



SRI LANKA STATE OF HUMAN RIGHTS

1995

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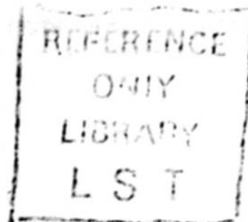
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Proposed Boundary
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1995



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Overview

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Workers' Charter

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Trade Unions

Ramani Muttetuwegama

Plantation Workers

P Manikkam

Minority Rights

Kanya Champion

Children's Rights

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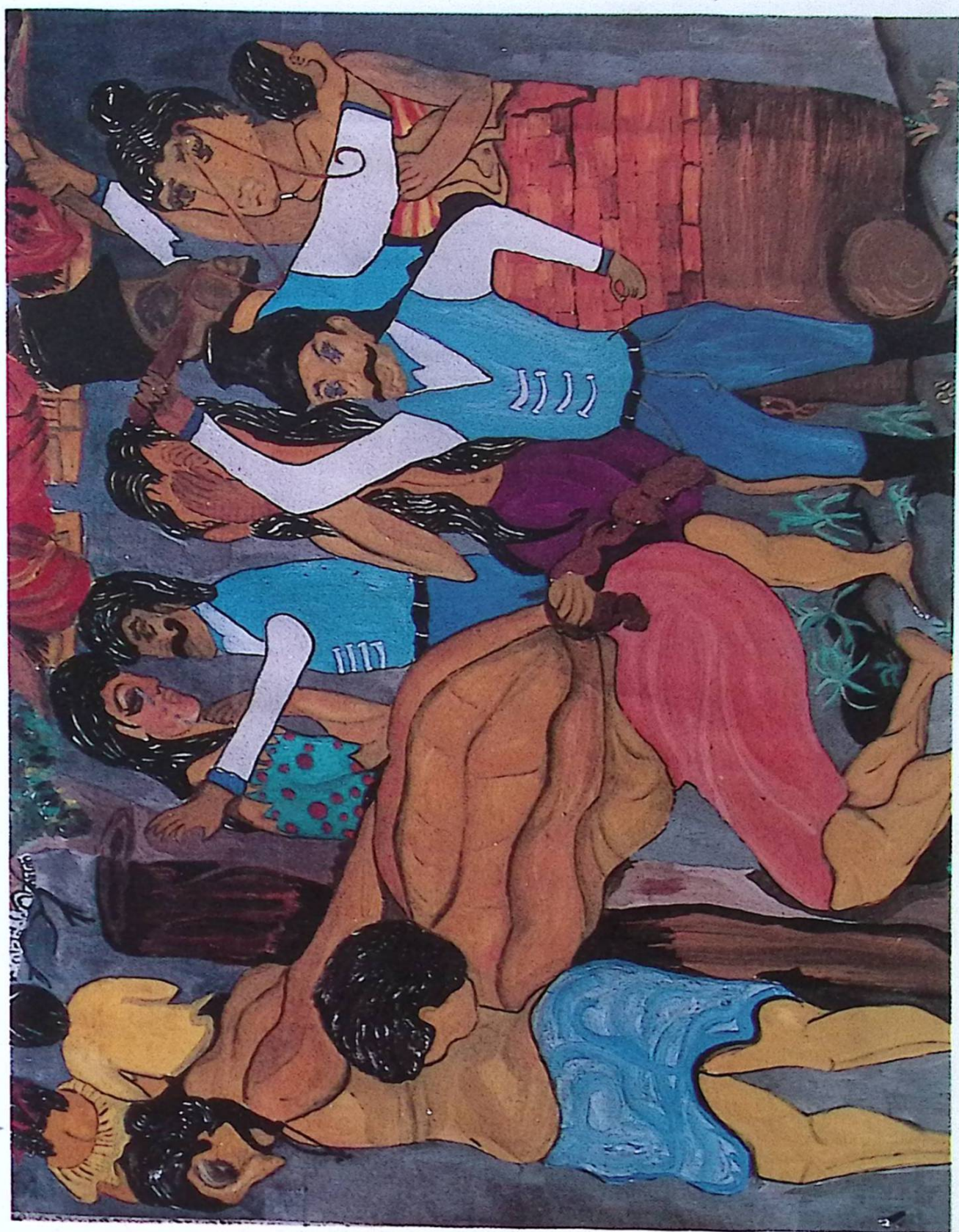
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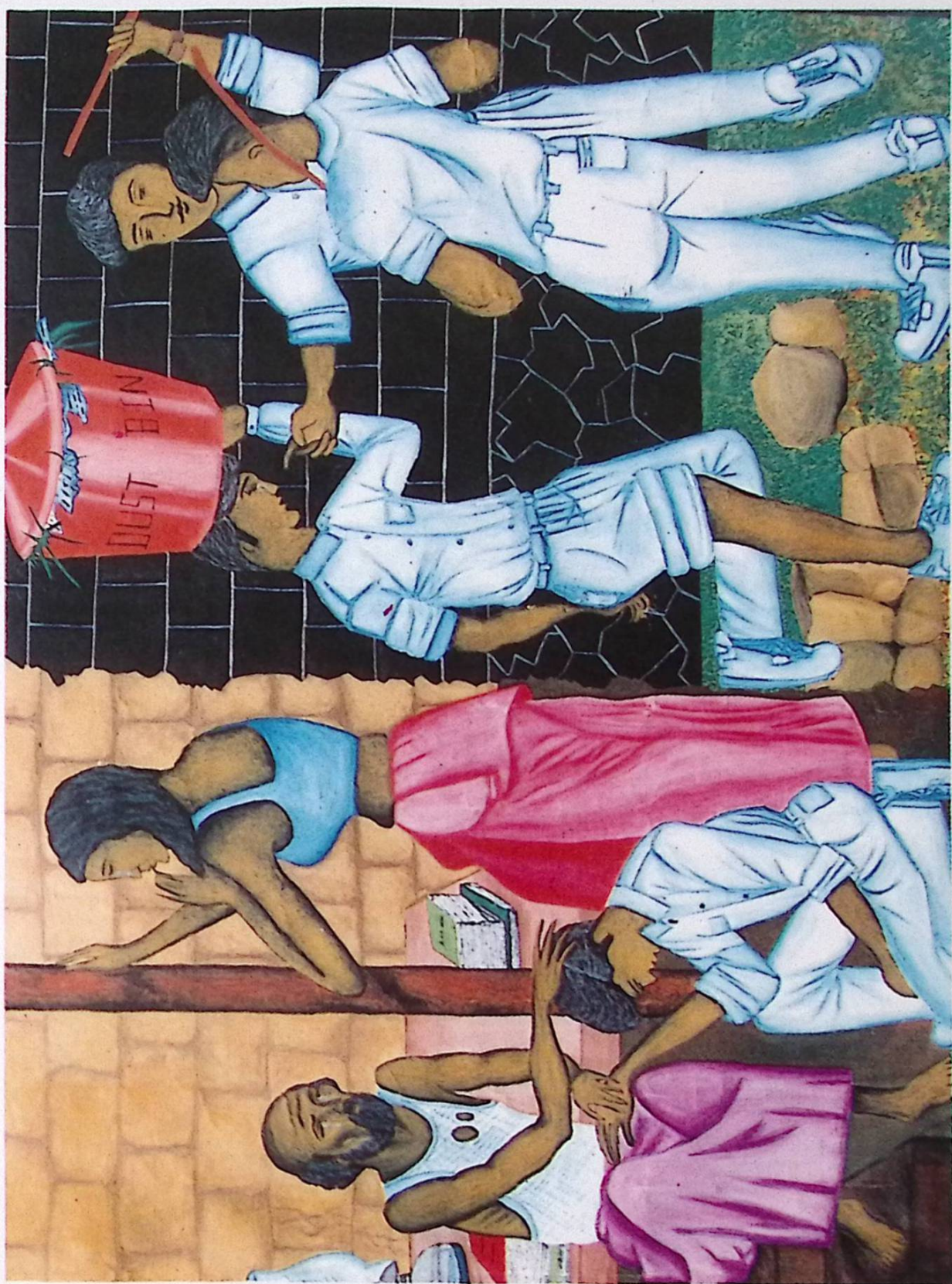
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Prize winning drawing by Anne Nadeeka Perera of Christ King College, Ja-ela, awarded at the All Island Inter-school Art Competition "*Defending Human Rights*" organised by the Law & Society Trust.

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Abbreviations

AG	<i>Attorney General</i>
AI	<i>Amnesty International</i>
AIDS	<i>Acquired Immuno-deficiency Syndrome</i>
ABC	<i>Australian Broadcasting Corporation</i>
ANCL	<i>Associated Newspapers of Ceylon Limited</i>
BBC	<i>British Broadcasting Corporation</i>
CEDAW	<i>Convention on the Elimination of All Forms of Discrimination against Women</i>
CID	<i>Criminal Investigations Department</i>
CDF	<i>Civil Defence Forces</i>
CRC	<i>Convention on the Rights of the Child</i>
CRM	<i>Civil Rights Movement of Sri Lanka</i>
CYPO	<i>Children and Young Persons Ordinance</i>
EPZ	<i>Export Processing Zones</i>
EPF	<i>Employees' Provident Fund</i>
ETF	<i>Employees' Trust Fund</i>
FTZ	<i>Free Trade Zone</i>
GA	<i>Government Agent</i>
HIV	<i>Human Immuno-deficiency Virus</i>
HRTF	<i>Human Rights Task Force</i>
ICCPR	<i>International Covenant on Civil and Political Rights</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i>
ICRC	<i>International Committee of the Red Cross</i>

ILO	<i>International Labour Organization</i>
IMR	<i>Infant Mortality Rate</i>
IPKF	<i>Indian Peace Keeping Force</i>
ITN	<i>Independent Television Network</i>
JVP	<i>Janatha Vimukthi Peramuna (People's Liberation Front)</i>
LTTE	<i>Liberation Tigers of Tamil Eelam</i>
MDO	<i>Mental Disease Ordinance</i>
MIRJE	<i>Movement for Inter Racial Justice and Equality</i>
MMR	<i>Maternal Mortality Rate</i>
MSF	<i>Medecins sans Frontiers (Doctors Without Borders)</i>
NGOs	<i>Non-governmental organisations</i>
NMI	<i>National Media Institute</i>
PA	<i>People's Alliance</i>
PGIM	<i>Postgraduate Institute of Medicine</i>
PTA	<i>Prevention of Terrorism Act</i>
SEDEC	<i>Social and Economic Development Centre</i>
SLBC	<i>Sri Lanka Broadcasting Corporation</i>
SLFP	<i>Sri Lanka Freedom Party</i>
SLRC	<i>Sri Lanka Rupavahini Corporation</i>

Foreword

This report seeks to describe the current status of human rights in Sri Lanka and to assess the extent to which Sri Lanka has fulfilled its obligation to protect the fundamental rights of its citizenry in conformity with international obligations. Hence, the report represents an important watershed with regard to human rights in Sri Lanka. Constitutional guarantees, legislative enactments, and the extent of the current implementation and enforcement of fundamental rights are examined and the impact of the restrictions they contain are discussed. The report considers civil and political rights focusing on the integrity of the person, freedom of expression and media freedom and judicial protection of human rights. In the area of socio-economic rights the report examines workers' rights focusing on the National Workers' Charter, trade union rights and rights of plantation workers; and health and human rights. In addition, separate chapters are devoted to children's rights, the plight of displaced persons and the rights of minorities.

The report was co-ordinated by the Law & Society Trust. Specific chapters were assigned to individuals with special competence in the relevant areas. The drafts were subsequently reviewed for accuracy, objectivity and clarity of presentation. The report was then compiled in draft form and comprehensively edited to ensure that as far as practicable there would be uniformity of style and approach. It is

inevitable, however, that there would be some overlap between chapters, and that some topics would be dealt with more comprehensively than others. The report also contains a list of international instruments to which Sri Lanka is a signatory and a list of instruments which are yet to be ratified by Sri Lanka. Also attached as schedules to the report are the Government's devolution proposals of August 1995 and the proposed fundamental rights chapter of the Constitution. It is encouraging to note that the Government has ratified ILO Convention No. 87 relating to Freedom of Association and Protection of the Right to Organise. The Government also acceded to the UN Convention on the Protection of the Rights of All Migrant Workers and Their Families in March 1996.

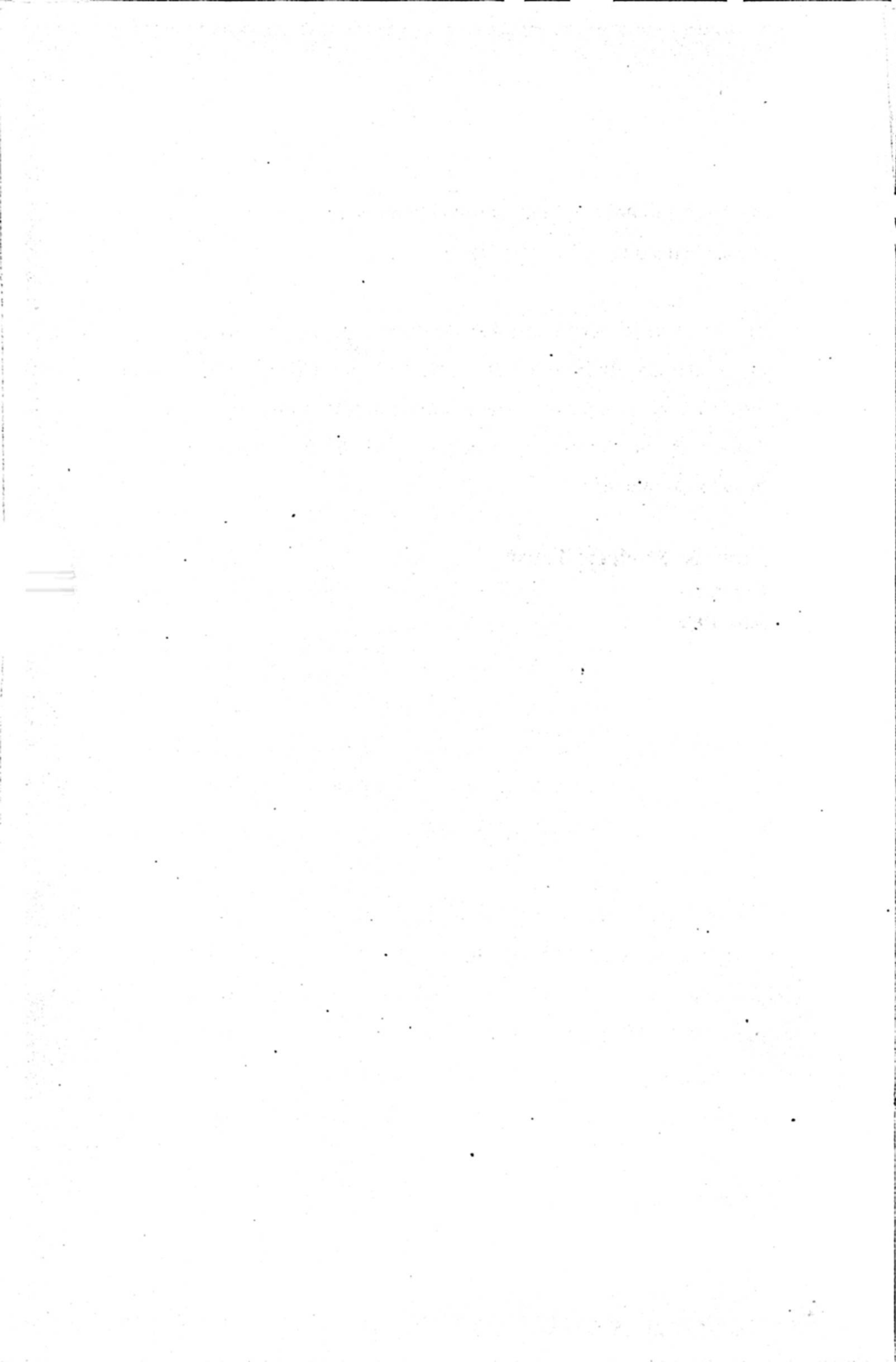
It is hoped that this report would continue to facilitate dialogue between civil society institutions and the government in ensuring more effective protection and promotion of human rights within Sri Lanka.

Sri Lanka's Constitution mandates that "the fundamental rights which are declared and recognised by the Constitution shall be respected, secured and advanced by all the organs of government..." Sri Lanka is also a signatory to several international human rights instruments, and must ensure that its domestic laws, policies and practices are in conformity with its international obligations. This report is a modest step in the continuing struggle to ensure that the state (and those non-state actors who are legitimately subject to scrutiny in

this report) upholds its international and constitutional obligations to respect and safeguard human rights.

The Trust in its effort to raise awareness on human rights issues, organised an all-Island School Art Competition on the theme *Defending Human Rights*. The response to this competition was most heartening and the entries which secured the first three places are included in this report.

Law & Society Trust
Colombo
July 1996.



I

Overview

1. Introduction

Nineteen ninety five brought many challenges from a human rights perspective. Central to these was the extent to which concern for national security could be reconciled with the government's obligations to uphold and protect human rights. The return to armed conflict in April 1995 between the government and the Liberation Tigers of Tamil Eelam (LTTE) provided the context for a tightening of security measures throughout the island, which in turn compromised many aspects of human rights protection. Indeed, in several areas of human rights - including freedom from arbitrary arrest and detention, freedom from torture and disappearance, and freedom of expression - there was a marked rise in the number of reported violations. Yet at the same time, the consultative processes which had started in 1994 (when the People's Alliance (PA) was newly in government) continued in such areas as constitutional and media reform. So too did work continue on draft legislation for a new National Human Rights Commission. While the government's stated commitment to protecting human rights was reiterated in several contexts during the year, and the process of policy development appeared to continue, its actual human rights practice deteriorated.

The PA had come to power in August 1994 with a stated commitment to introducing reforms which would enhance democracy and strengthen human rights protection. It had also embarked on a series of negotiations with the LTTE which many hoped might lead to a just and lasting settlement of a conflict which had cost many thousands of lives, devastated the livelihoods of many thousands more, and provided the context for widespread, gross human rights violations. In 1995, it had been hoped, the foundation might be laid for the resolution of these issues. In the event, however, the prospects for resolving the conflict and providing enhanced constitutional protection for human rights remained very uncertain at the end of the year.

The cessation of hostilities agreed between the government and the LTTE in January reinforced the anticipation of change. Yet the negotiations did not run smoothly, and by mid-April the process was in ruins. The international committees appointed to monitor the implementation of the cease-fire were prevented from functioning in LTTE-controlled areas, and after the fourth round of talks in April the LTTE announced its withdrawal from the process and blew up two naval ships in the Trincomalee harbour.

Thereafter, the return to armed conflict in the North East, coupled with fear in the South of LTTE infiltration and attacks on political and economic targets, began to dominate the political scene. There was a marked deterioration in the human rights situation, and humanitarian concerns in the North East increased rapidly. In the North - where the

government claimed to be fighting against the LTTE on behalf of the Tamil people living there - large numbers of civilians were displaced from their homes to face considerable hardship as the military offensive gained momentum. By the end of the year, government forces had taken control of Jaffna city, which had been completely under the control of the LTTE since 1990. When troops entered the city, however, it was virtually deserted as the LTTE had ordered the population to evacuate. The freedom of movement of the displaced was severely restricted by both the LTTE, which sought to prevent people from leaving areas under their control, as well by the government, which detained people who wished to travel south of Vavuniya until they could prove their *bona fides* to the satisfaction of the security forces. In addition, their access to many basic resources and services was greatly reduced, as discussed in the chapter on the internally displaced.

