIOLENCE

IN THIS ISSUE

THE EXECUTIVE COMMITTEE SYSTEM

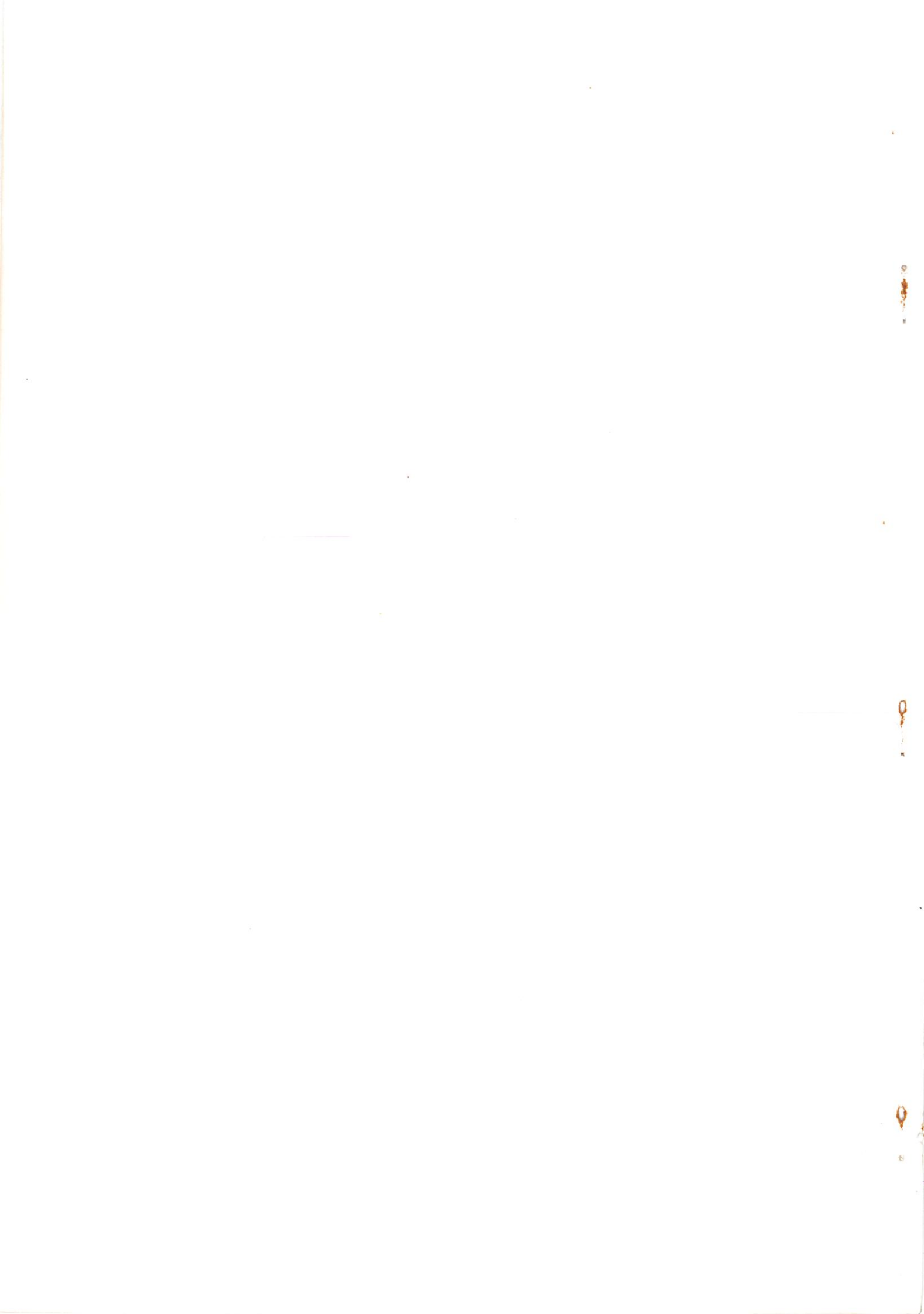
*Oswald B. Firth
&
Richard A. Dias*

COMMISSION ON HUMAN RIGHTS

A framework for model
legislation on domestic
violence

Radhika Coomaraswamy

THE LEGAL RESOURCES PROJECT AND ITS UNDERSTANDING OF PUBLIC INTEREST LAW



THE EXECUTIVE COMMITTEE SYSTEM: The Case for Its Adoption

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&

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Among the numerous proposals submitted to the Parliamentary Select Committee for Constitutional Reform (PSCCR) for its consideration, there is a particular proposal that predicates the functional integration, to an appreciable degree, of the Members of Parliament of whatever government is in power with those in the opposition, at least as far as the participatory, decision-making process at the parliamentary level is concerned. The manner in which this proposal is expected to be implemented is by incorporating into the proposed Constitution, in an appropriately modified form, the Executive Committee system, a la the Donoughmore Constitution, to suit the multi-party pluralistic character of the present Sri Lankan polity.

A wide gamut of considered views in favour of its adoption, from authoritative sources whose credentials are beyond question, has already found expression in ample measure. Of them, there is the veteran politician of the calibre of the late Mr S.W.R.D. Bandaranaike, who had been a most perceptive actor in the political arena for no less than 26 years until his untimely death, the late Dr Colvin R. de Silva, the eminent constitutionalist, lawyer and politician in his own right, the other seasoned politician, Mr Dinesh Gunawardane, the MEP leader, who has made an unprecedented proposal to the PSCCR with regard to the Executive Committee system, and the Rhodes scholar/academic turned politician, Professor G.L. Peiris, who also has made one of the most convincing cases in favour of this system. Of the NGOs, the Organisation of Professional Associations representing 32 professions in the country has also made its submissions to the PSCCR to the same effect. In this regard the academic studies done by the late Dr I.D.S. Weerawardana, the former lecturer in economics of the then University of Ceylon in his book *Government And Politics in Ceylon*, and that of Dr Jane Russell's *Communal Politics Under the Donoughmore Constitution: 1931-1947* provide a wealth of objective material at an in-depth level.

The case of Mr Bandaranaike's is one that gives much food for thought because he, having been at one time a fervent supporter of the Executive Committee system, then a convert to the Cabinet system, once again became a reconvert to the Executive Committee system, which also revealed his generally open-ended frame of mind. What adds credibility to this volte face of his is that his reconversion came after having gained first-hand experience of the strengths and weaknesses of both these systems, from the unique, vantage position of a Minister, the Leader

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of the House, the Leader of the Opposition and Prime Minister under either the Donoughmore or the Soulbury Constitution. He was thus eminently qualified to compare the merits and demerits of the Executive Committee system with those of the Cabinet system. As such, in 1957 he made the following observation which deserves serious consideration:

In countries where you cannot hope to get two parties to divide on purely political issues, there should be a modification of the system where all MPs regardless of party, have some share in executive work. Under the Donoughmore Constitution, backbenchers of all parties shared the executive work and you avoided the bitterness and sense of frustration that is liable to develop not only among the Opposition parties, but even backbenchers of the government. There were defects in the executive system as it was worked in Ceylon, but it has always been my view that it was a mistake to have scrapped it altogether¹.