In the South, increasing numbers of Tamil people became subject to repeated identity checks, which included periods of short-term arbitrary arrest and detention. Media freedom became increasingly threatened, culminating in September 1995 in the use of emergency regulations to impose a censorship for a period of three months on the reporting of all military matters. The freedom of expression and association of humanitarian organisations also began to be compromised.

More troubling still was the return to reports of disappearing in the custody of the security forces, and the discovery at various locations

around Colombo of over 30 bodies of people who had clearly been held prisoner and tortured before their deaths. While the number of reported disappearances did not herald a return to the mass disappearances of many thousands of people that had marked the 1988 - 1990 counter insurgency campaign against the Janatha Vimukthi Peramuna (JVP) in the South and the first months in 1990 of "Eelam War II" in the North East, it was nonetheless a worrying trend. At least 55 disappearances were reported from April to the end of 1995, marking a significant increase over the previous year and demonstrating that adequate safeguards on arrest and detention had yet to be put in place.

Personal security was not only put at risk by the actions of governmental forces. Indeed, with the attack on the Sinhala village of Kallarawa in May, which killed some 42 people, the LTTE was responsible for the first major attack on a civilian target during the renewed hostilities. This was followed by four further attacks on border villages in late October and early November, raising yet again the problem of how adequate security can be provided to civilians living in these areas whilst ensuring that sufficient controls are in place to prevent the creation of potential vigilante squads. The LTTE attacks in Colombo on two oil installations in October and on the Army Headquarters in November also resulted in a number of civilian deaths.

Ethnic tensions in the South were raised following major attacks by the LTTE, but there were no widespread outbreaks of violence. However, in June there were reports of ethnically motivated attacks in the

Southern town of Galle in which 28 shops were destroyed by arson. The great majority of the shops destroyed belonged to Tamils, and the police failed to take preventive action or to provide protection. The attack took place on the day of the funeral of a prominent Buddhist monk who had been assassinated by the LTTE. A few days later, the residents of an estate line-room near Galle were attacked. An eight-year old girl was killed and four other people were injured.

The government's response to expressions of concern about human rights issues is of great importance in assessing its performance. During 1995, the messages were mixed. In some instances - most notably in response to the discovery of the bodies of detainees around Colombo - there was a prompt response, which led to the deaths being investigated and charges being brought against the alleged perpetrators. Whether the trials will lead to convictions has yet to be seen. In other cases, however, the commitment to address the issue was less clear. For example, in June the Human Rights Task Force (HRTF) was recreated under the emergency regulations, which was a welcome development, and under the new provisions the President issued directives on procedures to be followed when a person is arrested, providing a good set of safeguards. Nevertheless, the directives were generally not followed, and no real attempt was made to enforce them. Again, in September the emergency regulations were amended to introduce new reporting requirements as a protection for people arrested and detained under the emergency regulations. Yet, the regulation was ambiguously worded and it too was not enforced. If the government is genuinely

committed to ensuring reform in this important area of human rights protection, it must ensure that the changes it makes are taken seriously by those who must carry them out, and that they cannot be treated as cosmetic alterations designed to satisfy another constituency.

The single issue that most exposed an ambivalence within government about human rights protection was freedom of expression. This right came under increasing threat during 1995, with the harassment of newspaper editors, verbal attacks on the media from the government, and - finally - censorship of all reporting on military matters which went far beyond legitimate national security concerns. In addition, journalists were barred from visiting the North so there could be no first-hand reporting of the conduct of the conflict, nor of the conditions in which hundreds of thousands of displaced people were living. This ban on access continued even after the formal censorship had been lifted, and constituted a considerable obstacle to the free flow of information on issues of humanitarian and human rights concerns. Indeed, at times it appeared that the government was particularly concerned to prevent reporting of the impact of the conflict on civilians, apparently desiring to convey an impression of a "clean" war. Even humanitarian organisations which spoke out about their concerns were verbally attacked by the government. Yet, even while free expression was coming under severe threat, the Media, Tourism and Aviation Minister continued to promise reform, and the four committees appointed in late 1994 to recommend specific measures for reform, submitted their reports. By the end of the year, however, no substantive steps had been taken to implement the proposed reforms.

This report again demonstrates the continuing need for effective action by the government to ensure the better protection of a broad range of human rights. Civil and political rights remain inadequately protected in both law and practice, and the most vulnerable groups of people in society (who are represented in this volume by the internally displaced, the plantation workers and children affected by the conflict) remain marginalised and disadvantaged in their access to resources and services. Their social and economic rights have yet to be secured. The fact that the majority of them are members of a minority community - which is also the most vulnerable to arbitrary arrest and detention - highlights both the key importance of minority rights protection and the interconnectedness of different human rights.

The return to armed conflict should not be permitted to provide "justification" for measures which violate human rights. The conflict has an undoubted impact on human rights, but human rights reform should not be seen as a matter which is secondary to the resolution of the conflict itself. Indeed, it could be argued that human rights reform - including reforms intended to ensure non-discrimination and the equitable social and economic participation of all groups in society - could assist in creating the conditions which would enable the settlement of the conflict.

2. Reforms Introduced in 1995

The government did introduce some measures in 1995 which addressed issues that had no relationship with national security.

The long-awaited National Workers' Charter - which is discussed in Chapter VI - was finally presented to President Kumaratunga in September, fulfilling an election pledge. With the increasing liberalisation of the economy, the protection of workers' rights has become more contentious. The Charter was created through a consultative process with trade unions and employers, and addressed numerous issues of concern to both parties. However, it is not a binding document and legislation to implement its provisions has yet to be enacted.

One area where legislative reform was implemented, concerned sexual offences. The changes enhanced the protection of children, particularly, as discussed in the chapter on the Children's Rights.

In relation to women's rights, Section 363 of the Penal Code was repealed and a new heading substituted covering both the crimes of rape and incest. According to the provisions of the Penal Code (Amendment) Act No. 22 of 1995, the age of consent for statutory rape has been raised from 12 to 16. Since no other significant changes have taken place during the year, women's issues have not been addressed separately in this volume. The amendments to the Penal Code are discussed in the chapters on Children's Rights and Right to Health. The UN Special Rapporteur on Violence Against Women has submitted to the government recommendations regarding the need for local legislation against domestic violence and for formulating a National Plan of Action on Violence Against Women. These recommendations

stem from the UN Declaration on the Elimination of Violence Against Women. Neither has yet been acted upon at the government level. Mention must be made of an important world event - the 4th World Conference on Women - which took place in Beijing in September 1995. Sri Lanka was represented by a government delegation which presented a national report, as well as a delegation comprising NGO representatives.

3. International Human Rights Standards Ratified in 1995

The government ratified an important international convention in 1995: the International Labour Organisation Convention No. 87 on Freedom of Association and Protection of the Right to Organise.

Important international standards which the government has yet to ratify include the Additional Protocol II to the Geneva Conventions of 12 August 1949, which contains important provisions for the protection of the civilian population, and which, if ratified by the government, would automatically be binding on all parties to the conflict and the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which provides the right to individuals to petition the Human Rights Committee¹ after all local remedies have been exhausted. In

¹ This Committee is the body established under the ICCPR to monitor adherence to its provisions.

addition, the UN Convention on the Protection of the Rights of All Migrant Workers and their Families is yet to be ratified by the government.² The deplorable situation that may face Sri Lankan migrant workers abroad was highlighted in April when a 20-year-old Sri Lankan housemaid working in the United Arab Emirates was executed by a firing squad. She had been accused of killing a young child. Her death provoked questions about whether the Foreign Ministry had made every possible effort to intervene on her behalf, and about the issue of safeguarding Sri Lankans working abroad more generally.³

4. Proposals for Constitutional Reform

4.1 The government's proposals for devolution

In August the government published its proposed "political package" for resolving the conflict. The "political package" proposed that Sri Lanka be defined as a "union of regions", with extensive devolution of powers in eight regional units which had yet to be defined. These proposals went further towards addressing the underlying issues of the conflict than any that had been offered to the Tamil leadership previously, and are discussed in the chapter on Minority Rights.

² See Foreword.

³ See Civil Rights Movement of Sri Lanka, "Execution in U.A.E. of 20 year old Sri Lankan Housemaid", E03/5/95 (Colombo, May 1995).

4.2 Proposed changes to the fundamental rights chapter of the Constitution

The government also published proposals for changes to the fundamental rights chapter of the Constitution. The "first working draft" issued in January was disappointing and represented a weakening of the proposals that the Ministry of Justice had already made in November 1994. Following further consultations, the Parliamentary Select Committee on Constitutional Reform issued a second draft in May which represented a considerable improvement on the January version.

Human rights organisations noted both positive and negative aspects of the proposed chapter.⁴ Among the positive aspects were improved safeguards on arrest and fair trial and the inclusion of the right to "receive and impart information and ideas." The right to life, which is not included in the current Constitution, gained recognition in these proposals, but with an unnecessary proviso. The proposed restrictions on the exercise of rights overall were more narrowly drawn than at present, and contained the test of "necessity" as required under the ICCPR. In one respect the proposals went beyond the requirements of the ICCPR, in recognising the right to a fair trial as a non-derogable right. Not all rights included in the ICCPR were covered in the

⁴ See "Constitutional Reform and Fundamental Rights: Some Comments" in Law & Society Trust, *Fortnightly Review*, Vol VI, Issue 94 (Colombo, August 1995).

proposed chapter, however, and some were included in limited form. For example, the right to liberty and security of the person was not included as such, and nor was the right to freedom from servitude included. The proposals legalised administrative detention, and set no time limit on it. They also retained the much-criticised provision in the current Constitution for existing laws, whether written or unwritten, to remain in force regardless of any inconsistency with the fundamental rights chapter of the Constitution.

5. Proposals for a National Human Rights Commission

Soon after it came to power, the government announced its intention to create a National Human Rights Commission. Human rights organisations expressed concern about the proliferation of institutions dealing with human rights, and urged that priority should be given to strengthening basic safeguards against violations, and ensuring that the institutions which already exist are properly co-ordinated, resourced and empowered. When the Bill was published, these concerns were expressed again,⁵ for it was clear that the relationship between the Commission and existing institutions had not been fully considered, as is discussed in the chapter on Judicial Protection of Human Rights.

The functions of the Commission would include: monitoring administrative and executive practices relating to fundamental rights;

⁵ See Deepika Udagama, "Human Rights Commission Bill (1995)" in Law & Society Trust, *Fortnightly Review*, Vol VI, Issue No. 96 (Colombo, October 1995).

investigating complaints of infringements of fundamental rights and providing resolution by mediation and conciliation, advising the government on legislative and administrative measures; making recommendations on the measures to ensure that national laws and practices accord with international human rights standards; making recommendations on further international instruments that the government should ratify; and promoting awareness of fundamental rights. The Commission would be empowered to investigate alleged violations, intervene in proceedings relating to an infringement of fundamental rights, with the permission of the court; monitor the welfare of detainees; follow-up on matters referred to it by the Supreme Court; research and promote awareness of fundamental rights; and "do all such other things as are necessary or conducive to the discharge of its functions" [draft Article 11(f)].

Under Article 13 of the Bill, the Commission would be empowered to investigate complaints of infringements of fundamental rights "by executive or administrative action," as well as infringements resulting from an act constituting an offence under the Prevention of Terrorism Act (PTA). Concern was expressed about this latter provision, as the primary responsibility for protecting human rights falls on states, not on private individuals. In any event, criminal law already deals with such acts, and provides for the punishment of those responsible.

Further concern was expressed about the lack of provision for an independent investigative unit to carry out investigations on behalf of

the Commission, and that the procedures for the appointment and removal of Commission members would not ensure the Commission's independence in the absence of a Constitutional Council,⁶ as the members would be appointed by the President on the recommendation of the Prime Minister in consultation with the Speaker.

6. Other Issues Addressed in this Report

The right to health has not been discussed in previous volumes and is discussed in Chapter IX in various dimensions. Increasingly recognised as a basic socio-economic right - but not recognised at present by the Sri Lankan Constitution - the right to health is also seen to be affected by violations of civil and political rights. From a policy perspective, it is argued that among other things greater attention needs to be paid to preventive health strategies, to integrating Sri Lanka's various medical systems, and to the development of a "human rights approach" to health care. Again, the effects of armed conflict in the South during the JVP insurgency and in the North East are seen to have had a devastating and long-term impact on the health of those affected.

Children's rights have been discussed in previous volumes, but the impact of the North East conflict on children had not been addressed so far. In Chapter VIII this lacuna is remedied in a discussion of the

⁶ No Constitutional Council exists at present. The creation of a Constitutional Council is included in the government's recommendations for constitutional reform. The fate of these proposals remains uncertain, however.

situation of children living in conflict areas, children displaced by conflict, and child combatants. Legal reforms affecting children's rights, and the comments of the Committee on the Rights of the Child - which in 1995 scrutinised Sri Lanka's performance under the Convention on the Rights of the Child - are also described.

The report as a whole carries forward and supplements the analysis and recommendations contained in the previous two volumes. It is hoped that it will be received as a positive contribution to the human rights debate in Sri Lanka, and that it will act as a catalyst for future reform.

II

Integrity of the Person

1. Introduction

This chapter concentrates on the extent to which certain key human rights associated with respect for integrity of the person were observed during 1995. It concentrates on the rights to life, liberty and freedom from torture and disappearance, describing both violations of these rights committed during the year and any steps taken by the government to remedy or prevent such violations. The relevant international human rights standards and the domestic laws governing these areas have been described in previous volumes¹ and are not repeated here. Any changes to these norms are noted at the relevant points, however. The chapter concludes with the recommendations of the Human Rights Committee relating to this area of human rights.

The resumption of armed conflict between the government and the LTTE in April 1995 was followed by a marked deterioration in the human rights situation more widely. The return to conflict, together with the resumption by the LTTE of deliberate attacks on civilians, provided a

¹ See Law & Society Trust, *Sri Lanka: State of Human Rights 1993* (Colombo, 1994) Chapter III, pp. 27-82; and Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995) Chapter IV pp. 61-88.

key test of the government's stated commitment to protecting human rights and to upholding the basic standards of humanitarian law. Widespread arbitrary detentions of Tamils in the Colombo area, disappearances, torture and extrajudicial killings all began to be reported at increased rates from April. While the main arena of conflict remained the North East, and the direct effects of the conflict were experienced most acutely in that area, people living in other parts of the island also became vulnerable to various kinds of abuse. Sinhala civilians living in the border areas particularly, became vulnerable to attack by the LTTE, while in the Colombo area, thousands of Tamils were again repeatedly subjected to widespread arbitrary detention and harassment by the police. By the end of the year, after hundreds of thousands of people had been displaced from their homes in Jaffna as a result of the conflict,² another form of arbitrary detention was being experienced by large numbers of Tamil people at Vavuniya. People who were trying to travel from the LTTE-controlled North to the South were held in overcrowded transit centres without any legal authority until they could prove their *bona fides* to the military.

Particularly worrying for the memories they invoked of death-squad activity under the previous United National Party (UNP) government were the discoveries at various places around Colombo from late May to September of the bodies of over 30 people, many of whom had clearly been held prisoner and tortured before their deaths. These discoveries

² See Chapter X on the Internally Displaced.

raised considerable fears of a return to the days of mass disappearances and extrajudicial killings that had marked the security forces' campaign against the JVP insurgency in the late 1980s, and the first months of "Eelam War II" in 1990. The bodies began to appear at a time in 1995 when numerous abductions of Tamil youth by unknown men in civilian clothes had been reported, and several of the victims were subsequently identified as being young Tamil men.

The important difference between these killings and those of the earlier period, however, was that the government insisted on them being investigated, and several security forces officers had been arrested in this connection by the end of the year. Nevertheless, it remains to be seen whether convictions will actually be reached in these cases. There have already been several examples in recent years in Sri Lanka where much publicised instances of grave human rights violations have been investigated and the suspects brought to trial, but the proceedings have either not reached a conviction, or have continued for years without conclusion.

The LTTE also continued to violate humanitarian law in 1995. It attacked and killed large numbers of civilians, was reported to have summarily executed people accused of being traitors, and to have tortured and ill-treated prisoners. It also continued to restrict the movement of people in areas under its control.

As the conflict intensified in the North later in the year, and fears of major attacks by the LTTE on economic, political and military targets

in Colombo increased, security measures were intensified and the position of Tamil people living in the capital became increasingly insecure. Not only were they likely to be arbitrarily detained for identity checks by the police, but they were also increasingly likely to be reported to police by members of the Civil Defence Forces (CDF), which were newly created by the government in June.

Certain changes to the emergency regulations also contributed to a sense of harassment for Tamil people. The regulation introduced in September requiring householders to register the occupants of their houses with the police in certain circumstances³ created confusion. It was widely misinterpreted as requiring all Tamils to be registered with the police, which created yet another pretext for harassment and arbitrary detention at security check points. The new regulations issued in October on the offence of harbouring people who had offended under the emergency regulations or the PTA made it all the more difficult for Tamil people to find accommodation in Colombo.

In this climate, and in the aftermath of the LTTE's October attack on the oil installations at Kolonnawa and Orugodawatta, some Tamils in Colombo fell victim to vigilante violence. In October, members of a CDF organised by the police went from house to house in the Wanathamulla area of Colombo armed with swords, knives and sticks, examining people's identity cards. Two Tamil youth from the

³ See Chapter III on Emergency Rule.

plantations who did not have their identity cards - but who could produce evidence of their employment in Colombo and a letter from the Superintendent of their estate - were dragged from their house and killed.

2. Violations of the Right to Life

2.1 Extrajudicial executions

Reports of apparently deliberate extrajudicial killings by government security forces arose in three contexts. First, there were reports of killings in the course of security forces' operations in the East. Second, there were reports of civilians having been targeted in bomb attacks from the air. Third, there were the killings of over thirty detainees in Colombo whose bodies were subsequently dumped in various locations.

According to Amnesty International, an estimated 40 Tamil civilians were extrajudicially executed in the East during 1995.⁴ Members of the police, army, Special Task Force (STF) and Muslim Home Guards were said to have committed these killings, mostly in the months of May, June, July and November. These killings were reportedly

⁴ *Amnesty International Report 1996* (London) p. 281. Nine cases involving 19 individuals reportedly killed in the North East in May 1995 are detailed in Amnesty International, *Sri Lanka: Reports of extrajudicial executions during May 1995*, AI Index ASA 37/10/95 (London, June 1995). Of these, six victims were Muslim and 13 were Tamil.

committed in the context of cordon-and-search operations, or in retaliation for attacks by the LTTE.

Among the civilians killed in bomb raids by government planes on the North in July were 65 people who had sought refuge at the Church of St Peter and St Paul at Navali, Jaffna.⁵ The International Committee of the Red Cross (ICRC) visited the site within 24 hours of the attack, interviewed witnesses, and subsequently issued a statement of concern, calling on all parties to the conflict to respect civilian lives, property and places of refuge. Although President Kumaratunga expressed her regret at the loss of life and ordered the military to investigate the incident, there had been no news of any investigation having been carried out by the end of the year. The ICRC did not attribute direct responsibility for these deaths; but in the absence of a proper inquiry by an independent body, the possibility that the site had been deliberately targeted for attack cannot be ruled out. Indeed, the government's subsequent strong and much-publicised criticism of the ICRC for having publicly reported this apparent breach of humanitarian law raised questions about the government's own sincerity on such a serious issue of humanitarian concern.

The discovery of over 30 bodies in and around Colombo in June, and the subsequent investigations by the Criminal Investigation Department (CID), revealed the apparent fate of some of the Tamil youth who

⁵ INFORM, *Situation Report July 1995* (Colombo), p.6.

had been abducted in Colombo over several months, and subsequently disappeared.⁶ Tamil youth had been abducted by men in civilian clothes from lodging houses or just from the streets or while waiting at bus stops.

The first eight bodies were discovered in Bolgoda lake at Indigahatutupola, Panadura. They all bore marks of torture, and the autopsy revealed that they had no food in their stomachs. Two had been strangled, and the other six - whose arms and legs were bound with rope - had been drowned. Several of the bodies were identified as those of Tamil youth who had been abducted. Two youth who had been abducted by men in white vans - one of whom was released and one of whom escaped - provided testimony which revealed more about what may have happened to those who had died. Both had been deprived of food in captivity; both had been stripped naked, and one had been tortured and interrogated about any links he might have with the LTTE, and his knowledge of people who had recently come to the South from the North East.

Having questioned numerous security forces personnel and others, the CID found that victims had been held at the STF Headquarters at Bullers Road, Colombo. They had been strangled in an unused toilet, using plastic handcuffs which were tightened around their necks. The

⁶ "Disappearances and Abductions and the Surfacing of Bodies in and around Colombo in 1995," Internal Document prepared for the Law & Society Trust by Menique Amerasinghe (Colombo, 1995).

inquiry led to the arrest of numerous suspects, including at least 18 members of the STF, and the government announced that it had suspended the operation of the STF intelligence branch. Some of those arrested for these killings had allegedly been involved in similar extrajudicial killings during the period of UNP rule. The question of whether senior officers in the defence establishment knew of the existence and methods of this unit within the STF remains unresolved.

2.2 The death penalty

In June, fears were raised in the human rights community that the government intended to implement the death sentence, a punishment which has not been carried out in Sri Lanka since 1976, although the courts continue to sentence people to death for certain crimes. These fears were raised after a private member's motion was passed in parliament which called for the re-implementation of capital punishment in the hope of building a law-abiding and civilised society. The government later issued assurances that it had no intention of re-implementing this punishment. Concern was also expressed on this proposal by Amnesty International as well as several local human rights NGOs.

2.3 Killings by the LTTE

The LTTE resumed its attacks on civilians in 1995 when in May it attacked the Sinhala fishing village of Kallarawa in the Eastern

Trincomalee District killing 42 persons, including women and children. This marked the first deliberate attack on civilians after the conflict resumed in April. Soon after, the LTTE killed a prominent Buddhist monk, the chief incumbent at the Dimbulagala temple, who had been an outspoken critic of the LTTE and an advocate of Sinhala settlement in the area. In October, several civilians were reported to have been killed by the LTTE in attacks on Sinhala villages in districts bordering the North East. On the 19th in Mangalagama, near Bakki Ela, in the Amparai district 16 persons were killed including 7 women and 7 children. On the 21st in Boatte in the Mahaweli B area in Welikanda, 37 were massacred including 12 women and 10 children. There were 3 Tamils killed in this incident. The same day 19 people were murdered in Ekey Kanuwa, Padaviya. 16 persons, of which 5 were women and 6 were children were killed in Ethimalai, Moneragala on the 23rd. On the 26th, 4 villages in and around the Kebithigollewa area on the Anuradhapura - Trincomalee road were attacked and a total of 24 deaths were reported. On the 28th in the Pottuvil jungles of the Amparai district 23 bodies were discovered presumed to be victims of LTTE violence.⁷ Most of these attacks occurred in the night or early hours of the morning, when LTTE cadres entered houses and killed people in their sleep. In one case a group of women was reported to have been raped before being killed.

Among Tamils deliberately killed by the LTTE were those considered traitors. Twenty nine such people were reportedly publicly executed at

⁷ INFORM, *Situation Report October 1995* (Colombo) p.6.

Omanthai in October, and their bodies were left exposed for the whole day.⁸ In November, there were reports of a woman whom the LTTE considered to be an informant being publicly executed in Trincomalee, and of the executions of three further informants.⁹

3. Disappearances

Amnesty International recorded at least 55 disappearances for which government forces were believed responsible between April and the end of 1995 from both the East and Colombo.¹⁰ All of the victims were Tamil, and in some cases armed Tamil groups which oppose the LTTE and are allied with the government were said to have been responsible (that is, the People's Liberation Organisation of Tamil Eelam and the Tamil Eelam Liberation Organisation). Another report recorded that over a hundred youth in Vavuniya District had reportedly been taken away forcibly by an armed group in early August 1995, and had disappeared.¹¹ Some of those reported to have disappeared may have been among those whose bodies were found in Colombo, but the identities of all the victims have not been established.

After the government ordered investigations into the deaths of people whose bodies were found in Colombo, the number of abductions in the

⁸ Ibid.

⁹ INFORM, *Situation Report November 1995* (Colombo) p. 6.

¹⁰ Supra n 4 at p. 281.

Colombo area diminished. However, shorter term unacknowledged detentions continued to be reported.

The three Commissions of Inquiry into Disappearances which the government appointed in November 1994¹² began their work in January 1995. Although they had initially been appointed for a period of four months, their mandates were twice extended for six month periods. The three Commissions have received over 30,000 cases to investigate, and by October each Commission had submitted two interim reports on their findings to President Kumaratunga. The contents of these reports have not been made public, however. The mandate of the Commission which had been appointed in January 1991 by President Premadasa - the Presidential Commission of Inquiry into Involuntary Removal of Persons - expired in October, and it was directed to hand any outstanding cases to the newer commissions to investigate.¹³ It reportedly submitted its final report to the President in November. None of its reports have been made public.

A further investigation into past disappearances was established in October, when a Special Presidential Commission of Inquiry was appointed to inquire into allegations that there had been a "torture house"

¹¹ Supra n 6.

¹² See Law & Society Trust, *State of Human Rights 1994*, Chapter 6 (Colombo, 1995) pp. 102-105.

¹³ INFORM, *Situation Report October 1995* (Colombo) pp. 9-10.

at the Batalanda Housing Scheme of the Fertiliser Corporation, where a police Sub-Inspector had disappeared in 1990. The forensic investigations of mass graves which had begun in 1994,¹⁴ and which might have resulted in a number of disappearances from the period of the JVP insurgency being resolved, did not progress further during 1995.

The landmark judgment reached in December 1994 in a *habeas corpus* case regarding three cases of disappearances from 1988, where the court for the first time confronted the issue of how it would deal with the denial of a detention by the respondents and awarded exemplary damages, was echoed in Court of Appeal decisions in 1995 on further such cases. In January 1995 the Court of Appeal ordered the seven respondents - all of whom were police and army personnel - to pay Rs 100,000 to each the parents of seven people who had disappeared in 1988-89. Again, in October the Court of Appeal ordered a senior police officer to pay exemplary damages of Rs 100,000 to the wife of a man who had disappeared in 1988.¹⁵

4. Arbitrary Arrest and Detention

Thousands of Tamil people living in the South - in the Colombo area particularly - and in the East were arbitrarily detained during 1995.

¹⁴ See Law & Society Trust, *State of Human Rights 1994*, Chapter 6 (Colombo, 1995) pp. 97-102.

¹⁵ INFORM, *Situation Report January 1995*, p.10 and *Situation Report October 1995*, p. 10 respectively.

Security measures in and around Colombo were intensified from April, when the LTTE withdrew from the cessation of hostilities and armed conflict in the North East resumed. Numerous checkpoints were established in the Colombo area and there was a marked increase in the numbers of Tamil people detained by police for their identities to be checked. The largest waves of detentions in the South took place in April after hostilities had resumed in the North East and after each major attack by the LTTE on civilian or state targets in the South later in the year. In April, there were reports of as many as a thousand people a day being detained;¹⁶ in May, some 500 people were reportedly arrested in the greater Colombo area alone. Security in and around Colombo was tightened further following the LTTE's attacks on the oil installations at Kollonnawa and Orugodawatta in October, and many more arrests of Tamils were reported. Arbitrary detentions were also reported at various times from other areas of the South such as Polonnaruwa, Anuradhapura and Kandy Districts, where LTTE infiltration was feared by the security forces.

The people who were most vulnerable to being arrested were Tamils who had recently arrived in Colombo from the North East, and Up Country Tamils who had migrated to Colombo from the hill country to seek employment. The scale of these arrests was not widely reported in the mainstream Sinhala and English-language media, although considerable attention was given to the arrests of alleged LTTE activists.

¹⁶ INFORM, *Situation Report April 1995* (Colombo) p. 7.

The great majority of those detained were released within two or three days, or less, and these detentions were not generally associated with torture or physical ill-treatment. However, a number of people were detained for weeks or even months without charge or trial.¹⁷ By October, the HRTF, which was re-established in June, had recorded over 600 cases of people held under detention orders in jails.¹⁸ The bodies of detainees found dumped around Colombo, as described above, are not generally believed to be those of people who had been detained in identity checks and round-ups by uniformed security forces officers.

In response to widespread complaints from Tamil politicians and human rights organisations about the scale of arbitrary detentions and harassment, and the lack of safeguards on detention, emergency regulations were issued in June to re-establish the HRTF, which is responsible for "ensuring that the fundamental rights of persons arrested or detained are respected and such persons are treated humanely." The regulations also enabled the President to issue directives to enable the HRTF to perform its role. The directives issued in June and amended in July contained rigorous requirements on the reporting of arrests, the issuing of "arrest receipts," the protection of women and children and other matters which - if actually implemented - would have provided welcome protections against abuse. However, the directives were largely ignored. As the scale of detentions

¹⁷ Institute of Human Rights, "Case Newsletter" Nos. 1 - 5 (Colombo).

¹⁸ INFORM, *Situation Report October 1995* (Colombo) p. 9.

continued to escalate, protest continued, and the emergency regulations were amended further in September to make failure to report an arrest within 24 hours an offence. This provision, too, has been largely ignored, and there are no known cases of members of the security forces being charged for failing to report an arrest. The relevant regulations and the directives are discussed further in the chapter on Emergency Rule.

Human rights organisations have frequently called for the emergency regulations and the PTA to be amended to safeguard against arbitrary arrest, torture and disappearance. The experience of the amendments made to the emergency regulations in 1995, however, demonstrates the obvious point that safeguards on paper are worthless if they are not translated into practice.

4.1 Detentions by the LTTE

An unknown number of prisoners continued to be held by the LTTE in 1995, and one former LTTE leader, Mahattaya, who had been held prisoner by the LTTE since 1993, was reported to have been executed in October. The LTTE has generally granted the ICRC access to members of the government security forces and Sinhala fishermen it holds prisoner, but not to its Tamil prisoners. In August, the LTTE hijacked a ferry travelling North from Trincomalee, taking all its passengers and crew captive. It released 121 passengers to the ICRC in September, but is believed to have held the eight crew members - who

were considered to be cadre of the rival Eelam People's Democratic Party, which supports the government - captive for the rest of the year.

4.2 The detention of travellers from the North to the South and restrictions on freedom of movement

Another form of arbitrary detention was experienced by large numbers of people who attempted to travel out of LTTE-controlled areas of the North to the South. The LTTE imposed considerable restrictions on the movement of people to the South, particularly after the numbers of people displaced from their homes in the North began to rise in September with the intensification of the military offensive.¹⁹ In September, for example, there were reports that between 2,000 and 3,000 people attempting to travel South were held at Omanthai by the LTTE for several days, apparently to prevent the spread of news from the area southwards.²⁰

The government, too, restricted the movement of people southwards, in this case apparently fearing infiltration by the LTTE. In November, after the numbers of people displaced from Jaffna had risen dramatically in anticipation of the military advance, it was reported that all people travelling South from Vavuniya would have to remain at the transit camp at Thandikulam for at least three days while they

¹⁹ See Chapter X on the Internally Displaced.

²⁰ INFORM, *Situation Report September 1995* (Colombo) p. 5.

obtained security clearance to travel further (Vavuniya being the northern-most point under the control of government forces). To obtain such clearance, they had to prove they were resident in the South.²¹ Long back-logs built up, however. On 2 December, new procedures were introduced for civilians who wished to travel South from Vavuniya. People who could produce police registration documents showing that they were already registered at police stations in the South would be issued with travel passes. In the cases of people who could not produce such registration documents, however, their relatives would have to travel from the South to Vavuniya to vouch for them before a travel pass would be issued. People attempting to travel South for medical purposes would only be permitted to do so if the Vavuniya District Medical Officer endorsed their cases, and people travelling on official matters could travel with the endorsement of the relevant agency.²² This system created considerable bureaucratic delays, and three transit camps were set up where people had to stay until they were able to satisfy the requirements for a travel pass.

5. Torture

Torture and ill-treatment continued to be reported throughout the year, both in the context of routine policing at various police stations around the island, and in the context of interrogations relating to the North

²¹ INFORM, *Situation Report November 1995* (Colombo) p. 7.

²² INFORM, *Situation Report December 1995* (Colombo) p. 7.

East conflict, whether conducted by the army, the STF, the police or the CID. Deaths in custody resulting from torture were also reported.

Reports of torture committed by the military included the rape of three Tamil women by soldiers in Batticaloa District in January, in retaliation for an attack by the LTTE; as well as rape by the police in Amparai in May and by the army in Trincomalee in August.²³ Other reported cases of torture in the context of the North East conflict included that of a man who stated he had been taken into custody by soldiers from the Valaichchenai Army Camp in November 1995. There, he said he had been "very badly assaulted and tortured," having been assaulted on his head and body, and had his legs trampled upon, and his head covered with a bag soaked in petrol.²⁴ Another man who had also been arrested by soldiers from Valaichchenai in November complained that at Valaichchenai Army Camp soldiers had trampled on his chest, and he had been assaulted with wire and bricks. At Kallady Army Camp, to which he was then transferred, he said he had been made to drink urine.²⁵

Methods of torture used by the army in the East, as recorded by Amnesty International, included: electric shocks; hanging prisoners upside-down; applying chilli powder to prisoners' genitals; and blindfolding prisoners with rags soaked in petrol.²⁶

²³ Amnesty International, *Amnesty International Report 1996* (London, 1996), p. 281.

²⁴ The case is yet to be decided by the Supreme Court.

²⁵ The case is yet to be decided by the Supreme Court.

²⁶ Amnesty International, *Amnesty International Report 1996* (London, 1996), p. 281.

The inquiry into the deaths of those whose bodies were found around Colombo, described above, indicated that a number of people had been tortured and killed in custody by the STF. Deaths in police custody resulting from torture were also reported. For example, Ratnaweera Patabendige Dayananda died in hospital in February from injuries sustained while he was in the custody of the Galle police. The post-mortem report found that his injuries were not consistent with a fall, which was what the police had said caused them. The coroner returned a verdict of homicide and instructed the Senior Superintendent of Police in Galle to produce the suspects before the Galle Magistrate's Court.²⁷

In its monthly *Situation Reports* for 1995, INFORM recorded six fundamental rights cases in which the court had awarded compensation to the petitioners for torture or ill-treatment, and five further cases filed in the Supreme Court, which have yet to be decided, in which allegations of torture were made. In all of these cases, the respondents were police officers. None involved members of the military. The findings of the court in these cases are discussed in the chapter on Judicial Protection of Human Rights. One case, which has yet to be decided, had been filed by a member of the STF who had been arrested in connection with the killing of prisoners whose bodies had been found in the Colombo area, and who said he had been tortured under interrogation.

²⁷ INFORM, *Situation Report February 1995* (Colombo) p. 10.

6. The Comments and Recommendations of the Human Rights Committee

In July 1995, The Human Rights Committee examined Sri Lanka's third periodic report on its implementation of the provisions of the ICCPR. The Committee noted that the government's report was "not satisfactory in that it failed to provide detailed information on the actual implementation in practice of the provisions of the Covenant." The Committee welcomed various initiatives being undertaken by the government, but also expressed its concern on a number of matters. Of particular relevance to this chapter were the following observations:

- * that the domestic legal system does not contain all the rights set forth in the Covenant nor all the necessary safeguards to prevent their restrictions beyond the limits established by the Covenant. In addition, the proposed reforms to the Constitution do not appear to incorporate all of these elements;
- * that the derogation of rights under emergency regulations may not be in full compliance with Article 4(2) of the ICCPR;
- * that the death penalty can be imposed for crimes which are not the most serious offences;
- * that reports continue of the deaths of civilians, disappearances, torture, summary executions and arbitrary detention caused by

both parties to the conflict, and that no effective system exists for the prevention and punishment of such violations; and that violations committed by the police are not investigated by an independent body and the perpetrators are frequently not punished; and

- * that the possibility of indefinite detention under emergency regulation violated the Covenant.

The Committee's recommendations included:

- * that urgent steps should be taken to ensure the full compliance of Sri Lanka's domestic law with the Covenant;
- * that the provisions of the Covenant should be fully respected in areas where a state of emergency has been proclaimed, and that all reported violations should be independently investigated, the perpetrators punished and the victims compensated.

These comments and recommendations by the Committee reinforce similar points that have been made by local human rights organisations, and draw attention once again to the pressing need for genuine reforms to be implemented which would bring Sri Lanka's human rights practice into line with international human rights norms to which it is committed.

III

Emergency Rule

Emergency rule continued in parts of Sri Lanka - namely the North East and border areas, and Colombo and surrounding areas - throughout 1995. At first it remained in force in the same geographical areas as at the end of 1994. In June, September and December, however, these areas were extended. No official communique was made announcing these changes or explaining the reasons for them, and they could only be discovered by comparing each monthly proclamation of the emergency with that of the previous month. The specific areas within which the emergency was in force, and the changes that were made to them, are given in Appendix A.

Emergency rule in Sri Lanka takes place under the Public Security Ordinance, the working of which was explained in the chapter on Emergency Regulations in *Sri Lanka: State of Human Rights 1993*.¹ At the beginning of 1995, the emergency regulations in force at the end of 1994 continued. A number of changes were made to the content of the regulations, however, during 1995, and new regulations were added.

The Emergency (Miscellaneous Provisions and Powers) Regulations No. 4 of 1994 continued in force throughout the year, by operation of

¹ Law & Society Trust (Colombo, 1994) Chapter II, pp. 12-26.

law.² These are the "main" emergency regulations, which provide for arrest and detention and a number of other matters. Two amendments of some significance were made in 1995, one related to arrest and detention and the other required householders to furnish certain information to the police.

1. Arrest and Detention

1.1 Reporting arrests to the nearest police station

An amendment made in September 1995 related to the reporting of certain arrests to the nearest police station. This is not the simple, straightforward obligation that one might imagine. When a person is arrested on suspicion ("regulation 18 arrest"), a decision has to be made within a specified period (seven days in the North East; 48 hours elsewhere) as to whether he is to be released or held for investigation. If the suspect is to be held further for investigation, then a detention order must be made (this should not be confused with the "preventive detention" type of detention order made under regulation 17). It is here that the element of reporting to the nearest police station has been introduced. The amendment provides that such detention order can be made only if the arrest has been notified to the officer-in-charge of the nearest police station forthwith, or in any event not later than 48 hours after the arrest. However, while the regulation provides that "any

² See Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995), Chapter III for details.

person who fails to inform of the fact of such arrest shall be guilty of an offence," it fails to specify who is responsible for notifying the arrest.³

The intention behind this amendment is unclear, however. The wording of the regulation seems to imply that the intention was to limit the power to issue detention orders to those cases where the arrest had originally been notified to the nearest police station. On the other hand, the intention may have been to make the reporting of all arrests under regulation 18 obligatory. The latter interpretation would seem implied by the fact that the failure to notify is made an offence, and that the obligation to notify arises at the stage of the original arrest and not at the stage of deciding to issue a detention order. The fact that the intention is in doubt exemplifies the continuing lack of clarity in the regulations, a problem which has persisted for some time.