In this regard, Jane Russell is of the opinion that, "Bandaranaike's final judgement on the Donoughmore dispensation vindicated the [Donoughmore] Commissioners who had adduced as one of the reasons for the system that: 'Politicians in Ceylon are always involved in details of administration. The politician would lose touch with reality were he to overlook them. The [executive] committee system will therefore make a virtue of necessity and give free play to the peculiar genius of the Ceylonese themselves'². The fact that he lamented over the exclusion of the Executive Committee system from the Soulbury Constitution, which was structured on party lines, indicates its validity and viability even under a parliamentary form of government.

The other ardent advocate of this system was none other than Dr Colvin R. de Silva in presentations he made at several seminars on constitutional reform organised by numerous NGOs including the Centre for Society and Religion and the Council for Liberal Democracy (CLD). At the seminar on *Parliament: Its Powers, Functions and Roles* organised by CLD Dr de Silva stated that

the most important thing about the set-up [Donoughmore Constitution] was this. Those [Executive] Committees had tremendous power in the initiation of legislation. And secondly, in the supervision of the execution of the legislation. It was in the Committees that the Bills that ultimately came before the Board of Ministers and through it to the State Council, originated... There were various Departments under each of these Committees... according to the subjects allocated to these Committees, and actually the Committees could meet again in the matter of the Executive tasks of the various Departments. That is, bring their influence to bear and take up those matters in the Committees and make their decisions to be carried out, so that the Ministers are not quite as free to use their powers as they are today, at least as they are supposed to be

¹ Hansard, 1945, November 8.

² Ibid pp. 214-15.

today. Finally, all these matters came through the Board of Ministers as I said. What I wanted to stress was this: in those Committees there would come up matters which most closely concerned the people, for the simple reason that the people in those Committees were those who had been chosen by the people... This brought the whole process of the Government in the country, aside from what the Governor was responsible for, into close relationship directly with the common people. Their wishes, their demands, their dislikes, all got reflected in these Committees precisely because the Committees had all the powers of legislation and also powers of Executive action being ensured³.

At another presentation at a seminar on *The Presidency and the Institutional Form of the Sri Lankan State* also organised by the CLD, Dr de Silva, when referring to the Donoughmore Constitution once again emphasised that "it carried with it a very valuable institution, the Executive system from which I think, if I say so to you, it was the major misfortune that we got away, for that system may have been capable of improvement. And I firmly and personally believe that, had that system been carried over to the new stage of Constitutional changes keeping that form and basis, much of the problems of the minorities with regard to the participation in power at the centre might have been, to some degree at least, assuaged and compensated for, even if it might not have fulfilled their requirements completely"⁴.

The sum and substance of these presentations were that: (a) governance, both legislative and executive, became a collective, interlinked effort and the re'sponsibility of **all the legislators and not just those in power**; (b) there was an effective curbing of any authoritarian tendencies of the respective Ministers; (c) it enhanced the capacity to initiate a greater volume of legislation; (d) it facilitated a closer relationship with the people; and (e) it sensitised the legislators regarding the problems of the minority communities with greater acuteness.

A Holistic Approach

Probably it was left to Mr Dinesh Gunawardane to even go beyond both Mr Bandaranaike and Dr de Silva in his advocacy of the Executive Committee system when he made a strong case before the PSCCR that it should be an integral part not only of the Parliamentary set-up but also of the District Councils (which in his opinion should be the basic unit of devolution) as well. Whether one agrees or not with what the basic unit should be, this two-pronged approach would facilitate power-sharing at both the Centre and at the periphery at one and the same time, even if the unit of devolution were to remain at the Provincial Council level. This is truly a bold and innovative move with far-reaching consequences, the most significant of which would be the close relationship the electors will have with the elected. Moreover, if accepted by the PSCCR in the form as suggested by Mr Gunawardane, devolution of power would have gained a meaningful dimension with the sharing of power by all elected to such bodies.

³ *Ideas for Constitutional Reform*, Chanaka Amaratunga (ed) (1989) p 45, published by CLD.

⁴ Ibid.

The implied logic behind adopting the Executive Committee system at all levels of these politico-administrative structures presupposes is that like peace, power-sharing between those in power and those out of power is also indivisible. To restrict such power-sharing only at the Parliamentary level would not only be a contradiction but also counter-productive and self-defeating. This is a more holistic approach which deserves to be extended even to the Pradeshiya Sabhas, Municipalities. Urban and Town Councils as well, which is where the day-to-day, micro-level problems of the people are closely felt and, therefore, could be effectively solved. Such power-sharing through the Executive Committee system at all these levels, particularly where all the three major communities live together, would go a long way in welding them into harmonious social units. This is a far cry from confrontational politicking which is the order of the day under the existing set-up with precedence already created for the Opposition to oppose for the sake of opposing!

The most explicit treatment of this subject was done by Professor G.L. Peiris when he adduced no less than 13 reasons in favour of the adoption of a modified form of the Executive Committee system⁵. In his opinion, "in the setting of Sri Lanka's present constitutional problems, the Donoughmore Constitution, so far as the wielding of executive power is concerned, had two particularly valuable features:

- (a) In terms of the Donoughmore system, the legislature did not divest itself of executive power and surrender it to an extraneous body such as the Cabinet. On the contrary, the legislature by the expedience of constituting itself into a variety of Executive Committees, retained executive power in its own hands and used it effectively throughout the life of the legislature.
- (b) In view of the excessive politicisation which is undoubtedly a grave problem in Sri Lanka today, we would place particular emphasis on the scope which the Donoughmore Constitution allowed for persons with differing political ideologies and points of view, and certainly not belonging to one political party, to make an active contribution to the formulation and implementation of executive policy.

If the central concern agitating us is the necessity for ensuring adequate control by the elected representatives of the people over the exercise of executive power - admittedly crucial in a modern welfare state - then we would suggest without hesitation that the following features of the Donoughmore Constitution, which is part of Sri Lanka's constitutional heritage, deserve serious reflection.

- (1) The Donoughmore system enabled a continuity and an intensity of involvement in executive policy on the part of the legislature, which is not realistically achievable under the Cabinet system of government.

⁵ *OPA Journal* Vol. 15, 1992-93 on "Sri Lanka's Constitutional Problems; Lessons from the Donoughmore Constitution."

- (2) This encouraged Members to state their preference with regard to the Executive Committee which they would belong to - for example, health, education or local government. Each Member would freely and deliberately choose, as the area for his contribution, a subject which he found congenial and in which he had special knowledge or experience.
- (3) Every Member of Parliament, by virtue of his membership of an Executive Committee, acquired the right to exercise supervision over government departments falling within the purview of the Executive Committee to which he belonged. This enhanced his sense of responsibility and relevance.
- (4) This regularity of involvement encouraged members of the legislature to secure a grasp of administrative details, which they would perceive, was certainly not expected of them by the assumption of the Cabinet system.
- (5) The clear imputation of an executive as well as a legislative role to Parliament and the explicit division between these two functions, fortified by the recognition of distinct procedures in respect of the discharge of these disparate functions, rendered parliamentary scrutiny of government much more meaningful and productive under the Donoughmore Constitution.
- (6) The fact that parliament had a separate opportunity in executive sessions to address itself to matters of administrative detail, naturally gave it ample scope to focus upon broad issues of legislative policy in legislative session.
- (7) The dual aspect of parliament's supervisory role gave the legislature far greater leverage with regard to control of public finance - a function which goes to the very root of Parliamentary responsibility in the context of representative government.
- (8) The smallness of the Executive Committees in which administrative business was transacted engendered a sense of intimacy which was conducive to greater frankness and candour. Posturing was seldom resorted to in this environment.
- (9) The Executive Committee system, which was the basic feature of the Donoughmore Constitution, encouraged compromise and willingness to give and take. All points of view tended to be taken into account before a decision was made, and the attainment of consensus was, therefore, easier.
- (10) The Executive Committee system lent itself to the establishment of viable consultative mechanisms consisting principally of sub-committees and joint committees. Where a project involved diverse aspects and ramifications, all the relevant Executive Committees had to be consulted and their responses had a bearing on the final decision which was arrived at.

Tamil community but also by academics who have carried out extensive studies on this subject. In this regard Weerawardana's book has devoted no less than 26 pages in two of its chapters on the subject on the Executive Committee system, which is replete with numerous references where it had faulted, due to the manner how it had been made to function or rather dysfunction instead of any inherent structural defects.

Such acts of omission and commission, however, should not detract the PSCCR and the Minister of Constitutional Affairs, and also the opposition from taking all necessary steps to re-install the Executive Committee system in the pre-eminent position it enjoyed under the Donoughmore Constitution, but with all safeguards taken to ensure that it functions at an optimum level.

Whatever is said and done, among the other reasons that could be adduced in favour of such an adoption of a modified form of the Executive Committee system are:

- (1) That it would enhance the **participatory character in the decision-making process of all the legislators**, irrespective of whether they are in the government or in the opposition, and particularly those who represent the interests of the minority communities.
- (2) That there would be a more **consensual approach** when such decisions are made, in contrast to the adversarial approach at present which is abortive of much results.
- (3) That to that extent, the **sense of alienation** that legislators, not only in the Opposition but also among the backbenchers of the government party itself, often feels, will be reduced to the minimum.
- (4) That the decision-making process will **cease to be the monopoly or the prerogative** of the Cabinet of Ministers and/or the party in power, with scant attention being given to the legislators in the Opposition.
- (5) That this would result in the present top-down approach being substituted with the bottom-up approach that would give a sense of gratification to all legislatures participating in the proceedings of Parliament that they have all made their contributions in the formulation of most of the legislation.
- (6) That the final outcome of each Bill, Act or motion, would have been subjected before they are presented to Parliament for ratification, to a **thorough evaluation from different perspectives**. For, the give-and-take interaction done informally across the table would be in sharp contrast to the formal, lengthy 'specifications' done standing, which often produce more sound than sense.
- (7) That this renewed feature would be instrumental in evolving a vibrant political culture of **mutual tolerance and respect for opposing viewpoints** that is sadly conspicuous by their absence today. It would generate also a sense of conviviality, and also

consultation, compromise and consensus (a Premadasa aphorism that seems to have been honoured more in the breach than in its observance!).

- (8) That such a healthy relationship would have a benign impact on our social values and norms, and, above all, on the behavioural pattern of all segments of our society now so deeply fractured, whose fissures are felt down to the grassroots family units. At least to a certain degree, it could help **restore the cohesive, organic character of our rural society**, which is a dire need of the hour.
- (9) That, last but not the least, **power-sharing** in a meaningful way both at the Centre and also at the periphery would be a living reality, though yet an elusive dream - with concrete results that would give a sense of belongingness to all communities, investing the devolutionary process with an added significance. In turn, this could ensure the territorial integrity of the country, provided other essential pre-conditions are also fulfilled.

It would, however, be too presumptuous if one were to repose faith exclusively in this device as the panacea for all the country's political ills. The very complexity of our problems today demand a multi-prolonged approach if they are to be resolved without creating more new intractable problems.

Nevertheless, the adoption of a revised version of the Executive Committee system, as suggested above, would mark a complete break from the 48-year tradition, since Independence, of the parliamentary form of government in which whatever government party and the official opposition have been in office, they have been forever congealed in their respective strait-jacketed adversarial positions. They have remained with daggers drawn on either side of their 'Berlin Wall', as if that was how it had been pre-ordained for them even before they were elected to office!

Once such a reconstituted Executive System gets institutionalised as a part and parcel of our political process **at all levels**, its spin-off effect could have far-reaching consequences. For, such a radical change could induce the politically partisan contending forces in and out of power, who are now in a perpetual state of conflict and confrontation, to interact with each other in a spirit of give-and-take, tolerance, mutual respect and harmony on an unprecedented scale. If this laudable, yet elusive, objective becomes a reality, it could truly be said that Sri Lanka would have attained that degree of political maturity we would be proud of.

This should, in turn, have a far-reaching impact on our socio-cultural milieu with the vast concourse of our people beginning to emulate this example set by the political elite. It could then create a climate that would be conducive for a qualitative transformation of the prevailing ethos of our society, leading to a paradigm shift in the sphere of human relations - from one of bi-polarity to that of bi-partisanship - in every layer of our society. It is only then that Sri Lanka would have come of age, in more than one sense of that term.

COMMISSION ON HUMAN RIGHTS

Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights Resolution 1995/85

A framework for model legislation on domestic violence*

Introduction

1. This framework for model legislation outlines important elements which are integral to comprehensive legislation on domestic violence. The objective of this model legislation is to serve as a drafting guide to legislatures and organisations committed to lobbying their legislatures for comprehensive legislation on domestic violence.

I. DECLARATION OF PURPOSE

2. The purpose of this legislation is to:

- (a) Comply with international standards sanctioning domestic violence;
- (b) Recognise that domestic violence is gender-specific violence directed against women, occurring within the family and within interpersonal relationships;
- (c) Recognise that domestic violence constitutes a serious crime against the individual and society which will not be excused or tolerated;
- (d) Establish specific legislation prohibiting violence against women within interpersonal and family relationships, protecting victims of such violence and preventing further violence;
- (e) Create a wide range of flexible and speedy remedies (including remedies under special domestic violence legislation, penal and civil remedies) to discourage domestic violence and harassment of women within interpersonal relationships and within the family and protect women where such violence has taken place;
- (f) Assure victims of domestic violence the maximum protection in cases ranging from physical and sexual to psychological violence;
- (g) Establish departments, programmes, services, protocols and duties, including but not limited to shelters, counselling programmes and job-training programmes, to

* E/CN.4/1996/53/Add.2 (2.2.1996).

aid victims of domestic violence;

- (h) Facilitate enforcement of the criminal laws by deterring and punishing violence against women within special interpersonal relationships;
- (i) Enumerate and provide by law comprehensive support services, including but not limited to:
 - (i) Emergency services for victims of abuse and their families;
 - (ii) Support programmes that meet the specific needs of victims of abuse and their families;
 - (iii) Education, counselling and therapeutic programmes for the abuser and the victim;
 - (iv) Programmes to assist in the prevention and elimination of domestic violence which includes raising public awareness and public education on the subject.
- (j) Expand the ability of law enforcement officers to assist victims and to enforce the law effectively in cases of domestic violence and to prevent further incidents of abuse;
- (k) Train judges to be aware of the issues relating to child custody, economic support and security for the victims in cases of domestic violence by establishing guidelines for protection orders and sentencing guidelines which do not trivialise domestic violence;
- (l) Provide for and train counsellors to support police, judges and the victims of domestic violence to rehabilitate perpetrators of domestic violence;
- (m) Develop a greater understanding within the community of the incidence and causes of domestic violence and encourage community participation in eradicating domestic violence.