1.2 The Human Rights Task Force (HRTF)

The provisions relating to arrest and detention in the Emergency (Miscellaneous Provisions and Powers) Regulations have to be read along with an important change made in June 1995 under a separate set of regulations. These are the Emergency (Establishment of the Human Rights Task Force) Regulations No 1 of 1995.⁴ In the middle of 1994

³ New paragraph 19(2A) introduced by amendment to the Emergency (Miscellaneous Provisions and Powers) Regulations No. 4 of 1994 by regulation published in Gazette Extraordinary No. 887/2 of 4 September 1995.

⁴ Published in Gazette Extraordinary No. 874/8 of 7 June 1995.

the requirement of reporting arrests to the HRTF had unaccountably been dropped, and doubt was created as to the status of the HRTF itself.⁵ After nearly a year during which arrests and detentions under the emergency regulations continued, this unacceptable situation was remedied with the promulgation of these new regulations.

For reasons which were not explained, the former HRTF was not resuscitated. Instead, a new HRTF was created under the June 1995 regulations with a somewhat different legal status. Its composition was entirely changed, but the previous staff continued to work under the new set-up.

The legal status of the previous HRTF had been based on a combination of the Sri Lanka Foundation Law of 1973 and the emergency regulations. The new HRTF has no link with the Sri Lanka Foundation, and is entirely a creature of emergency regulations. Should the emergency be lifted, it would therefore automatically cease to exist.

Under the new regulations, the provisions relating to the composition of the HRTF and the tenure of office of its members are a decided step backwards. The earlier regulations had laid down criteria for membership of the HRTF (which could have been improved upon), some of which were appropriate. Appointment had to be "from amongst

⁵ See Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995) pp. 53-54.

persons who are competent and experienced in matters relating to law, administration, medicine, science, engineering, banking or social service.”⁶ The new regulations, however, provide no criteria at all for membership. As for tenure of office, under the former regulations members were appointed by the President for a period of three years and could be removed only at the request of a majority of members, or at the request of the Chairman. (The Chairman himself was appointed and removable by the President). The new regulations do not stipulate any period of tenure of office and nor do they specify any grounds for removal of members, which means in effect that they may be removed at any time and for any reason, which is undesirable.

Although the opportunity for creating a stronger, more effective and independent HRTF was missed, the new regulations contained certain compensations. One was the provision for a National Advisory Group and Regional Advisory Groups to advise and assist the HRTF in its work, thus formally drawing on the experience of non-governmental human rights organisations. Representatives of political parties may also be included, in recognition of the need to take the protection of human rights outside partisan party politics.

The functions and powers of the HRTF remain by and large the same as before. However, the new regulations provide for Presidential

⁶ The Monitoring of Fundamental Rights of Detainees Regulations 1991 published in Gazette Extraordinary No. 674/17 of 10 August 1991.

Directions to be issued to enhance human rights protection,⁷ and in fact the President did issue a set of Directions in 1995 relating to safeguards at the time of arrest and related matters. Such Directions have the same force of law as the emergency regulations themselves. This is by virtue of regulation 35(1) of the Emergency (Miscellaneous Provisions and Powers) Regulations which provides that:

If any person contravenes or fails to comply with any emergency regulation, or any rule or order made under any such regulation, or any direction given or requirement imposed under any such regulation he shall be guilty of an offence....⁸

The new regulations and the Directions issued under them provide for such matters as the reporting of arrests to the HRTF; arresting officers to identify themselves; the issuing of "receipts" on arrest which should specify name and rank of the arresting officer, the time and date of arrest and the place at which the person will be held; affording an

⁷ "The President may give such Directions to the Heads of the Armed Forces and of the Police, as in her opinion are necessary, to enable the HRTF to exercise and perform its powers, functions and duties and to ensure that the fundamental rights of persons arrested or detained are respected" (Regulation 8(1) of the Emergency (Establishment of the Human Rights Task Force) Regulations No.1 of 1995).

⁸ Emphasis added. Unfortunately, however, the Directions have not been published in the Gazette or otherwise issued as an official publication which would be publicly available at such places as the Government Publications Bureau or in libraries. This does not merely affect public access. It may well also be a contributory factor to the scant regard generally paid to the Directions by law enforcement officers.

arrested person reasonable means of communicating with his family; and special provisions regarding the arrest of women and children under 12 years of age. Initial discrepancies between the regulations and the Directions, which human rights organisations drew attention to, were speedily remedied.

All in all, the provisions on arrest and detention set out an impressive set of safeguards - on paper, at least. They remain subject to criticism on two grounds. First, it is difficult for anyone to discover what rules apply, as it is necessary to refer to and implement simultaneously the provisions of three separate texts: the Emergency (Miscellaneous Provisions and Powers) Regulations No. 4 of 1994, the June 1995 regulations creating the HRTF, and the Presidential Directions made under the latter.⁹ Further, as already noted, the last of these texts has not been formally published in a readily accessible and retrievable form. There is a clear need for an official handbook combining all these elements for the guidance of law enforcement officers and other appropriate persons.

The second criticism, which is more serious, is that in practice the requirements of the regulations and Directions are frequently not observed. Law enforcement officers often appear to regard the

⁹ To assist human rights groups and lawyers in this task, the Nadesan Centre in September 1995 brought out a new edition of its Legal Briefing, *Arrest and Detention under the Current Emergency Regulations* (Colombo).

safeguards as pious recommendations or "window-dressing" rather than as legally-binding imperatives. The fact that there is no known case of a law enforcement officer being prosecuted for non-compliance with these provisions almost certainly serves to reinforce this view.

1.3 Unacceptable features of the regulations on arrest and detention

Other unacceptable features of the regulations governing arrest and detention remained unchanged in 1995, despite strong protest over the years from Sri Lankan and international human rights groups. Notorious among these deficiencies are that the regulations still provide the possibility of preventive detention for an indefinite period; that enforceable basic conditions of detention are absent; and that they abrogate the normal law relating to inquests when persons die in custody.¹⁰ The convoluted and unclear nature of the provisions relating to arrest and detention, and errors and anomalies in their text, also remained unaddressed.

2. Other New Regulations

Several other new emergency regulations were introduced in 1995.

¹⁰ These deficiencies are discussed further in Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995) Chapter III.

2.1 Householders to furnish information

The second amendment to the Emergency (Miscellaneous Provisions and Powers) Regulations No. 4 of 1994 was made in September 1995 and requires householders to furnishing certain information to the police. (Provision to this effect has existed in varying forms from time to time in the past, but had been omitted from the regulations in recent times). The amendment provides that, when required to do so by a police officer not below the rank of Assistant Superintendent, every householder within the Colombo Municipal limits and certain other areas in the Colombo District must provide a list of all inmates of the house to the officer-in-charge of the police station of the area. The list should distinguish family members from servants or other residents. Further, if so directed in the order, the householder shall also inform the police of any changes in the inmates of the house, and shall not, having received such order, harbour a stranger without giving notice to the officer-in-charge of the police station.¹¹

This regulation created considerable confusion and a general impression arose that all Tamils were now required to "register" themselves with the police. Indeed, people with Tamil names were frequently asked at security checks whether they were so registered. However, it is clear from the wording of the regulation that its

¹¹ Amendment to Emergency (Miscellaneous Provisions and Powers) Regulations No.4 of 1994 made by inserting a new paragraph, 20A published in Gazette Extraordinary No.889/15 of 21 September 1995.

provisions come into effect only when, and as regards persons in respect of whom, an order is made by an officer of the rank of ASP or above. No provision, however, was made as to how such order is to be communicated. Nor was any publicity given to any such orders of a general nature having been issued.

2.2 Harboursing of offenders, confiscation of premises and confiscation of motor vehicles

Two regulations made in October introduced new offences with drastic penalties. One made the harboursing in any premises of a person connected with the commission of any offence under the PTA or Part 3 of the Emergency (Miscellaneous Provisions and Powers) Regulations an offence punishable by between five and ten years' imprisonment.¹² In addition, following a conviction, the premises used for the commission of the offence shall be forfeited to the state. This consequence flows automatically, irrespective of whether the owner of the premises was involved in or even aware of the offence. Thus, an act of harboursing committed by a tenant, or even by a trespasser, would result in an owner losing his property. The only alleviation of the rigour of this provision is that the vesting is to be published in the press, whereupon any persons having any right or interest in the premises

¹² The Emergency (Harboursing of Offenders) Regulations No.1 of 1995 published in Gazette Extraordinary 895/4 of 30 October 1995.

(not being the person convicted of the offence) may put forward their claim. Even here, however, the court has no power to prevent or reverse the forfeiture; it may only order the state to pay such sum as the court considers reasonable for the loss caused. This provision aggravates the difficulties experienced by Tamils in the South in finding lodgings or houses to take on rent. The other regulation made on the same day¹³ relates to motor vehicles and makes similar provisions regarding making transport available for the commission of an offence under the PTA or the emergency regulations.

2.3 Prohibited zones; restriction on transport of articles

These regulations were carried over from the previous year. During 1995 a number of changes were made to them, and at one stage the former regulations were rescinded and substituted by new ones.¹⁴ The changes were connected to the changing military situation, after the cease-fire between the government and the LTTE ended in April.

¹³ The Emergency (Confiscation of Motor Vehicles) Regulations No. 1 of 1995 published in Gazette Extraordinary No. 895/5 of 30 October 1995.

¹⁴ See the Emergency (Restriction of Transport of Articles) Regulations No. 1 of 1995 published in Gazette Extraordinary 861/17 of 10 March 1995 and the Emergency (Establishment of a Prohibited Zone) Regulations No. 3 [sic] of 1995 published in Gazette Extraordinary 867/10 of 20 April 1995. The "No. 3" in the latter is clearly an error; it should read "No 1". The list of articles the transport of which was prohibited was changed by notification published in Gazette Extraordinary 866/13 of 14 April 1995, and again in Gazette Extraordinary 867/12 of 20 April 1995.

2.4 Jack-pots

A disturbing development was the resort to emergency legislation to deal with a subject with tenuous, if any, relevance to national security. Such abuse of emergency powers was commonly resorted to under previous governments, but the present government had hitherto refrained from such practices. Yet the Emergency (Games of Chance) (Jack-pots) Regulations No 1 of 1995¹⁵ were reminiscent of the regulations of a similar name made in 1991 by President Premadasa.

The 1995 regulations make it an offence "to play any game for a stake (Jack-pots)" in any premises, and this is furthermore stated to be "notwithstanding anything in any written law, or any licence or authorisation given..." The police are authorised to enter such places and seize whatever things (including money) are used for the game, which become forfeit to the state. The government has given no explanation as to why such regulations are considered necessary.¹⁶

¹⁵ Gazette Extraordinary No. 881/10 of 26 July 1995.

¹⁶ The 1991 regulations contained a definition of "games of chance"; the omission of any definition in the 1995 regulations raises an intriguing question as to the status of state lotteries, which were specifically exempted under the 1991 definition. The 1991 regulations were challenged in court where, amongst other things, their nexus with public security was queried (*D.C. Abeywardene v. Ernest Perera et al.* SC Appl. No. 92/91). The challenge was unsuccessful, the Court's decision turning largely on an affidavit by the Inspector General of Police referring to certain conditions said to have existed at that time.

3. Other Regulations and Notifications

Other regulations and notifications made in 1995 related to the creation of a restricted zone consisting of the sea area between Mutwal and Kollupitiya, later extended to Wellawatte (October 1995), the requisitioning of vehicles (July 95), the requisitioning of property (October 1995), and the extension of the terms of office of certain local authorities in the administrative divisions of Jaffna, Kilinochchi, Mannar, Vavuniya and Mullaitivu (October 1995). Censorship was imposed by emergency regulations from September to December 1995. This is discussed separately below. Curfew was declared following the attack by the LTTE on the Kolonnawa oil installation, and was in force in the surrounding area and in Colombo city on the nights of 21 and 22 October.

4. Censorship

The most controversial emergency regulation promulgated during 1995 was the one imposing censorship. A sweeping censorship was introduced by emergency regulation on 21 September,¹⁷ made worse by an amendment of 28 September,¹⁸ and lifted on 20 December 1995.¹⁹

The regulations contained an absolute prohibition on publication of certain types of news. An examination of the banned subjects shows

¹⁷ Gazette Extraordinary No. 889/16 of 21 September 1995.

¹⁸ Gazette Extraordinary No. 891/3 of 2 October 1995.

¹⁹ Gazette Extraordinary No. 902/13 of 20 December 1995.

that they were drawn extremely broadly. For clarity, the different elements of the relevant regulation have been broken up below. What was prohibited was the publication of any material containing any matter which pertains to:

- * any operations carried out or proposed to be carried out by the Armed Forces or the Police (including the STF);
- * the procurement or the proposed procurement of arms or supplies by any such Forces;
- * the deployment of troops or personnel;
- * the deployment or the use of equipment, including aircraft or naval vessels by any such Forces; or
- * any statement pertaining to the official conduct or the performance of the Head or any member of any of the Armed Forces or the Police Force.

This formulation was extremely broad and went well beyond protecting legitimate national security interests. For example, it prevented any exposure of corruption in the procurement of arms and supplies, even if such exposure were wholly in the public interest and could in no way endanger national security.

The last prohibition set out above was added to the regulations by an amendment of 28 September, and is the least defensible of all. Interpreted literally - and there is no other interpretation as the language is unambiguous - it would prohibit not only criticism but also

praise of any armed service or police officer. More disturbing is the fact that such constraints on freedom of expression are a serious interference with the watchdog role of the press and of independent human rights organisations, an essential element of which is highlighting matters such as any corruption, human rights violations, or other misconduct by the authorities.

The emergency regulations on censorship were criticised by human rights and press organisations both in Sri Lanka and abroad. There was apparently no consideration by the government of the international norms relating to the restrictions that may legitimately be imposed on freedom of expression. According to such norms, any restrictions have to be "necessary" to meet the permitted end. Moreover, departure from basic rights in times of national emergency may only be "to the extent strictly required by the exigencies of the situation." These are objective tests, and not just what a government might feel expedient. They are the requirements set forth in the ICCPR which Sri Lanka is bound by international law to observe in its internal law and practice, having ratified the Covenant in 1980.²⁰

5. Reporting the Conflict

The regulations coupled with the refusal to allow journalists or human rights organisations to visit the conflict area were not merely

²⁰ The ICCPR, Article 19(3) and Article(4). The present Constitution of Sri Lanka falls short of these international standards, but the new fundamental rights chapter would, if adopted, incorporate these aspects of the Covenant.

detrimental to the protection of human rights and humanitarian standards. As the Civil Rights Movement (CRM) has said, to deny correct information on what is happening on the military front is to impair the ability of citizens to come to responsible decisions on the political front. CRM pointed in particular to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information:

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organisations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. A government may not exclude journalists or representatives from such organisations from areas that are experiencing violence or armed conflict except where their presence would pose a clear risk to the safety of others.²¹

²¹ Principle 19, Access to Restricted Areas, of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information. These principles resulted from a study held in South Africa in October 1995 by a group of experts in international law, national security and human rights. It was convened by Article 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of Witwatersrand.

6. Oddities and Illogicalities in the Regulations on Censorship

The emergency regulations themselves were strange in several respects; their manner of operation stranger still. By their wording, the regulations imposed a total and absolute prohibition on publication of certain types of news. They did not contain any provision that such news items could be carried if approved by the Competent Authority. The Government nevertheless appointed a Competent Authority to whom news items were in practice submitted for "approval" before publication, and who often insisted on certain cuts and changes. There were many complaints about the delays this process involved, and about the inconsistency and inappropriateness of some of the decisions. As the CRM pointed out, however, what generally escaped people's attention was the fact that the publication of all news items — even the government's own communiques — on the prohibited subjects remained illegal even if the Competent Authority's approval had been obtained, because the regulations themselves made no provision for any such "approval" process. (There was provision for the appointment of a Competent Authority, but to perform another function). In fact, during this period there was a debate in the press about the conduct of a Deputy Inspector General of Police, and controversy about the conduct of named army officers, topics which, in terms of the regulations, were banned. It is ridiculous to think that all this was in fact illegal. In fact, no prosecutions were brought for contravening these regulations.

Other features of the censorship regulations were arbitrary, unclear or confusing. The censorship was applied only to the local media, foreign

correspondents being administratively exempted. Even as regards the local media, the censorship was in law operative only in those areas subject to emergency rule, creating doubt and unclarity as to the rights and liabilities of persons in, say, Matara or Kandy, which are not subject to emergency rule.

Such absurdities, illogicalities and inconsistencies do not merely affect the right of the public to be governed by clear, comprehensible and sensible laws. They also tend to bring the law itself as an institution into disrepute; this has long-term implications for the building of a stable society. The regulations (as has been the case with many emergency regulations on other topics) appear to have been drafted hastily, with their manner of implementation not properly thought out. The right of free expression in a democracy is so fundamental that it should be tampered with only in a carefully considered manner with minimum trespass on the right of publication and information, and with the practical workings of the media - with its deadlines, and its diversity as regards levels of staff, technology and other resources - in mind.²²

7. Failure To Publicise Emergency Regulations

There was no improvement in the accessibility of emergency regulations. Their text appears only in the Gazette, which is often late

²² Civil Rights Movement, *The Lifting of the Censorship* (Colombo, 22 January 1996), CRM ref.E01/1/96. See also Chapter IV on Freedom of Expression for other aspects of the working of the censorship.

and hard to come by. Official communiques announcing and explaining the regulations are rarely issued, and there is still no official list or index of all regulations in force.

Appendix A

At the beginning of 1995²³ the emergency was in force in the following areas:

The Municipal limits of Colombo, Dehiwala-Mount Lavinia, the Divisional Secretaries' Divisions of Nugegoda and Kolonnawa of the Colombo District, the Divisional Secretaries' Divisions of Wattala, Ja-Ela and Negombo of the Gampaha District, the Northern Province, the Eastern Province, the Divisional Secretaries' Divisions of Kalpitiya, Wanathawilluwa, Karuwalagaswewa of the Puttalam District, the Divisional Secretaries' Divisions of Nochchiyagama, Nuwaragampalatha (Central), Medawachchiya, Kebithigollawa, Padaviya and Horowpathana of the Anuradhapura District and the Divisional Secretaries' Divisions of Dimbulagala and Lankapura of the Polonnaruwa District.

In June 1995²⁴ it was extended to include:

²³ Gazette Extraordinary No. 852/22 of 4 January 1995.

²⁴ Gazette Extraordinary No. 874/1 of 4 June 1995.

The Divisional Secretaries' Division of Katana of the Gampaha District.

In September 1995²⁵ it was extended to include:

All the Divisional Secretaries' Divisions of the Gampaha District.

In December 1995²⁶ it was further extended to include:

The Divisional Secretaries' Divisions of Bibile, Madulla, Medagama, Moneragala, Kataragama and Grama Niladari Divisions of Mahakalugolla, Ethimale and Kotiyagala of the Siyambalanduwa Divisional Secretary's Division of the Moneragala District.