II. DEFINITIONS

3. It is urged that States adopt the broadest possible definitions of acts of domestic violence and relationships within which domestic violence occurs, bearing in mind that such violations are not as culture-specific as initially observed, since increasing migration flows are blurring distinctive cultural practices, formally or informally. Furthermore, the broadest definitions should be adopted with a view to compatibility with international standards.

4. States are urged to enact comprehensive domestic violence legislation which integrates criminal and civil remedies rather than making marginal amendments to existing penal and civil laws.

A. Domestic Violence

5. Legislation shall clearly state that violence against women in the family and violence against women within international relationships constitute domestic violence.
6. The language of the law must be clear and unambiguous in protecting women victims from gender-specific violence within the family and intimate relationships. Domestic violence must be distinguished from infra-family violence and legislated for accordingly.

B. Relationships to be regulated

7. The relationship which come within the purview of legislation on domestic violence must include: wives, live-in partners, former wives or partners, girl-friends (including girl-friends not living in the same house), female relatives (including but not restricted to sisters, daughters, mothers) and female household workers.
8. States should not permit religious or cultural practices to form an impediment to offering all women this protection.
9. States should offer protection to non-national women and hold non-national men accountable to the same standards as men of their nationality.
10. There shall be no restrictions on women bringing suits against spouses or live-in partners. Evidence laws and criminal and civil procedure codes shall be amended to provide for such contingencies.

C. Acts of Domestic Violence

11. All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed "domestic violence."

III. COMPLAINT MECHANISMS

12. The law shall provide for victims, witnesses of domestic violence, family members and close associates of victims, state and private medical service providers and domestic

violence assistance centres to complain of incidents of domestic violence to the police or file action in court.

A. Duties of police officers

13. The law shall provide that police officers shall respond to every request for assistance and protection in cases of alleged domestic violence.
14. Police officers shall not assign a lower priority to calls concerning alleged abuse by family and household members than to calls alleging similar abuse and violations by strangers.
15. Police shall respond at the scene of domestic violence when:
 - (a) The reporter indicates that violence is imminent or is in progress;
 - (b) The reporter indicates that an order relative to domestic violence is in effect and is likely to be breached;
 - (c) The reporter indicates that domestic violence has occurred previously.
16. The police shall respond promptly even where the reporter is not the victim of the violence but is a witness of the violence, a friend or relative of the victim, or is a health provider or professional working at a domestic violence assistance centre.
17. On receiving the complaint the police shall:
 - (a) Interview the parties and witnesses, including children, in separate rooms to ensure an opportunity to speak freely;
 - (b) Record the complaint in detail;
 - (c) Advise the victim of her rights as outlined below;
 - (d) Fill out and file a domestic violence report as provided for by the law;
 - (e) Provide or arrange transport for the victim to the nearest hospital or medical facility for treatment, if it is required;
 - (f) Provide or arrange transport for the victim and the victim's children or dependents to a safe place or shelter, if it is required;
 - (g) Provide protection to the reporter of violence;

- (h) Arrange for the removal of the offender from the home and, if that is not possible and if the victim is in continuing danger, arrest the offender.

B. Alternative Complaint Procedure

- 18. The victim, witness or reporter may file a complaint alleging an act of domestic violence in the judicial division where:
 - (a) The offender resides;
 - (b) The victim resides;
 - (c) Where the violence took place;
 - (d) Where the victim is temporarily residing if she has left her residence to avoid further abuse.
- 19. The victim may file a complaint alleging an act of domestic violence with a State or private health facility, which shall direct it to the police in the judicial division where that health facility is located.
- 20. A relative, friend or person from whom the victim requests assistance may file a complaint alleging an act of domestic violence with the police, who shall investigate it accordingly.

C. Statement of the victim's rights

- 21. The purpose of the statement of the victims rights is to acquaint the victim with the legal remedies available to her during the initial stage when she complains of an infringement of her legal rights. It also outlines the duties of the police and the judiciary in relation to the victim:
 - (a) The police officer shall communicate to the victim in a language understood by the victim, identifying himself or herself by name and badge number. The law requires that the police officer inform the victim of domestic violence that, if a crime is alleged to have been committed against her, the officer must either arrest the suspect immediately, persuade him to leave the household or remove him from the household;
 - (b) The officer must drive the victim, or help her find transport to a medical facility to have her injuries attended to;
 - (c) If the victim wants to leave her residence the officer must help her to find transport to a safe place or shelter;

- (d) The officer shall take all reasonable steps to ensure that the victim and her dependents are safe;
- (e) The officer must provide the victim with a written statement of the legal procedure available to her, in a language that she understands. The statement must indicate that:
 - (i) The law provides that the victim may seek an *ex-parte* restraining court order and/or a court prohibiting further abuse against the victim, her dependents, anyone in her household or anyone from whom she requests assistance and refuge;
 - (ii) The restraining order and/or court order shall protect the victim's property or property held in common from destruction;
 - (iii) The restraining order may order the offender to vacate the family home;
 - (iv) In the event of the violence taking place during the night, at weekends or on public holidays, the victim must be informed of emergency relief measures to obtain a restraining order by calling the judge on duty;
 - (v) The victim need not hire a lawyer to get an *ex-parte* restraining order or court order;
 - (vi) The offices of the clerk of the court shall provide forms and non-legal assistance to persons seeking to proceed with *ex-parte* restraining orders or court orders. To obtain a court order, the victim must be advised to apply to the court in the prescribed district/jurisdiction;
 - (vii) The police shall serve the *ex-parte* restraining order on the offender.

D. Domestic violence report

- 22. It shall be the duty of the police officer responding to a domestic violence call to complete a domestic violence report which shall be a part of the record. The report should be collated by the Department of Justice and (where applicable) the family court.
- 23. The domestic violence report shall be on a form prescribed by the police commissioner. It shall include but not be limited to:

- (a) The relationship of the parties;
- (b) The sex of the parties;
- (c) Information regarding the occupational and educational levels of the parties;
- (d) The time and date the complaint was received;
- (e) The time the officer began investigation of the complaint;
- (f) Whether children were involved and whether the domestic violence took place in the presence of children;
- (g) The type and extent of the abuse;
- (h) The number and type of weapons used;
- (i) The amount of time taken in handling the case and the actions taken by the officer;
- (j) The effective date and terms of the order issued concerning the parties;
- (k) Any other data necessary for a complete analysis of all the circumstances leading to the alleged incident of domestic violence.

24. It shall be the duty of the police commissioner to compile and report annually to the Departments of Justice/Women's Affairs and the Parliament all data collected from the domestic violence reports.

25. The annual report shall include but not be limited to:

- (a) The total number of reports received;
- (b) The number of reports made by the victims of each sex;
- (c) The number of reports investigated;
- (d) The average time lapse in responding to each report;
- (e) The type of police action taken in disposing cases including the number of arrests.

IV. DUTIES OF JUDICIAL OFFICERS

A. Ex-parte temporary restraining order

26. An *ex-parte* order may be issued on the application of a victim of violence in circumstances where the defendant chooses not to appear in court or cannot be summoned because he is in hiding. An *ex-parte* order may contain a preliminary injunction against further violence and/or preventing the abuser/defendant from disturbing the victim/plaintiff's use of essential property, including the common home.
27. It is also recommended that a wider category of persons besides the victim of violence apply for a restraining order. It is conceivable that the victim may not be in a position to have access to the legal system. It is also conceivable that witnesses and persons offering assistance to the victim may also be in 'danger of violence.
28. Where a situation of grave danger exists to the life, health and well-being of the victim and she is unlikely to be safe until a court order is issued, the victim/plaintiff, a relative or welfare worker may apply to a judge or magistrate on duty to provide emergency relief, such as an *ex-parte* temporary restraining order to be issued against the abuser within 24 hours of violence occurring.
29. The *ex-parte* temporary restraining order may:
 - (i) Compel the offender to vacate the family home;
 - (ii) Regulate the offender's access to dependent children;
 - (iii) Restrain the offender from contacting the victim at work or other places frequented by the victim;
 - (iv) Compel the offender to pay the victim's medical bills;
 - (v) Restrict the unilateral disposal of joint assets;
 - (vi) Inform the victim and the offender that if the offender violates the restraining order, he may be arrested and criminal charges brought against him;
 - (vii) Inform the victim that, notwithstanding the use of a restraining order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against the offender;
 - (viii) Inform the victim that, notwithstanding the use of a restraining order under domestic violence legislation and application for criminal prosecution, she can initiate a civil process and sue for divorce, separation, damages or compensation;

- (ix) Require each party to fulfil his/her continuing duty to inform the court at each proceeding for an order of protection at any civil litigation, proceeding in juvenile court and/or proceedings involving either party.
30. Emergency relief would include an *ex-parte* temporary restraining order, to remain in effect until a court order is issued but for not more than 10 days after the *ex-parte* temporary restraining order has been issued.
 31. The plaintiff must be informed of the following:
 - (a) That, notwithstanding use of an *ex-parte* restraining order under domestic violence legislation, she can apply for a court order to protect her from further violence or for a renewal of that court order, and/or request the prosecutor to file a criminal complaint against the defendant;
 - (b) That an application for an *ex-parte* restraining order in no way affects her access to other civil remedies such as the right to apply for a judicial separation, divorce or modification of the temporary restraining order.
 - (c) That, on 24 hours' notice to the plaintiff, the defendant may move for a dissolution or modification of the temporary restraining order.
 32. Non-compliance with an *ex-parte* restraining order shall result in prosecution for contempt of court proceedings, a fine and imprisonment.

B. Protection orders

33. Application for a protection order may be made by the victim, a relative, a welfare worker or person assisting the victim of domestic violence.
34. Application for protection orders may be made on the expiry of ex-parte restraining orders or independently of such restraining orders.
35. Protection orders may operate to protect the victim, a relative, a welfare worker or person assisting the victim of domestic violence from further violence or threats of violence.
36. Judges should be required to conduct hearings within 10 days of the complaint and application for a protection order.
37. Judges should uphold the provisions outlined in the victim's statement of rights.

38. The court order may provide any or all of the following relief:
- (a) Restrain the offender/defendant from causing further violence to victim/plaintiff, her dependents, other relatives and persons who give her assistance from domestic abuse;
 - (b) Instruct the defendant to vacate the family home, without in any way ruling on the ownership of such property;
 - (c) Instruct the defendant to continue to pay the rent or mortgage to pay maintenance to the plaintiff and their common dependents;
 - (d) Instruct the defendant to hand over the use of an automobile other essential personal effects to the plaintiff;
 - (e) Regulate the defendant's access to dependant children;
 - (f) Restrain the defendant from contacting the plaintiff at work other places frequented by the plaintiff;
 - (g) Upon finding that the defendant's use or possession of a weapon pose a serious threat of harm to the plaintiff, prohibit the defendant from purchasing, using or possessing a firearm or any such weapon specified by the court;
 - (h) Instruct the defendant to pay the plaintiff's medical bills, counselling fees or shelter fees;
 - (i) Prohibit the unilateral disposition of joint assets;
 - (j) Inform the plaintiff and the defendant that, if the defendant violates the restraining order, he may be arrested with or without a warrant and criminal charges brought against him;
 - (k) Inform the plaintiff that, notwithstanding the use of a restraining order under domestic violence legislation, she can request the prosecutor to file a criminal complaint against the defendant;
 - (l) Inform the plaintiff that, notwithstanding the use of a restraining order under domestic violence legislation, she can activate the civil process and sue for divorce, separation, damages or compensation;
 - (m) Conduct hearings *in camera* to protect the privacy of the parties.

39. The burden of proof in these proceedings is on the accused to demonstrate that such domestic violence did not take place.
40. Judges should order the dispatch of copies of all protection/restraining orders issued to the police zones where the plaintiff and those protected by the order reside, within 24 hours of the issuing order.
41. Compliance with protection orders shall be monitored by the police and the courts. Violation of a protection order is a crime. Non-compliance shall result in a fine, contempt of court proceedings and imprisonment.
42. Where the plaintiff files an affidavit that she does not have the funds to pay the costs of filing an *ex-parte* restraining order or a protection order, the orders shall be filed without the payment of fees.
43. *Mala fide* and unjustified claims for a protection order may move the court to order the plaintiff to pay costs and damages to the defendant.

V. CRIMINAL PROCEEDINGS

44. The prosecuting attorney or Attorney-General shall develop, adopt and put into effect written procedures for officials prosecuting crimes of domestic violence.
45. When a court dismisses criminal charges in a crime involving domestic violence, the specific reasons for dismissal must be recorded in the court file.
46. In criminal actions concerning domestic violence, the prosecuting attorney shall charge in the information sheet that the alleged act is one of domestic violence.
47. The victim's testimony shall be sufficient for prosecution. No move to dismiss a complaint shall be made solely on the grounds of uncorroborated evidence.
48. Upon conviction for a domestic violence offence, the judgement shall so indicate the results of the case.
49. During the trial phase, the defendant accused of domestic violence shall have no unsupervised contact with the plaintiff.
50. The issue of a restraining order or protection order may be introduced as a material fact in subsequent criminal proceedings.
51. Depending on the nature of the offence, and where a defendant is charged for the first time with a minor domestic violence offence and pleads guilty, a deferred sentence and counselling may be imposed, along with a protection order, provided that the consent

of the victim is obtained.

52. Upon conviction of a defendant for a serious crime of domestic violence, the court may order a term of incarceration and counselling.
53. Enhanced penalties are recommended in case of domestic violence involving repeat offences, aggravated assault and the use of weapons.
54. Counselling shall not be recommended *in lieu* of a sentence in cases of aggravated assault.
55. Clear sentencing guidelines shall be established.

VI. CIVIL PROCEEDINGS

56. A protection order may be issued while civil proceedings for divorce, judicial separation or compensation are pending.
57. In these circumstances, protection orders may be issued in addition to and not *in lieu* of civil proceedings.
58. Protection orders and restraining orders may be issued independently, unaccompanied by an application for divorce or judicial separation.
59. The issuance of a restraining order or protection order may be introduced as a material fact in subsequent civil proceedings.