²⁵ Gazette Extraordinary No. 887/1 of 4 September 1995.

²⁶ Gazette Extraordinary No. 900/1 of 4 December 1995.

IV

Freedom of Expression and Media Freedom

1. Introduction

The PA was elected to power in August 1994 on a platform which promised to restore freedom of expression, and in particular, freedom of the media. Its manifesto contained a substantial section on media policy, promising to "create a framework within which the media can function independently and without inhibition." However, instances of censorship by the new government were reported within 1994¹ and continued in 1995. This chapter examines the state of media freedom during 1995 by outlining the legal framework governing freedom of expression, the extent to which the exercise of this right has been permitted in practice and the extent to which the government's media policy (which promised considerable institutional and legal reforms) has been implemented.

2. Legal Framework

2.1 The 1978 Constitution

The constitutional provisions on the freedom of speech and expression were discussed in *Sri Lanka: State of Human Rights 1994*. The

¹ See Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995) Chapter VIII.

restrictive nature of the constitutional guarantee has been eased somewhat by the progressive interpretation of these provisions by the Supreme Court, which is conferred with exclusive fundamental rights jurisdiction. It has held that freedom of expression also includes the right to receive information and the right to circulate publications; that expression can be through any medium; and that restrictions on freedom of expression need to be strictly scrutinised as this freedom is "basic to a democratic form of government."²

2.2 Relevant legislation

Many laws impinge on freedom of expression in general, including:

- * Parliamentary (Powers and Privileges) Act No. 21 of 1953 (as amended) which defines parliamentary privileges broadly and also provides for parliament to try and punish alleged offenders;
- * The Penal Code (provisions relating to criminal defamation, profanity, sedition and bringing the head of state into contempt);
- * Obscene Publications Ordinance No. 4 of 1927;
- * Public Performances Ordinance No. 7 of 1912;
- * Official Secrets Act No. 32 of 1955; and
- * Prevention of Terrorism Act No. 48 of 1979.

In addition, the press is regulated by the Newspapers Ordinance (Cap.376) and the Sri Lanka Press Council Law, and the electronic

² *Joseph Perera v. The Attorney General et. al.* [(1992) 1 Sri L. R. 199 at 223].

media are regulated by the licensing requirements under the Sri Lanka Broadcasting Corporation Act (Cap.365), the Sri Lanka Rupavahini Corporation Act No. 6 of 1982 and the Sri Lanka Telecommunications Act No. 25 of 1991.

Most of these laws were enacted before the promulgation of the current Constitution. However, any provisions within them which contravene the protection of freedom of expression contained in the current Constitution continue to remain in force. This is because under Article 16(1) of the Constitution, a provision which is often criticised by civil libertarians, all written and unwritten laws existing at the time of the adoption of the Constitution continue to stand notwithstanding any inconsistency with constitutional guarantees of fundamental rights.

2.3 Emergency Laws³

Under the Constitution, the "law" for purposes of limiting fundamental rights includes emergency regulations.⁴ Emergency regulations are promulgated by the President under powers conferred by the Public Security Ordinance.⁵ However, the regulations have to be in

³ See Chapter III on Emergency Rule for an account of the emergency regulations in force during 1995, including those imposing censorship, and for the areas of the country where the state of emergency applied.

⁴ The Constitution of the Democratic Socialist Republic of Sri Lanka, Article 15(7) (Hereinafter the 1978 Constitution).

⁵ See Law & Society Trust, *Sri Lanka: State of Human Rights 1993* (Colombo, 1994) pp. 48-9.

accordance with constitutional provisions, including constitutional guarantees of fundamental rights.⁶ In other words, the limitations imposed by emergency regulations have to pass constitutional muster. The final arbiter of the constitutionality of an emergency regulation is the Supreme Court.

Sri Lanka has been under emergency rule for nearly a quarter of a century.⁷ The state of emergency has applied at times to specified parts of the Island, and at other times to the country as a whole. Under emergency rule, freedom of expression - and especially freedom of the press - has sometimes been severely restricted with the appointment of Competent Authorities to regulate the press and also by the promulgation of emergency provisions which even made the possession of certain types of literature an offence.

While in the early years of emergency rule the courts were deferential to the executive,⁸ more recently the judiciary has adopted more exacting standards of scrutiny of emergency regulations which appear to impinge on freedom of expression. In the seminal judgment *Joseph Perera v. The Attorney General et. al.*,⁹ delivered in 1987, the Supreme

⁶ The 1978 Constitution, Article 155 (2).

⁷ See the Chapter on Emergency Rule.

⁸ Eg. *Siriwardene v. Liyanage* [2] F.R.D. 310 and *Visvalingam v. Liyanage* [2] F.R.D. 529 where the Supreme Court exercising the fundamental rights jurisdiction vested in it recognised the need for the executive to possess wide discretionary powers during times of emergency.

⁹ SC App. Nos. 107-109/86, Decision of 25 May 1987 (per Sharvananda CJ).

Court held that even during times of emergency any regulation which seeks to limit the scope of fundamental rights must have a reasonable relationship with the objective sought to be achieved. In this case the court invalidated an emergency regulation which required prior police approval of any poster, handbill or leaflet.

The stance taken in this case was in stark contrast to earlier judgments which had upheld extensive discretionary powers conferred on Competent Authorities to seal presses and prohibit the publication of newspapers with hardly any examination of the merits.

2.4 International legal obligations

The government is legally bound to give expression in national laws to Article 19 of the ICCPR. The extent and the scope of Sri Lanka's obligations under international law are discussed in *Sri Lanka: State of Human Rights 1994*. Sri Lanka's extant laws relating to freedom of expression fall far short of the requirements of the ICCPR, and need to be reformed to guarantee, as a minimum, the international standards binding on Sri Lanka.

3. The Nature of the Mass Media in Sri Lanka

3.1 The press

According to statistics provided by the Press Council of Sri Lanka, there are 198 publications registered as newspapers in Sri Lanka. The

breakdown according to manner of publication and language medium is as follows:

	Sinhala	Tamil	English
Dailies	4	4	3
Weeklies	62	5	9
Bi-weeklies	12	2	2
Monthlies	40	6	7
Bi-monthlies	7		1
Others	19	7	8
Total	144	24	30

Source: Press Council of Sri Lanka

Due to the high literacy rate,¹⁰ newspaper readership is relatively high. Provisional statistics available for 1994 point to a daily circulation of 192,937 with a circulation rate of 169 per 1,000 persons per day.¹¹ Then, of course, each newspaper is read by many.

In the areas of the North under its control, the LTTE published its own newspapers and imposed strict censorship on any other news sources.

¹⁰ Literacy rate for males - 92.2%, for female - 85.2%, Statistics Department, Central Bank of Sri Lanka, Sri Lanka Socio-Economic Data 1995 (June 1995).

¹¹ Ibid.

3.2 The electronic media

In addition to the government-run Sri Lanka Broadcasting Corporation (SLBC), Sri Lanka Rupavahini Corporation (SLRC) and the semi-government Independent Television Network (ITN), there are a number of private radio and television channels. Private radio and television channels were opened up under the previous UNP government.

The number of private channels seems to increase each year. According to the Ministry of Media, Tourism and Aviation, there were four each of independent radio and television stations. While the radio channels broadcast mostly Sinhala and English programmes, the television stations broadcast a mixture of English (mostly re-runs of foreign programmes), Sinhala and Tamil programmes. The government radio service has several channels in the three languages as do the television services including ITN.

It is significant that most of the private channels now broadcast independent news programmes, breaking the earlier state monopoly over electronic news broadcasting. Also, private stations provide the public with easy access to foreign news services, including from the British Broadcasting Corporation (BBC) and the Australian Broadcasting Corporation (ABC).

4. The Exercise of Freedom of Expression in Practice

The PA administration has been credited with lifting, to a great extent, the cloud of fear under which Sri Lankan society had laboured during

the rule of the UNP, when self-censorship was rampant in all spheres of activity, and especially within media institutions. After the PA took office, exercise of freedom of expression saw an overall healthy resurgence. Both the print and the broadcast media improved, with more bold and critical coverage of governmental policies and of individual politicians, including President Kumaratunga herself. Popular tabloids which had openly supported the PA campaign during the 1994 general election continued their robust tradition of investigative journalism and raised questions regarding alleged governmental irregularities and absence of accountability. Broadcasts of independent news bulletins by the privately-operated electronic media, which commenced towards the end of the UNP administration, gradually improved in quality and have become robust components of the local news industry, which hitherto was monopolised by the state-run media institutions.

The new-found media freedom, however, did not proceed smoothly. During 1995 relations between the media and government soured.¹² The attention given to the President's private life in some political gossip columns was believed by many to have prompted her description of the manner in which media freedom was exercised as the "freedom of the wild ass."¹³ In February, she called for a code of ethics for journalists to be formulated by the government.¹⁴

¹² See below for a discussion of some of the relevant incidents.

¹³ *The Island*, 10 February 1995.

¹⁴ A Code of Ethics for journalists has been in existence since it was gazetted in 1981 (Gazette No. 162/5A of 14 October 1981). This Code had been formulated by editors and gazetted by the Press Council pursuant to powers granted to it by Section 30 (1) (a) of the Sri Lanka Press Council Law No. 5 of 1973. However, the existence of this Code does not appear to be widely known.

Pressure began to be put on journalists by the government. Several editors and journalists were questioned by the CID about their sources. Criminal defamation suits against at least two editors were initiated by the Attorney-General for publication of reports allegedly defamatory of the President. There were several reports of assaults on journalists, although the identity of the perpetrators has not been established. Journalists within the state-controlled media who attempted to chart an independent course, and others who were considered not to support the ruling party, were removed from their positions. Some of these incidents are discussed further below.

In September, with the launch of a fresh military offensive against the LTTE in the North, the government imposed censorship of reporting on security operations and activities of the armed forces, which is described below.

These trends towards greater control of the media do not bode well for the future of media freedom, or for freedom of expression in general. However, paradoxically, the government continued to state that its media policy would be implemented, promising greater media freedom in the future. These policy statements are discussed further below.

4.1 Harassment through legal action

Among the media personnel reportedly questioned by the CID in 1995 were the editors of the weekly *Sunday Times*¹⁵ and

¹⁵ *The Island*, 23 February 1995.

*Lakbima*¹⁶ and journalists belonging to the Upali Group of publishers,¹⁷ the newspapers *Hiru*¹⁸ and *Yugaye Janahanda*,¹⁹ and the Chairman of Extra Terrestrial Television (ETV).²⁰

The *Sunday Times* and *Lakbima* had published gossip columns alleging that the President had attended the birthday party of a male Member of Parliament in a prominent Colombo hotel, having entered through a back door, and that she had stayed until the early hours of the morning. The editors of both papers were indicted for criminal defamation of the President in the High Court of Colombo. An attempt at an out-of-court settlement in the *Sunday Times* case failed, and the editor was ordered to stand trial in early 1996.²¹ The editor of *Lakbima* was given bail in December.²² In October, the editor of the *Sunday Leader* was also indicted with criminal defamation of the President.²³

¹⁶ *The Island*, 9 March 1995.

¹⁷ Ibid.

¹⁸ INFORM Situation Report, March 1995.

¹⁹ INFORM Situation Report, September 1995.

²⁰ INFORM Situation Report, June 1995.

²¹ INFORM Situation Report, October 1995.

²² INFORM Situation Report, December 1995.

²³ *Ceylon Daily News*, 18 October 1995.

The Chairman of ETV was reportedly questioned about the broadcast of a statement allegedly defamatory of the Minister of Commerce and Trade,²⁴ while journalists as well as other personnel from *Hiru*, a Sinhala weekly, were questioned regarding a development between the students of Sri Jayewardenepura University and the police.²⁵ *Yugaye Janahanda* journalists were apparently questioned on suspicion that they intended to publish material defamatory of the President.²⁶ Personnel from the Upali Group of newspapers were questioned in September about the sources for a report on a meeting of the government parliamentary group, but they refused to divulge this information.²⁷

In November, while the military offensive was underway in the North, a foreign correspondent working for the Associated Press was detained at the Fort police station in Colombo, and police seized several of his video tapes. One tape reportedly contained an interview with Karikalan, the LTTE leader in Batticaloa. After the British High Commission intervened, the correspondent was released.²⁸ According to the Associated Press Office in Colombo, of the 16 tapes seized the police only released ten. The contents of the retained six tapes are not unknown.

²⁴ *The Observer*, 21 June 1995.

²⁵ INFORM Situation Report, September 1995.

²⁶ Ibid.

²⁷ Ibid.

²⁸ INFORM Situation Report, November 1995.

Another prominent incident was the "Kenneth Mulder affair." Although it did not pertain to media freedom, the incident highlighted the vulnerability of freedom of expression, especially in the context of the conflict in the North East. On the night of 21 July, police searched the offices of the National Christian Council in Colombo. They found leaflets with a computer-drawn picture of a bleeding white lotus, calling for a halt to civilian killings in the military offensive in the North.²⁹ The police confiscated the leaflets and arrested their author, Kenneth Mulder, an American student of theology. He was deported five days later.

These incidents indicate a pattern of harassment against the media using legal procedures (as opposed to the previous regime's use of extra-legal methods) which has created an unhealthy environment for the exercise of freedom of expression - despite the government's promises to ensure the freedom to exercise this right. It was heartening to note, however, that there was widespread public criticism of these incidents, which provoked considerable debate on such issues as the limits of free expression, whether the offence of criminal defamation should be retained, the manner in which media portrays female leaders,

²⁹ The white lotus is the symbol of the "Sudu Nelum" campaign launched by the government to promote its political proposals for solving the ethnic conflict. The campaign has also promoted activities aimed at boosting the morale of the armed forces.

and the responsibilities of media personnel and who should be responsible for setting them out.

4.2 Physical attacks on journalists

Several incidents of physical assaults on journalists were reported in 1995, the most prominent being the attack on *Sunday Leader* editor Lasantha Wickrematunge and his journalist wife Raine in February. The *Leader* had been consistently critical of the PA government. According to newspaper reports, the car in which the two were travelling was forced to stop by masked men. The Wickramatunges were both beaten and their car windscreen was broken. When Raine Wickrematunge raised cries, the assailants fled. Lasantha Wickrematunge suspected Sanath Gunethilaka, the Presidential Media Advisor, of being behind the attack as he had allegedly threatened him earlier. Gunethilaka vehemently denied the charge.³⁰ The government promised a full investigation, but police inquiries failed to identify the culprits.

In another incident, the editor of *Yukthiya* and several other journalists were assaulted when they went to cover a meeting of the Sri Lanka NGO Forum, a network of European and local NGOs which work on development and human rights in Sri Lanka. The journalists were beaten

³⁰ *The Island*, 8 and 11 February 1995.

by a mob which had surrounded the hotel at Bentota where the meeting was to be held and two needed hospital treatment. The mob was protesting about the meeting on the basis of allegations which had been publicised in both the state-owned and private press that the NGO forum sympathised with the LTTE, a charge which the forum denied. There was no conclusive evidence as to who had orchestrated the violent demonstration against the Forum meeting. The incident, while having serious implications for freedom of expression, had wider ramifications, especially for freedom of association and assembly.

Of particular concern was the press campaign against the NGO Forum, which alleged that it intended to tarnish the government's image. This campaign could well have encouraged the violence against the meeting, which effectively prevented it from taking place. When the organisers attempted to relocate the meeting in Colombo, mob violence again ensued after a private radio station mentioned the new venue in a news bulletin. The government eventually issued a statement regretting the violent incidents, but without assuming responsibility.³¹

Other reported assaults on journalists included two journalists from the Upali Group of Newspapers at the funeral of Clara Kumaratunga, the President's mother-in-law. The Minister of Media, Tourism and Aviation condemned the incident and assured it would be investigated.

³¹ *Ceylon Daily News*, 18 November 1995.

The police, however, concluded that there was insufficient evidence to go by, even speculating that the complaint was malicious.³² There is no known concrete evidence of who was behind these attacks.

The widespread condemnation of these incidents indicates that the public, fearful of a return to the violent past, has become more vigilant in insisting that the government take responsibility for preventing such attacks and for bringing the culprits to book, whoever they may be.

4.3 Harassment of journalists by employers

There were troubling reports of journalists being harassed by their employers in both state and private media institutions. For example, in June Kumaradasa Giribawa, senior journalist of *Lankadeepa*, a Sinhala daily published by the Wijaya Group of Newspapers and secretary of a trade union of employees of the group, was interdicted without inquiry or pay for comments he had made about the Wijaya Group to *Hiru*, another independent newspaper. This was seen as a move to stifle freedom of expression and the trade union rights of journalists by publishers.³³ He had obtained prior permission from his employers to give the interview.

In the state-owned newspaper sector, Manik de Silva, editor of the *Daily News*, an English daily published by Associated Newspapers of Ceylon

³² *The Island*, June 22 1995.

³³ *The Sunday Observer*, 4 June 1995.

Ltd. (ANCL), was removed from his post and appointed as a consultant to ANCL. His successor as editor was widely perceived as being a strong supporter of the Sri Lanka Freedom Party, the main constituent party of the PA. The newly-formed Editors' Guild of Sri Lanka urged the ANCL management to reinstate Mr. de Silva, stating that his removal constituted a blatant violation of the principle of media freedom.³⁴

Moves to control the programme content of the non-formal educational programmes of the SLBC Educational Services, which began in 1994, continued in 1995. When attempts at censoring the programmes, which were designed to probe issues of contemporary relevance, were met with defiance by the staff of the Educational Service, they were reportedly deprived by the SLBC authorities of the equipment and vehicles essential for their work.³⁵ In spite of positive assurances made by the Minister of Media, Tourism and Aviation, this situation eventually culminated in the interdiction of the Controller of the Educational Service, Tilak Jayaratne, and the restructuring of the unit in a manner which would apparently assure compliance with directives issued by the government-appointed hierarchy of the SLBC.³⁶

³⁴ INFORM Situation Report, November 1995.

³⁵ Article 19, "Words into Action, Censorship and Media Reform in Sri Lanka", Issue 39 (March 1995) p. 12.

³⁶ INFORM Situation Report, February 1995.

4.4 Formal Censorship

On 21 September, shortly after the military launched a major offensive to take control of the city of Jaffna from the LTTE, the President imposed censorship on military news under emergency powers.³⁷ The censorship remained in force for three months, until after the offensive was over and Jaffna was in the hands of the Sri Lankan military. In justifying the censorship, the government maintained that the media had acted irresponsibly in reporting on military matters, but cited no specific instances of such reporting.

In addition, both local and foreign journalists were barred from visiting the conflict areas. This ban on access continued after the censorship was lifted, which meant that there was hardly any access at all to independent accounts of events in the North and no means of verifying the conflicting versions put out by the government and the LTTE.