VII. PROVISION OF SERVICES

A. Emergency Services

60. The State must provide emergency services which shall include:
 - (i) Seventy-two hour crisis intervention services;
 - (ii) Constant access and intake to services;
 - (iii) Immediate transportation from the victim's home to a medical centre, shelter or safe haven;
 - (iv) Immediate medical attention;
 - (v) Emergency legal counselling and referrals;

- (vii) Confidential handling of all contacts with victims of domestic violence and their families;

B. Non-emergency services

- 61. States must provide non-emergency services which shall include:
 - (a) Delivery of services to assist in the long-term rehabilitation of victims of domestic violence through counselling, job training and referrals;
 - (b) Delivery of services to assist in the long-term rehabilitation of abusers through counselling;
 - (c) Programmes for domestic violence which are administered independently of welfare assistance programmes;
 - (d) Delivery of services in co-operation and co-ordination with public and private, state and local services and programmes;

C. Training of police officials

- 62. The police department shall establish and maintain an education and training programme for police officers to acquaint them with:
 - (a) The nature, extent, causes and consequences of domestic violence;
 - (b) The legal rights and remedies available to victims of domestic violence;
 - (c) the services and facilities available to victims and abusers;
 - (d) The legal duties imposed on police officers to make arrests and to offer protection and assistance;
 - (e) Techniques for handling incidents of domestic violence that minimize the likelihood of injury to the officer and promote the safety of the victim and her dependents.
- 63. Every police cadet should be trained to respond to domestic violence cases.
- 64. Special units should also be established where police officers receive intensive and specialized training to handle more complex cases.
- 65. Educators, psychologists and victims should participate in seminar programmes to sensitise the police.

D. Training of judicial officers

66. Provision shall be made to conduct on-going training programme for judicial officers on the handling of domestic violence cases. Training shall include guidelines on:
- (i) The issuing of *ex parte* restraining orders;
 - (ii) The issuing of protection orders;
 - (iii) Guidance to be given to victims on available legal remedies;
 - (iv) Sentencing guidelines.
67. Training shall include an initial course for a prescribed number of hours and an annual review for a prescribed number of hours.
68. Special family courts should also be established and the judiciary should be provided with intensive and specialized training to handle more complex cases.

E. Training of counsellors

69. States shall provide trained counsellors to support the police, judges, victims of domestic violence and perpetrators of violence.
70. The law shall mandate counselling programmes for perpetrators as a supplement to, and not as an alternative to the criminal justice system.
71. Counselling programmes must be designed to:
- (i) Help the perpetrator take responsibility for his violence and make a commitment not to inflict further violence;
 - (ii) Educate the perpetrator on the illegality of violence.
72. Funding for counselling and perpetrator programmes should not be taken from resources assigned to victims of violence.
73. The law should provide but not mandate counselling for victims of violence. Counselling for victims of violence must be:
- (a) Provided as a free service;
 - (b) Empowering to the victim and assist her in deciding on short-term and long-term strategies to protect herself from further violence and to restore the normality of her life.

The Legal Resources Project and its understanding of Public Interest Law*

1. Introduction

Over most of the South, hundreds of groups are using law and law related strategies to achieve social justice. They have attracted a variety of labels and have themselves conceptualized their work in different ways. Despite the wide range of social contexts within which they function, the multiplicity of strategies and tools they use, and the variety of labels attached to them, some common ideas about the law animate their work.

This note is written for the Legal Resources Project (LRP) of the International Human Rights Internship Program and sets out an understanding of Public Interest Law (PIL) for the LRP. It includes a checklist that can be used by the LRP to identify PIL groups on the basis of this understanding.

The note focuses on a few countries of the South which have particularly vibrant PIL cultures. Its source material has principally been a collection of materials gathered by LRP. A few other writings have also been used. In addition, the author tries to weave into the analysis his brief experience with the subject.¹

2. Relationship to Human Rights

Human Rights have provided the normative framework for much of the work PIL groups have engaged in. Thus PIL groups have litigated around *rights*; paralegals have educated, mediated and advised around *rights*; public education and legal literacy programs have been structured around *rights* and to help people assert their *rights*; people have demonstrated and engaged in "sit-ins" on questions of *rights*; much of the research has been around *rights*; law reform has centered on a better recognition of *rights*; and alternative tribunals have tried to 'adjudicate' on principles of *rights*;

3. The origins of "Public Interest Law"

PIL is a term of U.S origin and is one of the most widely-used terms to describe the law-related activities surveyed in this paper. Some of the law-related activities in countries of the South have been influenced by the PIL movement in the U.S., which had a particularly productive period in the 1950s, 1960s and 1970s. The U.S. experience drew attention to the potential for

* Based on Draft Working Paper written by Mario Gomez. Edited and adapted for the Legal Resources Project by International Human Rights Internship Program staff.

¹ This note uses several examples from Asia because this is the region with which Mr. Gomez is most familiar. Similar and perhaps richer examples may well come from other regions.

law to serve as an instrument for change, and began the processes of thinking that now see law not simply as a method of dispute resolution, but also as an instrument of social justice.

4. The Principal characteristics of PIL

Different terms have been used interchangeably with "public interest law". These include, most notably, "alternative law", "development law" and "structural legal aid". The late Senator Jose W. Diokno of the Philippines, in discussing developmental legal aid, identified the major characteristics of what is often called "public interest law" or, in other contexts, "alternative law" or "structural legal aid" when he said:

...development requires a different type of legal aid... concentrating on public rather than private issues, intent on changing instead of merely upholding existing law and social structures, particularly the distribution of power within society (underlining added).²

To develop a fuller understanding of PIL, developmental law or legal aid, alternative law, or structural legal aid, it is helpful to focus on each of the underlined terms or phrases in turn. In the following, PIL is used as "shorthand" for all of these different terms.

5. Law framework

PIL groups use law or a law-related framework in furtherance of their objectives. One of their assumptions is that law, if used creatively, can be one source, among a number of sources, that enables people to mobilize and engage in positive action to better their lives.

They may choose to work within the existing legal system, or where that system lacks credibility, to work outside it. The amount of time and resources PIL groups spend working within the state-administered legal system depends on the nature of that system. If the rule of law is upheld in a country and the legal system commands credibility, then there will be a tendency to use the formal legal mechanisms within that system. Even in such contexts however, PIL groups may, in specific situations, develop activities, like alternative law tribunals, that fall outside the system. Where the rule of law is absent, and/or the legal system does not command much credibility, PIL groups will tend to work outside the system although, again they may, on occasion, and in a specific context, use a particular legal mechanism or channel.

For example, the legal system has more credibility in some former British colonies. In India, Pakistan, Sri Lanka and Malaysia, there has been a tendency to work within the confines of the state-administered legal system. While this may have some positive aspects, it has also generated some negative ones. Except, perhaps, in India, few groups in the other countries have looked for new and imaginative ways of using law and law-related strategies. By contrast,

² Jose Diokno, *Developmental Legal Aid in Rural Asean: Problems and Prospects* (1981)

in Indonesia and the Philippines, where public institutions, including the judiciary, do not command much confidence, there has been a search for other, more legitimate and credible institutions.³ There, by refusing to stick within the confines of the formal legal system, the public interest law movement has been more creative and dynamic.