The regulations coupled with the refusal to allow journalists or human rights organisations to visit the conflict area were not merely detrimental to the protection of human rights and humanitarian standards. As the CRM has said, to deny correct information on what is happening on the military front is to impair the ability of citizens to

³⁷ Emergency (Restriction on Publication and Transmission of Sensitive Military Information) Regulations, No. 1 of 1995 (Gazette No. 889/16 of 21 September 1995).

come to responsible decisions on the political front. CRM pointed in particular to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information.³⁸

The relevant emergency regulation made it an offence for editors and publishers of newspapers and persons in charge of broadcasting or television stations, whether in or outside Sri Lanka, to publish any material relating to operations by the armed forces and the police, or relating to the procurement of arms by such forces, the deployment of troops or personnel or the deployment or use of equipment including naval vessels and aircraft by such forces. On 28 September the scope of censorship was broadened to prohibit reporting of any matter relating to the official conduct or performance of any member of the armed forces or the police.³⁹

Although at first the censorship applied to both local and foreign press, it was lifted with respect to the foreign press on 26 September.⁴⁰ However, foreign journalists remained barred from travelling to the North. Private local television stations which re-broadcast news bulletins from international news organisations such as the BBC or the ABC did not retransmit their news items on Sri Lanka, however, as they

³⁸ See Chapter III, n 22 and accompanying text for details.

³⁹ See Chapter III on Emergency Rule for further details on these regulations.

⁴⁰ *The Daily News*, 26 September 1995.

could not submit them for prior scrutiny and feared prosecution. However, the privileged few with direct access to satellite transmissions could nevertheless tune in directly to these broadcasts. International perspectives and reports on Sri Lanka which were available to the public in other countries were thus generally denied to the public in Sri Lanka.

The censorship was widely criticised by media and human rights groups as being overly broad (in applying to the entire spectrum of military activity) and unwarranted; as denying the public their right to information; and as exceeding legitimate interests in protecting national security.⁴¹ For example, the Free Media Movement ran a full page advertisement in newspapers with the cry "Censorship Begins Another Era of Repression: Defend the People's Right to Know."

Many journalists complained that the censorship was implemented in an arbitrary manner, and that there were no clear guidelines on how the regulations were to be implemented. Issues which did not come within the purview of the emergency regulation imposing the censorship, such as criticism of the censorship itself, were also censored at times. In addition, reports on the impact of the war on civilians - including the number and condition of the hundreds of thousands of people displaced - were censored.⁴² The arbitrariness and inconsistency of the censor

⁴¹ See Chapter III on Emergency Rule.

⁴² See Article 19, *Silent War: Censorship and the Conflict in Sri Lanka* (London, 1996).

was clearly demonstrated by the censor approving a news item on one occasion and censoring the same item on another.

The constitutional implications of the censorship were open to debate. One question, of course, was that emergency rule was declared only in certain areas of the Island, whereas the censorship affected the whole country.⁴³ Another question was the constitutionality of the extent of the censorship, given the judgment in the *Joseph Perera* case⁴⁴ mentioned above, as the emergency regulation banned publication of any item pertaining to the issues specified.

In *Wimal Wickremasinghe v. Edmund Jayasinghe et. al.*,⁴⁵ the petitioner, a former UNP cabinet minister and now the chief editor and publisher of the newspaper *Janajaya*, brought a fundamental rights case claiming that the "blanket censorship" violated his right to free expression including publication guaranteed under Article 14(1)(a) of the Constitution. Furthermore, he argued that the censorship was implemented in a discriminatory manner in that the state-controlled media and foreign media did not have to submit news items to the Competent Authority but could regulate themselves, unlike the private media, and that this violated his right to equal protection of the law and non-discrimination guaranteed by Articles 12(1) and (2) of the Constitution respectively.

⁴³ See Chapter III on Emergency Rule.

⁴⁴ *Supra* note 2.

⁴⁵ SC App. No. 592/95.

The Supreme Court refused to grant leave to proceed on the basis that the petitioner had not made a *prima facie* case. In the opinion of the Court, the censorship was not a "blanket censorship" as the powers of the Competent Authority were discretionary and not automatic; in other words, except for information deemed to be sensitive, not all news pertaining to the ongoing military operations were censored. In any event, the petitioner had himself chosen not to publish any news items relating to military matters. As such, he had not been prevented from publishing his newspaper and nor had he been subjected to prosecution for any offence. He could not claim the right to publish whatever he wished without any restrictions, given the circumstances prevailing in the country.

The Court further distinguished the facts of the present case from those in the ground-breaking *Joseph Perera* case. It argued that unlike in the latter case, the current case had arisen against the backdrop of a civil war raging in the country.⁴⁶ Further, the court considered that the emergency regulation in question did provide specific guidelines regarding the censorship and that clearer guidelines "may not be demanded in the present circumstances." The court also distinguished this case from the *New York Times v. US*⁴⁷ on the basis that although prior censorship of classified material on American policy on the

⁴⁶ The Joseph Perera case, however, arose during one of the biggest security threats facing the Sri Lankan state, which was confronted by two bloody uprisings at the time: one in the North East and the other in the South of the Island.

⁴⁷ [1971] 403 U.S. 713.

Vietnam war was found by the United States Supreme Court to be unconstitutional, the issue, in that case, had been governmental policy in the affairs of a foreign state. Citing *The Zamora*,⁴⁸ the Court seemed to favour the position that the executive was the best judge of the necessary measures where national security was concerned.

One could, with due respect to the Court, question the position it took, especially concerning the reasons it gave for distinguishing this case from the *Joseph Perera* and *Sunday Times* cases. There was certainly a public need to check the extent of the censorship as the emergency regulation in question was phrased extremely broadly. Even if the court was of the opinion that the extent of the censorship was within constitutional limits, the validity of the arbitrary manner in which it was implemented ought to have been tested.

4.5 Unofficial Censorship

"Unofficial censorship" refers to censorship imposed by the state authorities in an arbitrary and *ad hoc* manner, unlike official censorship, the policy of which is made public.

In its report *Words into Action: Censorship and Media Reform in Sri Lanka*, published in March 1995, Article 19, the International Centre

⁴⁸ [1916] 2 A.C. 77.

⁴⁹ See Article 19, *Words into Action* and Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995) Chapter VIII.

Against Censorship, pointed to troubling instances of unofficial censorship engaged in by the new government in the latter part of 1994 and early 1995 (i.e. the first six months of the PA administration). Harassment of the SLBC Educational Service, which began in 1994,⁴⁹ reached its peak in 1995, culminating in the interdiction of the Controller of the service and the ending of the independent, cutting-edge non-formal programmes which the service had introduced. On 6 February, the Deputy Director General (Programmes) of the SLBC stopped a programme while it was on air, and ordered music to be played instead. On 18 February, contrary to assurances given by the Minister of Media, Tourism and Aviation, the Controller was removed from his post on the technicality that he had given listeners an address other than that of the SLBC to write regarding a programme. By circular No. SLBC/2344 the service was restricted to broadcasting only formal educational programmes.⁵⁰

This sequence of events was in direct contrast to the government's stated liberal media policy. A listener filed a fundamental rights petition before the Supreme Court⁵¹ arguing that his right to receive information - which is inherent in the freedom of expression clause in the Constitution⁵² - had been violated by the ban on broadcasting non-formal education programmes. The Supreme Court granted leave

⁵⁰ Description of events based on interviews with relevant personnel. See also publication of Article 19, *supra* at note 49, pp. 11-13.

⁵¹ *Wimal Fernando v. Sri Lanka Broadcasting Corporation*, SC App. No. 81/95.

⁵² See *supra* text under sub-heading "The 1978 Constitution."

to proceed with the case which was scheduled to be heard in early 1996. Two instances were also reported where the customs authorities acted as censor by withholding two journals. The Tamil-language edition of an issue of *India Today* was impounded on the basis that it contained a statement about the LTTE attributed to President Kumaratunga which she had denied making. Eventually the issue was released with the offending page torn out. Interestingly, the English-language issue had not been impounded.⁵³ Later in the month an issue of the *Far Eastern Economic Review* was withheld because it contained an allegedly controversial report on Sri Lanka. The issue was later released after the Ministry of Media, Tourism and Aviation had decided that the report was not controversial after all.⁵⁴

5. The Implementation of the Government's Proposed Media Reforms

In November 1994, the PA government had announced a new, cabinet-sanctioned media policy which expanded on the assurances relating to media freedom contained in the PA election manifesto. By the end of that year the Minister of Media, Tourism and Aviation had appointed four committees to make recommendations on the implementation of this policy.⁵⁵

⁵³ *The Island*, 3 March 1995.

⁵⁴ *The Island*, 20 March 1995.

⁵⁵ See Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995) pp 122-124.

Even while the incidents discussed above were taking place, the government continued to promise to introduce reforms to better guarantee freedom of expression, ranging from strengthening media freedom and improving the quality of journalism in the country to constitutional and legal reform. The committees appointed by the Minister of Media, Tourism and Aviation on various aspects of media reform submitted reports in 1995 (see below), but very limited action had been taken on them by the end of the year. However, the government did take a few concrete steps to provide media personnel with better facilities. In February, the establishment of the Lake House Journalism Training and Research Centre was reported,⁵⁶ to provide training and research facilities to journalists and the public. In May, the President declared open the National Information Centre, intended as an "open house" or a "press club" providing research, communication and computer facilities to media personnel.⁵⁷ If these centres function well they will fulfil a long-felt need for better facilities and training opportunities for journalists.

5.1 Constitutional reform

As pointed out in the 1994 Report, there are many deficiencies in the existing constitutional guarantee of freedom of expression, especially

⁵⁶ *Ceylon Daily News*, 16 February 1995.

⁵⁷ *Ceylon Daily News*, 5 June 1995. INFORM Situation Report, May 1995.

when compared with Sri Lanka's obligations under Article 19 of the ICCPR.⁵⁸ The government's media policy statement pledged to reform constitutional provisions affecting media freedom.

In early 1995, the Ministry of Justice and Constitutional Affairs issued its first working draft of constitutional reforms for consideration by the Parliamentary Select Committee on Constitutional Reform, which made little change to the existing guarantee of freedom of expression under the 1978 Constitution [Article 14(1)(a)], although it did add explicit reference to freedom of information. It failed to include the right to hold an opinion, and did not elaborate on the right to information, as contained in Article 19 of the ICCPR:

...this right shall include the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

Further, it continued to provide unacceptably broad grounds for limiting free expression, including in the interest of parliamentary privilege, contempt of court or for prevention of obscenity. The new proposed right to information could be further limited in the interests of privacy, state privilege or official secrecy [proposed Article 15(1)(c)], grounds which far exceed those recognised as legitimate in international law. In addition, the right would continue to be guaranteed only to "citizens" rather than to all "persons."

⁵⁸ See supra section 2.4 on "International Legal Obligations".

The first working draft was particularly disappointing⁵⁹ because it significantly weakened the more progressive formulation which the Minister of Justice and Constitutional Affairs had released on 22 November 1994, which had guaranteed freedom of speech and expression to "every person" and incorporated the right to information as fully elaborated in the ICCPR. It had further declared that:

The right of expression may not be restricted by indirect methods or means, such as by the abuse of Government or private controls over newsprint, radio broadcasting frequencies or implements or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

The only restrictions envisaged in the November draft had been those prescribed by law as necessary in the interest of racial and religious harmony, or in relation to contempt of court, defamation or incitement to an offence. None of the welcome advances contained in the November draft were present in the first working draft issued in early 1995.

Given the unsatisfactory nature of the first working draft, several human rights organisations lobbied parliamentarians, urging them to

⁵⁹ For example see "Civil Liberties and Constitutional Reform: A Memorandum by CRM for Persons Concerned with the Current Select Committee Process" (February/March 1995) CRM Document E 2/7/95.

advocate a new formulation of the constitutional guarantee of freedom of expression which would guarantee the right as contained in Article 19 of the ICCPR. In May 1995,⁶⁰ the government issued its second working draft of the constitutional chapter on fundamental rights. This incorporated an improved freedom of expression clause. According to the Minister of Justice and Constitutional Affairs, the second working draft took into consideration the representations made to the Parliamentary Select Committee by various political parties.⁶¹

The scope of the substantive right to freedom of expression in the second working draft is consonant with the ICCPR, except that the right to "seek" information and to enjoy the right to information "regardless of frontiers" is absent. The limitation clause incorporates the welcome feature of requiring that restrictions shall be only "as necessary in a democratic society." Surprisingly, however, restrictions would still be permitted on the basis of "maintaining the authority of Parliament."⁶² The other grounds on which restrictions would be permitted if this draft is adopted are: national security, public order, racial and religious harmony, protection of the reputations of others, preventing confidential information and maintaining the authority and impartiality of the judiciary. The fate of these proposals is uncertain, however.

⁶⁰ Published in the *Sunday Observer*, 21 May 1995.

⁶¹ Ibid.

⁶² This feature of the freedom of expression clause has been singled out for criticism in a commentary on the second working draft prepared by the Centre for the Study of Human Rights, University of Colombo.

5.2 Proposals of the committees examining media reform

The four committees appointed on media reform all presented reports with recommendations in the course of 1995. However, the report of the committee on legal reform was an "interim" report, and the committee's second report had not been completed by the end of the year. On the whole, the recommendations advocated loosening state control of the media and providing better facilities, training and working conditions for media personnel.

5.2.1 The committee on broadbasing ANCL

This committee comprised academics, lawyers and journalists with a mandate to make recommendations on the manner in which ANCL ownership should be broadbased. Hitherto, this publishing house - the largest of Sri Lanka's newspaper publishers - has functioned as a government monopoly. The committee held public sittings to entertain proposals from journalists' associations, trade unions, individual journalists and the public. The committee's report was submitted to the Minister of Media, Tourism and Aviation in April and was summarised in the *Sunday Observer*, an ANCL newspaper, of 16 April 1995.

The committee prefaced its report with the key observation that the law which established the ANCL was never intended to be created as a government monopoly; it envisaged the divestment of shares temporarily acquired by the government to the public. In any event, no

person could own more than 2% of the shares. However, to date the government has owned approximately 88% of the shares through the Public Trustee. The report stressed the need to broadbase ANCL not only to end state control but also to ensure public, and especially workers', participation in management and to achieve journalistic excellence.

The committee recommended a revamping of the law to enable the following distribution of share ownership: 20% of the shares to be reserved for ANCL employees; 15% to be held by a trust comprising the Public Trustee and nominees of Vice-Chancellors of national universities, the Organization of Professional Associations, organisations representing media personnel, and the Constitutional Council;⁶³ the shares currently held by individuals would remain intact; the remaining shares would be sold through a public share issue.

Further, under the committee's proposals, no individual or company would be entitled to hold more than 25,000 shares. Only Sri Lankan citizens and companies with a majority of Sri Lankan share holding would qualify to purchase shares. The price of shares would be determined, as far as possible, to ensure maximum public participation in the purchase.

The company would have a directorate comprising 11 members, selected in a manner which would broadbase participation in the

⁶³ See *supra* Chapter I, n 6.

operation of the company. Six would be elected by the share-holders; there would also be one nominee each of journalists (including editors) employed by ANCL, other employees of ANCL, the trust, the Minister of Media, Tourism and Aviation and the leader of the opposition. The chairperson would be elected by the directors. The report stressed that the manner in which the directorate is constituted would necessarily ensure editorial independence.

The publication of the recommendations provoked some debate. The recommendation to sell shares through the stock exchange was criticised on the basis that it would limit participation to persons or groups of particular social and economic strata with vested interests. By the end of the year, the government had not stated whether it intended to proceed with these recommendations.

5.2.2 The committee on the National Media Institute

This committee was mandated to study the needs of media personnel to improve their skills, training facilities and professional education, and to look into the role that a National Media Institute (NMI) could play in fulfilling those needs. It was also required to make recommendations with regard to the structure, administration and financing of the institute as an autonomous body. The appointment of this committee is very significant as the need to foster greater professionalism among media personnel and to improve the quality of journalism is keenly felt.

In its report dated 27 November 1995, the committee recognised the dearth of specialised training facilities for media personnel and recommended the establishment of a NMI to cater to the training needs of print as well as electronic media personnel. The proposed NMI would provide courses for career journalists as well as part-time journalists. The report went on to state that "[a] National Media Institute must necessarily give primacy to the objective of professionalism" as in the case of law and medical schools.⁶⁴ It recommended that the state should make a substantial financial input into the establishment of the NMI without prejudice to its status as an autonomous body. It recommended that the NMI be established as an autonomous national institution by an Act of Parliament.

5.2.3 Committee on the working conditions of journalists

This committee had a mandate to report on the working conditions of journalists involved in both the print and electronic media, and presented its report in November. It was summarised in the *Sunday Observer* of 3 December 1995.

The committee recommended an immediate increase in journalists' salaries by 15%, and a new salary structure. It had also advocated the provision of other benefits including bonuses, insurance, loan facilities, travel allowances, scholarships, medical facilities and telephone facilities. A pension scheme for journalists, customs duty

⁶⁴ Report of the Committee for the Establishment of a National Media Institute (November 1995) p. 17.

concessions relating to the importation of equipment used by journalists and the establishment of a Journalism Council were also among the recommendations.

5.2.4 The committee on law reform relating to freedom of expression

This committee reportedly presented a preliminary report to the Minister of Media, Tourism and Aviation in March 1995. It was reproduced by the *Sunday Times*, a private newspaper, of 13 November 1995. The recommendations made a strong case for strengthening the existing constitutional guarantee of freedom of expression by reformulating it in line with Sri Lanka's obligations under Article 19 of the ICCPR.⁶⁵ It further recommended that the restrictions imposed on members of the armed forces and police in exercising freedom of expression under the current Constitution should also be removed.

The committee also called for extensive reform of existing statutory law impinging on freedom of expression. It recommended the repeal of: the Official Secrets Act; Section 16 of the Press Council Law which prohibits the publication of various matters including cabinet proceedings and decisions; Section 118 of Penal Code which deals with the offence of bringing the President into contempt; Section 479 of the Penal Code which recognises the offence of criminal defamation; the

⁶⁵ See discussion on p. 58.

four amendments to the Parliamentary (Powers and Privileges) Act which, *inter alia*, confer judicial powers on parliament regarding offences relating to contempt and also provisions in the parent Act itself which include within the concept of contempt defamatory statements reflecting on parliament or the conduct of a member of parliament in respect of his or her conduct as a member. The committee also recommended a narrowly drawn-up reformulation of the offence of sedition under Section 120 of the Penal Code.

An important recommendation concerned the need to introduce judicial review of legislation via the constitution as a safeguard against encroachments on rights by parliament. On the other hand, the committee also recommended the adoption of a specific Contempt of Court Act to delineate the parameters of the contempt of court doctrine and the *sub judice* rule, to prevent restriction of freedom of expression by the judiciary.

The committee stated its intention to produce a second report dealing with the need for a Freedom of Information Act, the adoption of a Media Council Act (instead of the Press Council Law), a statutory right of reply and issues relating to the electronic media. This report had not been submitted by the end of 1995.

The government's response to the recommendations contained in the preliminary report are not known. However, the government's media policy had promised reform of the specific statutes referred to by the

committee, and this intention was publicly reiterated by the Minister of Media, Tourism and Aviation several times during the year.⁶⁶

6. Initiatives of Media Personnel

There were several initiatives by media personnel to organise themselves better. Three new media organisations were inaugurated in 1995. In April, the Foreign Media Journalists' Organisation was set up.⁶⁷ In October, both the Editors' Guild⁶⁸ and the Newspaper Society of Sri Lanka⁶⁹ - including the state-controlled ANCL and private publishing companies - were launched. Most of these organisations, like the Free Media Movement earlier, have emerged as watchdogs protesting against encroachments of media freedom. Together, they could form a formidable lobby group to enhance media freedom.

In April, newspaper publishers were reported to be contemplating the establishment of an independent media training institute. It is not known whether this initiative will be co-ordinated with the proposed media institute recommended by the government-appointed committee.

7. Conclusions

The situation in 1995 regarding freedom of expression, and media freedom in particular, could at best be described as a paradox. On the

⁶⁶ *Ceylon Daily News*, 9 August 1995.

⁶⁷ INFORM Situation Report, April 1995.

⁶⁸ *Ceylon Daily News*, 13 October 1995.

⁶⁹ *Sunday Island*, 1 October 1995.

one hand the "fear psychosis" which had silenced Sri Lankan society under the previous UNP government has gradually dissipated since the PA took office, and a bolder brand of journalism has emerged. The government publicised a liberal media policy in keeping with its election promises and has proposed constitutional reforms including an enhanced guarantee of freedom of expression in keeping with Sri Lanka's international obligations. The government also seemed, in principle at least, to be committed to institutional reform to strengthen media freedom, as well as to providing improved facilities to media personnel.

Yet on the other hand, serious questions about the government's commitment to media freedom were raised by such events as the persistent questioning of media personnel by the CID, the hurried serving of criminal indictments against newspaper editors for alleged criminal defamation of the President, the imposition of sweeping censorship on military news under emergency powers and the use of other forms of unofficial censorship. This was all the more disappointing because of the high expectations raised by the new administration when it took office, and the fact that media freedom had been one of the PA's rallying calls during the 1994 election campaign.

This paradox appears to result from advocating liberal values without fully appreciating their substance or spirit. The government does not appear to appreciate that freedom of expression protects both popular and unpopular ideas and information, or that public personalities should

expect to bear criticism with a higher level of tolerance than others. At the same time, there is also a clear need for greater professionalism among media personnel, who would also benefit from a greater sense of social responsibility. It is to be hoped that the new training initiatives will address these needs.

The challenges ahead are enormous. The government now has possession of the valuable recommendations of the media committees to strengthen freedom of expression and media freedom. It remains for the government's rhetoric on these issues to be translated into reality. For this to happen in a meaningful way, however, there has to be a sound appreciation of all that is involved in respecting freedom of expression.

V

Judicial Protection of Human Rights

1. Introduction

The 1978 Constitution of Sri Lanka clearly defines its commitment to the protection of fundamental rights in Article 4(d) which states that: "the fundamental rights which are by the Constitution declared and recognised shall be respected, secured and advanced by all the organs of Government."

In Article 3 the sovereignty of the people is said to include "the powers of Government, fundamental rights and the franchise." However, the fundamental rights embodied in Chapter III of the Constitution are restricted by Articles 15 and 16. These provide far broader grounds for restriction than are permitted under the ICCPR, and also specify that any existing law remains valid regardless of any inconsistency with the fundamental rights chapter of the Constitution.¹

¹ The failure of Sri Lanka's Constitution to fulfil the state's obligations under the ICCPR is discussed more fully in Law & Society Trust, *State of Human Rights 1993* (Colombo, 1994) Chapter 3 and in Law & Society Trust, *State of Human Rights 1994* (Colombo, 1995) Chapter IV.

Article 126 of the Constitution confers on the Supreme Court the:

sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognised by Chapter III or Chapter IV

of the said Constitution. This is further strengthened by Article 17 which states that every person shall be entitled to apply to the Supreme Court as provided by Article 126.

Thus, the Supreme Court, which has island-wide jurisdiction, is the primary mechanism to deal with violations of fundamental rights. In order to proceed with an application, however, prior leave to proceed must be obtained from the Supreme Court.

2. Proposed Amendments to the Constitution

The proposed amendments to the Constitution,² if adopted, would make many welcome alterations to the fundamental rights chapter of the Constitution, the most significant proposed addition being the recognition of the right to life. At present, the Constitution provides in Article 17 for redress to be sought for violations of fundamental rights resulting from "executive and administrative action." Another important proposed change is the replacement of "executive and administrative action" with state action, which would widen the scope of violations of fundamental rights for which redress may be sought.

² The proposed amendments discussed here are those issued in May 1995 by the Parliamentary Select Committee on Constitutional Reform.

In addition, it is proposed to extend the time limit within which an application must be made to the Supreme Court to three months, as the present time limit of one month has debarred many applications being made to the Supreme Court.

Many other welcome changes are also proposed. These include, for example, recognition of the right to privacy (draft Article 14), the right to hold property (draft Article 21), the right to communicate with a relative or friend of choice when arrested [draft Article 10(4)], that bail should not be excessive and the right of a person to be charged or released without undue delay [draft Articles 10(7) and (8)].

The inclusion of the right to life, probably the most important amendment, would be a very effective weapon in the hands of an active and innovative judiciary. It could be used to develop areas of law like environmental law, as has been done in India by such judges as Justice Bhagwati and Justice Krishna Iyer.

However, the proposed fundamental rights chapter is still far from perfect. It contains defects and omissions which should be rectified to make the Constitution a more effective safeguard of the fundamental rights and freedoms of the people against abuse of power by the government and its agencies, and to bring it fully into line with Sri Lanka's obligations under the ICCPR and the ICESCR.

3. Case Law

An analysis of the fundamental rights cases decided during 1995 shows an interesting divide between violations of Articles 11³ and 13 (1) and 13 (2)⁴ on the one hand, and violations of Article 12⁵ on the other. Violations of the former category constituted the majority of cases.

Most cases were brought against members of the police force for alleged violations of Articles 11, 13(1) and 13(2). The other cases involved the violation of Article 12; only two cases involved Article 14, regarding violations of freedom of speech, assembly and expression.

3.1 Cases under Article 11: freedom from torture and cruel, inhuman or degrading treatment or punishment

A distinction can be made between cases brought against the police and those brought against other state officials. The case of *Parakramage Douglas Bandara v. Wickramasinghe et al* ⁶ constituted a departure from the usual kind of cases filed under Article 11, where the respondent is generally a member of the police force. It was instituted by a 17 year-old student who alleged that he had been assaulted by the Deputy Principal, the Vice Principal and a teacher of

³ Freedom from torture or cruel, inhuman or degrading treatment or punishment.

⁴ Freedom from arbitrary arrest and detention.

⁵ Equality before the law and freedom from discrimination.

⁶ SC Application No 190/94.

his school. In addition to sustaining physical injuries, the student, who had never had any psychiatric illness before, had to be admitted to Mulleriyawa Mental Hospital.

One issue that the Supreme Court had to decide was whether physical abuse of a student by school teachers constituted a violation of fundamental rights by "executive or administrative action," within the meaning of Article 17. Applying the formula adopted in *Vivienne Goonewardene v. Perera*,⁷ Justice Kulatunga came to the conclusion that the alleged violation of fundamental rights was committed under "the colour of office" and that the alleged acts did amount to cruel and degrading treatment, thus constituting a violation of Article 11.

Justice Kulatunga in his judgment stated that,

in view of the seriousness of the dereliction and the issues involved I am unable to accept the claim ... that the impugned acts involved disciplinary action not violative of fundamental rights.

The petitioner's claim was upheld and compensation and costs amounting to Rs 60,000 were awarded.

⁷ FRD (11) 426 at 438. Here Justice Soza said: "The State no doubt cannot be made liable for such infringements as may be committed in the course of personal pursuits of a public officer or to pay off his personal grudges. But infringements of fundamental rights committed under colour of office by police officers must result in liability being cast on the State."

In deciding cases involving violations of Article 11, the judiciary expressed its sense of frustration at the continuing incidence of such violations, and at the failure of the State to take effective preventive action. In deciding the case of *Abasin Banda v. Sub Inspector of Police Hanguranketha*,⁸ which involved the violation of Articles 11, 13(1) and 13(2) by the police, Justice Amarasinghe made explicit reference to Sri Lanka's obligations under international human rights law, by referring to provisions of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which Sri Lanka ratified in January 1994.⁹ In deciding whether Article 11 of the Sri Lankan Constitution had been violated or not, he referred to the fact that:

Article 2.1 of the United Nations Convention on Torture, which entered into force for Sri Lanka with effect from 2 February 1994, requires the State to take 'effective legislative, administrative, judicial or other measures to prevent acts of torture' Sri Lanka has enacted legislation [Act No. 22 of 1994] making 'torture' an offence.

He went on to stress that the Convention against Torture requires the State to adopt educational programmes and certain procedural steps to prevent torture and other acts of cruel, inhuman or degrading treatment or punishment.

⁸ SC Application No 109/95.

⁹ Articles 2, 10, 11, 12, 13 and 16 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In his judgment, Justice Amarasinghe questioned the effectiveness of requiring perpetrators to contribute towards the compensation awarded by the court as a deterrence against future acts of torture. He pointed out that judicial condemnation of fundamental rights violations had so far had little effect:

Judicial condemnation and the imposition of sanctions by way of requiring transgressors to personally contribute towards the compensation assessed by the Court as being just and equitable in the hope that other persons may be deterred from violating Article 11 of the Constitution has meant very little. The Court's sense of frustration has been openly expressed.

He emphasised that the State should adopt a comprehensive approach to preventing torture if satisfactory results are to be achieved.

Justice Kulatunga expressed similar sentiments to Justice Amarasinghe with regard to continuing violations of fundamental rights by the police and called upon the government to take appropriate action to arrest the situation:

I wish to add that infringements of fundamental rights by the police continue unabated even after nearly 18 years from the promulgation of the 1978 Constitution and despite the numerous decisions of this Court which have condemned such infringements. As this Court has observed in previous judgments, this situation exists because police officers

*continue to enjoy an immunity from appropriate departmental sanctions on account of such conduct. It is hoped that the authorities will take remedial action to end this situation.*¹⁰

3.2 Cases under Articles 13(1) and (2): freedom from arbitrary arrest and detention

Articles 13(1) and 13(2) of the Constitution provide that nobody shall be arrested except according to the procedure established by law; that persons arrested shall be informed of the reason for their arrest; and that all persons held in custody shall be brought before a judicial authority according to the procedure established by law, and shall not be further detained except upon an order of such an authority.

In *Senaratne v. Senior Superintendent of Police, Criminal Investigation Department et al*¹¹ the Court had to consider three main issues: whether there were reasonable grounds for arrest; whether reasons for arrest were given; and whether the detention in question was unreasonable. With regard to the first issue, the Court stated that proof of the commission of an offence is not required for an arrest to be made, as the arrest can be made on the basis of suspicion. However, the Court specified that,

the suspicion must not have been of an uncertain and vague nature, but of a positive and definite character providing

¹⁰ *Abasin Banda v. Sub Inspector of Police Hanguranketha*, SC Application No 109/95.

¹¹ SC Application No 18/95.

reasonable grounds for concluding that the Petitioner was concerned in the commission of the offences.

It concluded that the arrest had not been made in accordance with the procedure laid down by law and therefore constituted a violation of Article 13(1).

As regards the second issue, the Court laid down the test that must be applied. The Court stated that:

The constitutional right only to be given the reasons for arrest is not satisfied by giving any kind of explanation. A reason for depriving a person of his personal liberty within the meaning of Article 13(1) of the Constitution must be a ground for arrest. There can be no such ground other than the violation of the law or a reasonable suspicion of the violation of the law.

Finally, the Court had to determine whether the detention of the petitioner was unreasonable. The Court stated that a person who is detained in custody beyond the prescribed maximum time or beyond a reasonable time cannot be considered as a person arrested in accordance with the procedure established by law. Such a detention would violate Article 13(1).

As regards Article 13(2), the Court stated that the question of the legality or unlawfulness of the detention, which is integral to the act of

arrest, is immaterial in deciding whether this Article has been violated. Article 13(2) requires any person held in custody, detained or otherwise deprived of personal liberty to be brought before the relevant court - the Magistrate - according to the procedure established by law. The Article is concerned with protection against the extension of executive detention beyond the 24 hours provided by law without judicial intervention.

The Court did not always decide that delay in producing prisoners before a Magistrate constituted a violation of Article 13(2), however. In *Hewa Mudiyansele Milan et al v. Sub Inspector, Crime Branch et al*¹² the Court came to the conclusion that, under the circumstances of the case, the arrest in question was not illegal and that although there had been a delay in producing the petitioners before a Magistrate, the delay of two-and-a-half hours was insufficient to constitute an infringement of Article 13(2).

3.3 Cases under Article 12: the right to equality before the law and freedom from discrimination

Quite a number, and variety, of cases involved the alleged violation of Article 12. Most of these cases were in relation to Article 12(1), some to Article 12(2) and some involved both Article 12(1) and 12(2).

¹² SC Application No 139/94.

¹³ SC Application No 222/94.

*Wickremanayake v. Sri Lanka Telecom et al*¹³ involved an application under Article 12(1)¹⁴ by a person who had not been selected for a training course in Japan. The main allegation was that no proper selection process had been put in place by Sri Lanka Telecom; bad faith or an improper motive were not alleged.

In *Jayawardena v. The Board of Investment of Sri Lanka et al*,¹⁵ the petitioner alleged that he had not been given equal opportunity to apply for a particular post. One allegation was that the person appointed, who was a respondent in the case, did not satisfy the criteria stipulated in the advertisement for the job; the other was that, since the post had not been advertised a second time (after it had not been filled the first time round), the petitioner had been deprived of the opportunity of being considered for the post. The Court found for the petitioner, declaring that his fundamental right to equality under Article 12(1) of the Constitution had been infringed.

In *Amirtharajah v. The Commissioner-General of Inland Revenue et al*,¹⁶ the Court decided that the petitioner's fundamental right under Article 12(1) had been violated by the arbitrary denial of the retirement benefit to which he was entitled.¹⁷

¹⁴ Equality before the law.

¹⁵ SC Application No 267/94.

¹⁶ SC Application No 64/95.

¹⁷ Similarly, *Godawela v. GA Trincomalee et al* (SC Application No 208/95/FR) involved non-payment of a pension. The Court held for the petitioner on the ground that the pension had been withheld in an arbitrary manner.

The privatisation of government agencies was seen to have a direct impact on employees' ability to seek redress through the Supreme Court for infringements of fundamental rights. The Supreme Court has jurisdiction over infringements "by executive or administrative action," which in *Rajaratne v. Air Lanka* was held to mean State action or actions of bodies which are agencies or instrumentalities of the State.¹⁸ In *Don Sunil Daya Batugahage v. National Development Bank of Sri Lanka*¹⁹ the Court had to decide whether the actions of the bank - which had been privatised - fell within its jurisdiction. Citing the *Rajaratne v. Air Lanka* judgment, the Court held that although it had been a government agency at its inception, the character of the National Development Bank had changed as a result of an amendment to its principal Act in 1992, which had in effect privatised it. Therefore, the actions of the bank could not be considered executive and administrative action as the bank was no longer a government agency. The Court referred here to the control test and the functional test in order to determine whether a particular action constituted executive or administrative action.²⁰

In *Upaliratne et al v. Co-ordinating Secretary to Hon Col Ratwatte and 21 others*,²¹ a case alleging discrimination on political grounds under

¹⁸ 2 Sri L.R. 128 (1987).

¹⁹ SC Application 138/95.

²⁰ The former test evaluates the degree of governmental control over an institution and its financial resources; the latter looks at the powers, duties and functions of an institution in order to determine if it is governmental in nature.

²¹ SC (FR) Application No 86/95.

Article 12(2), some "time keepers"²² in Kandy alleged that they had been forcibly evicted from their jobs and that supporters of the ruling Peoples' Alliance had been employed in their place. In holding for the petitioners, the Court yet again took the opportunity of pointing the finger at the activities of the police:

The Police function fulfills a most fundamental obligation of Government to its constituency. Public safety, the maintenance of public order and the preservation of peace and tranquillity depend not only on the existence of adequate laws but also on the way in which it is applied.....

By necessity the State has cloaked policemen with substantial discretionary power. The Police may classify persons and draw lines in the application of laws, but discrimination must not be based upon impermissible criteria or arbitrarily used to favour or burden a group of individuals.

3.4 Applications under Article 14: freedom of expression

In his leave to proceed with a fundamental rights application, Dr Wimal Wickramasinghe alleged that his rights as editor and publisher of the newspaper *Janajaya*, guaranteed by Articles 12(1), 12(2) and 14(1)(a) of the Constitution, had been infringed by the application of

²² "Time keepers" are persons who gather data from the field in order to assist the Transport Ministry of the Central Provincial Council to regulate private omnibuses and see that they arrive and depart on time.

Emergency (Restriction of Publication and Transmission of Sensitive Military Information) Regulations No 1 of 1995, which imposed a censorship on the reporting of military and police activities. The Court refused leave to proceed with the application on the grounds that the occasion and the manner of imposing the censorship were not arbitrary and that in a war situation of this dimension, the petitioner cannot claim the freedom to publish all news without restriction.²³

4. Remedies

The remedies awarded by the Supreme Court in the event of a successful claim range from a mere declaration of the violation by the Court to an award of compensation plus costs. It is interesting to note that when compensation is awarded, the Court orders that it be paid by the State as well as by the individual respondents. The human rights community has argued for some time that the Court should order compensation to be paid solely by the respondents as this would both punish the individuals concerned, and serve to deter others from committing such violations in the future. The comments of Justice Amarasinghe in *Abasin Banda v. Sub Inspector of Police Hangu ranketha*, however, recognise the limited effect that awarding compensation has had as a deterrence if the state is unwilling to take broader preventive action, including education, to remedy the situation.

²³ For a detailed discussion of the case, see Chapter IV on Freedom of Expression and Media Freedom.

The petitioner in *Senaratne's Case*²⁴ claimed compensation and costs to the value of five million rupees. However, he was only granted relief by way of a declaration²⁵ as the Court felt that no useful purpose would be served by awarding compensation in that case. A sum of Rs 15,000 was ordered by way of costs.

In *Parakramage Douglas Bandara's Case*,²⁶ on the other hand, the Court considered that in view of the seriousness of the abuse and the effects - both mental and physical - it had on the petitioner, compensation and costs to the value of Rs 60,000 should be awarded.

Thus, in deciding on the relief to grant to the petitioner, the Court takes into account such factors as: the seriousness and the nature of the violation; the circumstances of the case and the effect the abuse had on the petitioner; whether remedial action is possible; and whether the State should take any further action. Sometimes, a mere declaration of the Court that the violation has been committed is considered adequate relief.

5. The Proposed National Human Rights Commission and its Impact on the Jurisdiction of the Supreme Court

In August of 1995, a Bill was placed before parliament with the aim of setting up a National Human Rights Commission. The previous UNP

²⁴ See supra n 11.

²⁵ The Court stated that its finding of the violations of Articles 13(1) and 13(2) constituted just satisfaction.

²⁶ See supra n 6.

government had repeatedly assured the UN Human Rights Commission of its intent to establish a Human Rights Commission, but had not done so. Shortly after the PA government came to power in 1994, the Foreign Ministry announced the new government's intention to create such a body.

The human rights community in Sri Lanka has expressed considerable concern about the creation of a National Human Rights Commission in the absence of other substantive action being taken to protect human rights. There is concern that no evaluation has yet been made of the effectiveness of existing human rights mechanisms within the country, and that a new human rights commission might just represent a proliferation of such mechanisms, with potential problems of overlapping functions, without any increase in effectiveness.²⁷ At present the state institutions relating to human rights protection include: the Supreme Court; the Ombudsman; the HRTF; the Human Rights Centre of the Sri Lanka Foundation; the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights; and the Commissions of Inquiry into disappearances.