6. Group Issues

Unlike mainstream law, PIL is not oriented to the individual nor does it deal with a range of "single" disputes. PIL is invariably group-oriented. It deals with the assertion of group or collective rights, involves questions of injustice pertaining to a group or collectivity, or may involve a legal action where an individual is a representative of a group. PIL groups address issues which impact on society as a whole, or on a section of society. PIL has seen, in this group dimension to its work, the opportunity to make more profound structural changes in society and initiate larger ripples of change.

PIL groups vary in the degree to which, in acting on behalf of others, they also act in partnership with them. Some groups identify cases or issues and develop related strategies and tactics by using their own professional judgment about what they think is best for the "client" community.⁴ Others try to involve the client community at all stages, basing their work on the experiences and reflections of that community. The latter type of approach is illustrated by an experience from the Philippines where a Filipino PIL organization assisted a group of fisherfolk in a law reform effort. Most of the suggested reforms came from the fisherfolk themselves. The role of the PIL group was to collect the different ideas, put the proposal together as a coherent whole and lobby for its implementation before political bodies. This latter type of PIL group strives towards legal self-reliance for the client community, seeking to build into groups an independent capacity to use the law and legal resources effectively.

7. Intent on changing instead of merely upholding existing law and social structures, particularly the distribution of power within society

PIL groups share an intent on "changing instead of merely upholding existing law and social structures." This intent often distinguishes their work from, for example, many governmental legal aid schemes which provide legal services to undeserved or disadvantaged sectors of society, but may not intend, in doing so, to change existing law and social structures or to challenge the distribution of power in the society.

³ See Daniel Lev, *Human Rights in Indonesia and Malaysia*, in Welch and Leary (ed.) *Asian Perspectives on Human Rights*, Westview, 1990.

⁴ PIL groups frequently claim they always act in partnership with the client group and that many of their activities are highly participatory. This is true in many cases, yet in other cases PIL groups have played an active role, directing much of the activities themselves. For example Marc Glanter criticizes public interest litigation in India as being 'an episodic response to a particular outrage' and failing to mobilize victims or failing to develop their capabilities for a sustained use of the law. Glanter, *New Patterns of legal Services in India* (1982) mimeo.

This intent has brought PIL groups into conflict with governments. Indeed, many NGOs all over the South have emerged as governments have shown themselves incapable of promoting positive social change and eradicating patterns of unequal distribution of resources and power.

The socio-economic context in which PIL groups function is crucial to their work. The label "developmental law groups" reflects this dimension. The groups are contending with unequal development patterns and fighting unjust socio-economic policies. Matters relating to access to credit, marketing schemes, land ownership and use, land tenure and produce-sharing systems are matters of concern to them, as are questions of squatters' rights, access to sanitation and water, environmental rights, and the rights of indigenous peoples and tribals.

PIL groups have often emerged in a socio-economic context in which law has assumed an irrelevance in the lives of many, or in which laws perpetuate situations of poverty and dependency. PIL groups see as one of their objectives the re-designing of the legal map to promote, in their view, a more equitable system of legal relations.

PIL has also flourished both in countries of the South and in the U.S., because it has provided a way for civil society to become actively involved in questioning public decision-making, including decisions on political structure and democratic space. It has provided a way to challenge and change major public policy decisions and campaign for social, economic and political reform.

8. A Summary of Tools PIL Groups Use

PIL groups use a range of different tools that are quite dependent upon the context within which the group works. The use of these tools does not automatically qualify an organization as a PIL group, but a survey of the tools is helpful to understand the range of ways in which PIL groups work towards their goals.

8.1 Litigation

Litigation that deals with group issues and/or promotes social change is used most frequently where the formal legal system commands a degree of credibility. Public interest litigation is perhaps the most developed in India, where it has been used in a particularly vibrant way. Litigation may also be used to test the constitutionality of legislation where this is possible.

Public interest litigation began to emerge in India around the late 1970s and early 1980s when the Indian judiciary responded in a sympathetic way to the initiatives of Indian social action groups, journalists and scholars.⁵ It became possible for any member of the public, not only public interest groups, to initiate litigation by merely addressing a letter to a judge. In this way

⁵ One of the best essays on this subject is by Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India* (Revised), Upendra Baxi (ed.) *Law and Poverty: Critical Essays*, (Bombay: Tripathi 1988). See also Mario Gomez, *In the Public Interest: Essays on Public Interest Litigation and Participatory Justice* (Colombo: Legal Aid Centre, University of Colombo, 1993).

a number of public interest issues affecting prisoners, workers and children were brought to the attention of the court. Three features came to characterize this litigation in India:

1. An expansion of the doctrine of standing (*locus standi*) which permitted any *bona fide* petitioner to bring matters of public interest before the court. The petitioner was not required to show that he or she was personally affected;⁶
2. Dispensing with formal court procedure for the commencement of such actions. Actions could be initiated by writing a letter to the court, and this would be converted into a formal petition and notice issued on the respondent;
3. The use of novel methods to gather facts. Often the court appointed a socio-legal commission of inquiry to investigate the disputed facts and submit a report to the court.

This litigation has been referred to as public interest litigation or social action litigation.⁷ In developing this litigation the Supreme Court of India has argued that court procedures must be deformed to enable all segments of society to have access to the courts. Most disadvantaged and economically underprivileged groups lack the capacity to approach the courts on their own, thus the court should permit non-governmental organizations and public interest groups to litigate on their behalf.

Litigation has been a principal activity of PIL groups in the U.S., although issues of standing and formal court procedures have not been modified to handle PIL cases. The NAACP, which has been involved in a great deal of public interest litigation, views its work as part of an effort to use law in pursuit of economic and social justice for minorities, the poor and other disadvantaged groups.

*In the context of NAACP objectives, litigation is not a technique of resolving private differences; it is a means for achieving the lawful objectives of equality of treatment...for the members of the Negro community in this country. It is thus a form of political expression. Groups which find themselves unable to achieve their objectives through the ballot frequently turn to the courts....And under the condition of modern government, litigation may well be the sole practicable avenue open to a minority to petition for redress of grievances.*⁸

⁶ In the Philippines petitioners have been permitted to sue on behalf of succeeding generations in a case involving ecological damage: *Juan Antonio Oposa v. Hon. Fulgencio S. Factoran* (Supreme Court, 30 July 1993).

⁷ See Upendra Baxi, *Taking Suffering Seriously*.

⁸ *NAACP v Button*, 371 US 415, 429-30 (1963).

The extensive reliance on litigation of U.S. PIL groups seems to have led to an understanding in the USA of PIL, that is narrower than that in most countries of the South. The role of paralegals (below) is one example of this difference.

8.2 Legal Advice

Legal assistance and advice to groups, such as farmers, fisherfolk, and women is often part of PIL work. This assistance may often be provided by paralegals, law students, sometimes by lawyers. To the extent that through this advice the PIL groups try to give client communities the capacity and confidence to use the legal process and legal institutions, it shares some similarities with community legal education (below).

8.3 Paralegals

The role of paralegals in PIL in most countries of the South reflects PIL's preoccupation with "changing.... social structures, particularly the distribution of power within society." These paralegals (unlike their counterparts in the U.S.) are often members of the client community who are given a basic training in the law. The heavy use of non-lawyers within PIL in countries of the South serves to "de-mystify" the law and make knowledge of the law and legal tools more accessible to the community.

Paralegals in countries of the South often live and work in the community, assisting the community with a variety of legal tasks, including community education, dispute resolution, offering legal advice, conducting research and investigations, undertaking administrative interventions, and initiating litigation.

Many PIL groups have engaged in the training and deployment of paralegals in a very successful way. It would be possible to give many examples of the work of paralegals with different communities, but this paper will limit itself to one. In Peru, paralegals have been used effectively in combatting gender-based discrimination. Paralegals have helped disadvantaged communities with such routine matters as the procurement of birth certificates and identity cards and also with more complex matters like lodging sexual assault complaints.⁹

8.4 Legislative advocacy and lobbying

Law reform and lobbying are two additional tools which PIL groups employ. A considerable amount of work in this area focuses on bringing existing law into compliance with international human rights standards. Lobbying efforts may also be directed at institutions outside of government, such as International Financial Institutions, donor agencies, corporations, and so on.

⁹ Gridley Hall and Burton Fretz, *Legal Services in the Third World*, Clearinghouse review, December 1990.

The extent to which proposals for law reform and associated lobbying are shaped and driven by the experience and perspectives of the affected community(ies) varies from country to country and organization to organization.

8.5 Legal Research

PIL and other groups have tried to develop critical and applied legal research. One of their tasks has been to investigate and critique, where appropriate, some of the fundamental assumptions of the law and the legal system. Their research has also encompassed what has come to be termed socio-legal research, a combination of empirical and theoretical study. This has resulted, among other things, in monitoring and documenting the impact of development projects on the lives of communities. Frequently the research of PIL groups has been multi-disciplinary, employing sociologists, political scientists, anthropologists and economists. This multi-disciplinary approach represents a sharp break from traditional legal research, which has tended to be skeptical about the contribution non-lawyers can make to the world of law.

In India, through this type of research, scholars have developed critiques of court procedures and concepts such as *locus standi*, which have, in turn, led to changes in the way the judiciary perceives these ideas. Thinking has also emerged in relation to the design of new and innovative remedies. Another area which has felt the impact of this type of research is custodial rape, where the burden of proof has been reversed so that the police must provide evidence that a rape did not occur rather than the woman having to prove that she was raped.

8.6 Education

One of the key objectives in PIL education has been to de-mystify the law to convey to groups that law can be understood and used effectively by non-lawyers. Education programs undertaken by PAIL groups have sought to disseminate awareness of laws and rights and to develop an independent legal capacity in the target community. A group of over 10 women scholars and activists defined legal literacy in June 1989 to mean:

The process of acquiring critical awareness about rights and law, the ability to assert rights, and the capacity to mobilize for change.¹⁰

PIL groups have used a variety of techniques to make law-related knowledge and skills available to the larger public. One striking innovation has been the alternative law school initiated by several Filipino groups. A program of critical and participatory education is conducted on law related to a specific sector, such as fisherfolk, labor or land tenure. The program is detailed enough to allow the client group to use the knowledge and skills gained in their battle for more equitable social and economic relations.

¹⁰ Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, *Legal Literacy: A Tool for Women's Empowerment*, Women, Law and Development, OEF International (1992) p.2.

PIL groups have also used the mass media to spread awareness about rights. The Law and Society Trust in Sri Lanka, at one time, conducted a series of radio plays on legal themes. The Law Division of the Open University has used public television to raise-related questions. Comics, cartoons and games have also been used in educational efforts.

Educational efforts may also reach out to certain elite groups, including judges, lawyers, legislators and politicians, to foster a greater openness to PIL efforts.

Education: Law Schools

Some law schools function as PIL centres in two ways. Firstly, some are substantially devoted to producing PIL lawyers. The National Law School in Bangalore, India, for example, was set up with the proclaimed objective of introducing a degree of relevance to legal education in India and producing lawyers committed to social change. There is a strong clinical education component with students spending a large part of their time working with NGOs, trade unions, political parties, the corporate sector and judges.

Secondly, a number of law schools have set up centres or clinics that do PIL work. The National Law School combines these, in that it runs both a legal services clinic and a centre for women and the law, both of which engage in a range of PIL-type activities. The University of the Philippines Office of Legal Aid also combines these objectives. Among its stated purposes for running the legal aid clinic are: (a) to provide free legal services to those who cannot afford it; (b) to provide law interns practical experience and learning opportunities from the actual handling of legal problems; (c) to conscientize the law students about the problems facing the dispossessed in society; (d) to undertake law reform activities.

There are clinical programs along these lines in a few other countries including South Africa and the United States. Some of the centres work in collaboration with PIL groups in their area. In some cases academic credit is given for participation. In others the centres function outside the academic program and attract students purely through the social legitimacy of the work they do. Even in this case the objective is normally to contribute to the pool of PIL lawyers.

8.8 Alternative Dispute Resolution (ADR)

Non-acrimonious and informal methods of dispute resolution have been one of the activities pursued by many PIL groups. This is particularly true where the community does not have confidence in the formal legal system or where access to the courts is too costly or time consuming. Bangladesh has some strong mediation programs, and in India ADR programs have involved senior judges and lawyers. ADR is also performed by paralegals in the communities in which they work. PIL groups, in general, have been more concerned with utilizing ADR on issues pertaining to disadvantaged groups, such as women, indigenous people and farmers.

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¹⁰ Margaret Schuler and Sakuntala Kadirgamar-Rajasingham, *Legal Literacy: A Tool for Women's Empowerment*, Women, Law and Development, OEF International (1992) p.2.

ACTIVITIES OF THE TRUST

Two discussions were organised by the Trust under its Law and the Economy Programme. The main aim was to discuss two Bills that were about to be presented in Parliament shortly. The discussions were co-ordinated by Navin Perera of the Trust.

Discussion on the Goods and Services Tax Bill

A discussion was held at the Trust premises on the 7th October on the Goods and Services Tax Bill before it was presented in Parliament for the second reading. A presentation was made by Mr P. Guruge, Deputy Commissioner, Inland Revenue, which was followed by a discussion. He outlined the main reforms proposed as: substitution of the existing Turnover Tax Act by a Goods and Services Tax (GST), except for certain special areas like shipping, airlines and wholesale trade. The proposed legislation deals mainly with goods and services supplied in Sri Lanka. Mr Guruge also pointed out that "zero tax undertakings" is a novel feature of the Bill. He also stressed the need to train personnel and to educate both the taxpayer and the personnel on relevant matters.

Discussion on the Rehabilitation of Public Enterprises Bill

A discussion was held at the Trust premises on the 8th October on the Rehabilitation of Public Enterprises Bill. A presentation was made by Mr Gunendra Sellahewa of Crosby Securities on the pros and cons of the Bill. He noted the controversial nature of the Bill and stressed the importance of the adoption of a national policy on privatisation. He also discussed a few of the failed privatised enterprises.

According to the terms of the Bill, where the President is of opinion that in any of the privatised public enterprise there is, or likely to be: (a) a cessation of, or a substantial reduction in the work; and (b) non-employment or retrenchment of the workers or non-payment of wages or statutory dues, then by an order published in the Gazette, the President may vest the administration and management of such enterprise in the Government.

A much watered-down Bill was passed by Parliament recently with 99 votes in favour and 75 votes against.

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