There are many weaknesses in these existing mechanisms, including their inadequate powers, inadequate infrastructure and inadequate funds,

²⁷ See for example Civil Rights Movement of Sri Lanka, *A National Human Rights Commission for Sri Lanka? A question of needs and priorities*, E 01/2/96 (Colombo, February 1996) and Deepika Udagama, "Human Rights Commission Bill (1995)," *Law & Society Trust Fortnightly Review*, Vol. VI, Issue No. 6 (Colombo, October 1995) pp. 13-17.

and the fact that their recommendations are often not implemented. Rather than creating yet another institution which may prove as ineffective as the others, it might therefore be better to correct the defects and weaknesses in those which already exist, and to ensure proper co-ordination between them.

One major concern with the Bill, which demonstrates the concern that no proper attention has been paid to the impact of one human rights institution on another, is that it could erode the fundamental rights jurisdiction of the Supreme Court. At present, Article 126(2) of the Constitution requires that to be admissible, applications regarding alleged violations of fundamental rights must be made to the Supreme Court within one month of the alleged violation taking place. If a victim were first to apply to the Commission for redress, his or her ability to pursue a fundamental rights case in the Supreme Court might be barred because of the delay. Victims could thus potentially be deprived of an important remedy that is currently available to them. The Bill has no provision addressing this problem. It is of great importance to ensure that a new commission, if created, will not diminish the fundamental rights jurisdiction of the Supreme Court.

Amnesty International has expressed concern that the creation of national human rights commissions should not detract attention from other important areas of human rights protection, all of which are relevant to the Sri Lankan situation:

The creation of a national human rights commission can be an important mechanism for strengthening human rights protection but can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial and adequately resourced and accessible judiciary. The creation of such a human rights commission should go hand in hand with a thorough review of existing legal and other human rights institutions in order to make these more effective instruments of human rights protection. These initiatives should be accompanied by a determined government policy aimed at holding the perpetrators of human rights violations fully accountable, thus ensuring that those who violate human rights cannot do so with impunity.²⁸

6. Conclusion

Although in 1995 there were no landmark cases which broke new ground or revolutionised the law relating to fundamental rights, the Supreme Court continued its very important task of protecting the fundamental rights of the people, as the primary provider of relief in respect of violations of fundamental rights. It has time and time again called upon the government to take appropriate action to arrest abuses of

²⁸ Amnesty International, *Proposed Standards for National Human Rights Commissions*, AI Index: IOR 40/01/93 (January 1993). See also Amnesty International, *Sri Lanka: The Human Rights Commission Bill*, AI Index: ASA 37/25/95 (December 1995).

police power; it is now time for these calls to be heeded. If the government proceeds with its proposed National Human Rights Commission, it must first resolve the issue of the relationship between the jurisdiction of the Supreme Court and the proposed Human Rights Commission, and ensure that the jurisdiction of the Court would in no way be eroded or undermined. The Supreme Court, being the highest court in the judicial hierarchy of Sri Lanka, plays a vital role in the protection of fundamental rights. The jurisdiction of each institution needs to be clearly defined and demarcated in order to avoid confusion. If, however - as the Supreme Court itself has pointed out - the government lacks the political will to adopt comprehensive policies to stop abuses of power by executive and administrative action, even a strong and independent judiciary cannot be fully effective. It is not a proliferation of human rights institutions that is needed, but political determination and the strengthening and co-ordination of the existing institutions. The importance of an independent judiciary to oversee and provide relief in respect of violations of fundamental rights cannot be over-emphasised.

VI

Workers' Rights

During the year the issue of workers' rights was brought to the limelight with the adoption of the National Workers' Charter. The Chapter discusses the salient features of the Charter and two separate sections are devoted to Trade Unions and the Rights of Plantation Workers, the latter being addressed for the first time in the State of Human Rights Report.

Except where indicated in this Chapter, the labour legislation in force during 1995 remained as described in Chapter X of *Sri Lanka: State of Human Rights 1994*. International standards applying to workers' rights, and the extent to which Sri Lanka complied with these, were explained in *Sri Lanka: State of Human Rights 1993*. It should be noted that in July 1995 the government ratified International Labour Organisation (ILO) Convention No. 87 on Freedom of Association and Protection of the Right to Organise, which was a welcome development.

1. The National Workers' Charter

On 2 September 1995 the Minister of Labour and Vocational Training, Mahinda Rajapakse, presented the text of a new National Workers' Charter to President Kumaratunga. The creation of the Charter

fulfilled a pledge made by the PA in its 1994 election manifesto. The PA had promised to formulate and implement an Employees' Charter which would include compulsory recognition of trade unions, the strengthening of collective bargaining and the establishment of a National Wages Commission. The Charter is not legally binding, but expresses the government's intent with regard to labour policy. It contains the pledge that it will be implemented through legislative reform, but by the end of the year no progress had been made in its implementation.

The government had ratified ILO Convention No. 98 in relation to collective bargaining in 1972, but not the important Freedom of Association and Protection of the Right to Organise Convention (No. 87), because public servants in Sri Lanka were prevented from federating, which was a restriction inconsistent with that Convention. However, the UNP government had decided in 1993 to amend the relevant provisions in the Trade Unions Ordinance and to ratify ILO Convention No. 87. Although the Convention was ratified in July 1995, amendments to the Trade Unions Ordinance had not been made by the end of the year.

The preamble to the Workers' Charter expressed the government's commitment to the ideals contained in the Declaration of Philadelphia¹

¹ The Declaration of Philadelphia, adopted by the ILO in May 1944 sets out the aims and objectives of the ILO. It is referred to in Article 1 of the ILO Constitution, and forms an annexure to its Constitution.

and Conventions adopted by the ILO. It placed emphasis on the following ideals drawn from the UDHR:

- * The right to work, with free choice of employment, just conditions of work and protection against under-employment;
- * Non-discrimination in applying the principle of equal pay for equal work;
- * Just remuneration supplemented where necessary by other forms of social protection; and
- * The right to form and join trade unions.

The Charter is divided into eight parts dealing with different aspects of employment² and a ninth part which declares that the state would ensure the effective implementation of the Charter by enacting new legislation or amending existing enactments. The Charter is intended to cover all employees in Sri Lanka and to ensure them equality of status and protection from discrimination.

Part 1 of the Charter, entitled "Basic Human Rights - Freedom of Association and the Right to Organize and Bargain Collectively," says that the State shall, *inter alia*:

² The eight parts are: Freedom of Association and the Right to Organise and Bargain Collectively; Employment Services; Wages, Terms and Conditions of Employment; Labour Administration; Industrial Relations; Social Security; Employment of Women, Children and Young Persons; Welfare of Workers. The ninth part is entitled "Legislation".

- (a) guarantee and provide the right of workmen to form and join Trade Unions, and to organise and bargain collectively;
- (b) ensure that employers recognise Trade Unions and deal with them on matters pertaining to their members. Anti-Union discrimination by employers will be made an unfair labour practice.

This provision addressed the PA's promise in its election manifesto that it would not use emergency regulations "to deal with workers' strikes," as had been done previously. It was argued that most disputes in the recent past had been engendered by the failure of employers to recognise trade unions, and that workers had often resorted to demonstrations, which sometimes turned violent, to compel employers to accept trade unions.

Part 1 also promises that "appropriate measures for equality of opportunity and treatment of workers" will be ensured by the state, which is intended to address allegations that employees working in Free Trade Zones (FTZ) could not enjoy the right to association which was accorded to their counterparts in other employment sectors. Despite the constitutional guarantee of the right to join a trade union, this right is not fully recognised in the FTZ areas. The Board of Investment and employers have vehemently argued that freedom of association and the right to bargain are enjoyed in the FTZs, under unique arrangements in the FTZs through the mechanism of employee councils. According to

this argument, employee councils are freely chosen and are in effect trade unions, though not in the traditional sense as understood in Sri Lanka. However, they are not trade unions as defined in the Trade Unions Ordinance as they have never sought registration under the Ordinance.

Part 2 of the Charter deals with employment services and highlights human resource development, the care of migrants and disabled persons. As a large number of Sri Lankans seek employment abroad, the government deliberately linked vocational training and migrant workers in the same section of the Charter. Part 2 also requires the state to implement the national policy on rehabilitation of disabled persons.

Part 3 deals with wages and terms and conditions of employment. By and large, it attempts to reflect changes which have taken place in the law through the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 and its judicial interpretation over the years. Employers had unsuccessfully campaigned against this Act from its inception and had adopted various ruses to overcome the protection it offers to workers, such as using apprentices, trainees and fixed-term contracts to avoid the consequences of permanent employment. The Charter thus clearly defines who can be designated as a trainee, a contracts employee (employees on fixed-term contracts are usually referred to in this form) and a temporary worker. It specifies that "[t]he employment of workers in the guise of apprentices or trainees for regular employment will be prohibited."

One issue in Part 3 which had caused concern to employers related to the closure of a business. An earlier draft of the Charter had sought to make dues to employees a first charge of the company's assets. The government accepted the arguments of employers, removed the words "first charge" from the text, and instead adopted the undertaking "that it would ensure that an employer who closes down his establishment should fulfil his obligations under the law, in relation to unpaid wages, EPF, ETF,³ gratuity entitlements."

Part 4 deals with labour administration, and promises "an adequate labour inspection service" to assist in the enforcement of labour laws, and the creation of a process of tripartite consultation through the National Labour Advisory Council to strengthen labour administration.

Part 5 deals with industrial relations and promises the promotion of and strengthening of conciliation and mediation mechanisms to settle disputes and a speeding-up of the procedures adopted by Labour Tribunals and arbitrators. It also states that the all-important Industrial Disputes Act will be reviewed "keeping in mind the present day requirements and the needs of economic development, yet guaranteeing security of employment to workers." This final proviso recognises the fact that some flexibility in the labour market may be warranted by economic conditions, but that in effecting change the state must be mindful of workers' security of employment.

³ Employees' Provident Fund and Employees' Trust fund respectively.

In view of the fears expressed by employers that the Charter would be too heavily weighted in favour of employees, the government included a commitment in Part 5 to bring into force a Code for Industrial Harmony. The state appeared to accept a need for workers and their trade unions to co-operate and act in a responsible way, so that the protection of workers extended under the Charter would not be interpreted as giving them unrestrained freedom which might result in breaches of discipline.

Parts 6 and 7 look at issues of welfare, family responsibility and social justice. Part 6 deals with social security, and includes the intention to establish a social security scheme for workers after retirement. Part 7 deals with the working conditions of women, children and young persons. Part 8 - entitled "Welfare of Workers" - recognises the need for the state to provide workers with infrastructure such as housing, transport and medical facilities at work. In recent times the lack of housing, transport and adequate medical services has created considerable pressure on employers to increase wages and benefits. This in turn pushes up the cost of production and has a direct bearing on the competitiveness of local industry.

While the trade unions were generally satisfied with the Charter, several trade organisations - notably the Federation of Chambers of Commerce and Industry of Sri Lanka and the Ceylon Chamber of Commerce - protested about its contents.

2. Trade Union Rights

In reviewing developments relating to trade union rights during 1995, this section focuses on the National Workers' Charter, and - in so far as

they would affect trade unions if introduced - the proposals issued in May 1995 for changes to the fundamental rights chapter of the Constitution. It also briefly reviews trade union activities in 1995. The discussion of the Workers' Charter in this section is concerned only with those aspects which have a bearing on trade unions. The Charter as a whole is discussed in a separate section.

2.1 The National Workers' Charter

The preamble to the Charter specifically affirms that everyone has the right to form and join trade unions for the protection of his/her interests, as stated in the UDHR. It further affirms the government's commitment to the 1944 Declaration of Philadelphia; to the various ILO standards; and to ratify further ILO Conventions wherever possible. The Charter also contains a commitment on the part of the government to protect the right of workers to organise.

The two principles contained in Part 1 of the Charter⁴ already have some recognition in Sri Lankan law. The present Constitution also guarantees the right to form and join trade unions, though subject to specified grounds for restrictions on this right.⁵ Further, the

⁴ See the section on the Workers' Charter.

⁵ See *infra*.

termination of workers' services purely on the basis of union activities has already been held unfair by the Labour Tribunal. The new departure for Sri Lanka in Part I of the Charter, then, is the declaration that anti-union discrimination will *per se* form an unfair labour practice.

Part 5 of the Charter, on Industrial Relations, includes the requirement for the state to ensure, and to take necessary steps to provide, special facilities for national level trade unions. However, it does not specify the nature of the facilities that will be provided. Adequate inspection services to "assist workers and employers" in the implementation of the labour laws are promised in Part 4 of the Charter, which deals with Labour Administration.

Most trade unions have welcomed the Workers' Charter in principle. However, they were concerned that the delay in presenting the Charter to the President may have indicated a lack of will on the part of the government to actually implement it.

As the Charter was drafted in consultation with trade unionists, it addressed most of their aspirations, including: security of tenure, social security measures for workers (including those who have retired), implementation of existing labour standards across the board, equality of opportunity, maternity benefits and other welfare provisions. The Charter is recognised as a breakthrough in that it may apply equally to both the public and private sectors.

Part 9 of the Charter - on legislation - expresses the government's intention to amend existing laws which are contrary to the provisions of the Charter and also promises to enact new laws where necessary. However, it gives no time-frame for these reforms, and a change of government before it is implemented could seriously undermine the Charter's effectiveness.

2.2 Applicability of the Charter

The Workers' Charter is the result of detailed consultations between the Department of Labour officials and workers' and employers' representatives. As a statement of intent, it is welcomed by most trade unions. However, it only affirms the government's concern for workers' rights and provides a statement of principles for the development of future policy and legislation; it is not a legally binding document. The Charter imposes a moral duty upon the government to implement its provisions effectively through law reform. The challenge now facing the trade unions will be to monitor its implementation.

2.3 Changes affecting workers' rights

The Public Service Union secured some changes for their members, particularly for women, with improved provisions for pregnant and lactating women. These changes were introduced by the Ministry of Public Administration through circulars, the provisions of which can be changed at any time.

The circulars permit women in the public service who work eight hours a day to work half an hour later and leave half an hour earlier than their regular hours after their fifth month of pregnancy. During lactation, they have the right to an hour off during work-time to feed their babies.

By being restricted to women who work eight hours a day, these new provisions will not apply to a high proportion of women in public service, including women teachers (who constitute a high proportion of working women). The utility of an hour off work for lactating mothers is also questionable, as many women commute to work and there is a lack of creche facilities at workplaces.

2.4 The proposed revisions to the fundamental rights chapter of the Constitution

As part of the process of constitutional change initiated by the government, various proposed versions of a new chapter on fundamental rights have been issued by the government, which are under consideration by the Parliamentary Select Committee on Constitutional Reform appointed by the government in 1994. The Select Committee has also received representation from political parties and the public. The proposals for reform considered here are those issued by the Select Committee in May 1995. They would have various impacts on trade unions, and are considered here in comparison to the provisions of the present Constitution.

2.4.1 Contents

The proposed changes to the fundamental rights chapter of the Constitution include the following features. Many of the rights which currently apply to citizens only would be extended to all persons. The blanket restrictions on most rights under the present Constitution would be revised, with each right enumerated together with the restrictions placed upon it, in separate clauses. The scope of application under the Constitution regarding violations of fundamental rights would be drastically changed by these proposals, if implemented.

The present Constitution provides under Article 14(1) that every citizen is entitled to the freedom of peaceful assembly; the freedom of association; and the freedom to form and join a trade union.

The restrictions at present are two-fold. Under Article 15(7), all the rights protected by Article 14 can be restricted:

by law in the interests of national security, public order and the protection of public health and morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.

The separate rights contained in Article 14 can also be restricted on certain specified grounds under other provisions of Article 15. The

right to freedom of peaceful assembly can be restricted "in the interests of racial and religious harmony" [Article 15(3)]; the right to freedom of association can be restricted "in the interests of racial and religious harmony or national economy" [Article 15(4)].

The range of permissible restrictions on these rights is currently broader than is envisaged under the ICCPR, to which Sri Lanka is a party. In particular, the ICCPR requires the restrictions to be "necessary in a democratic society" for the interests being served, and does not include "the just requirements of the general welfare of a democratic society" as a ground for restriction.

Article 17(1) of the proposed fundamental rights chapter states that "Every person is entitled to the freedom of peaceful assembly." The restrictions on this right provided in the proposed Article 17(2) are the same as under the present Constitution, except for one important difference. The restrictions would be brought in line with the principles of the ICCPR as being "necessary in a democratic society," rather than "the just requirements of the general welfare..." as is the case at present.

Article 18 of the proposed fundamental rights chapter states that every person is entitled to the freedom of association. Every citizen is entitled to the freedom to form and join a trade union. These rights under Article 18 would be subject to the same restrictions as the right to freedom of peaceful assembly. The proposal made in late 1994 that the freedom to form and join trade unions could be restricted in the interest

of the national economy was not included in the May 1995 proposals. The only problem with the May 1995 proposals is that the right to form and join trade unions is applicable only to citizens.

Article 23(1) of the proposals would provide for blanket restrictions on the fundamental rights contained in the Constitution by law (including emergency regulations) in time of "public emergency." However, unlike at present, the proposed Article would require these derogations to be limited

... to the extent strictly required by the exigencies of the situation, provided that such measures do not involve discrimination solely on the grounds of race, language, caste, national or social origin.

Article 22 of the proposals would continue to permit restrictions to be imposed by law on the exercise of the rights declared in Articles 17 and 18 (among others) by members of the armed forces, police force and other forces charged with maintaining public order, "in the interests of the proper discharge of their duties and the maintenance of discipline among them." This is identical to the provisions in Article 15(8) of the present Constitution.

2.4.2 Applicability

Under the present Constitution, only persons alleging violation of their fundamental rights, or their lawyer, can apply to the Supreme Court for

inquiry into the matter under Article 126 of the Constitution. Thus, a trade union is barred from applying to court on behalf of its members. This is quite unlike the normal labour laws of the country where a union is permitted to apply to the Labour Tribunal, Industrial Court, Commissioner of Labour, the Court of Appeal and the High Court on behalf of its members. These restrictions on *locus standi* prevent the initiation of group actions or public interest litigation, as has been effectively used in India to redress the problems of many marginalised and impoverished groups of workers.

Article 26 of the May 1995 proposals would remove this restriction. The proposed Article envisages applications being made on behalf of people who are otherwise unable to apply themselves "by reason of physical, social or economical disability or other reasonable cause..." Such third party actions could be brought by any relative or friend of the aggrieved person, and the Article also specifically provides for group actions "in the public interest."

2.5 Review of trade union activities in 1995

Both 1994 and 1995 saw a significant increase in well-organised, successful trade union activity. The labour movement as a whole seems to be finally recovering from the twin blows it suffered in the 1980s: the repercussions of the general strike in 1980 and of the insurrection in the South in the late 1980s, in the course of which many trade union leaders were killed.

Trade unions were active in developing the Workers' Charter, and the Public Service Union achieved important progress in the interest of their female membership, especially regarding maternity rights and rights of pregnant women, as described above.

Unions have not always found themselves free to associate, however; some peaceful demonstrations in 1995 were disrupted by police. Workers at the Blue Diamond factory, for example, alleged that police and others assaulted them while they were holding a peaceful meeting on 26 November 1995 at a temple close to the factory.

The increased activism on the part of workers in their demands for fairer working conditions, however, has also revealed a distressing side-effect of the repression of the 1980s. Workers have recognised the increased space now available for them to articulate demands and to review their position. As in 1994, however, their methods of vocalising demands have, in some instances, included criminal acts such as kidnapping, and have seriously damaged labour relations in Sri Lanka.

In the privatised graphite mines in Bogala, workers kidnapped their supervisors and kept them inside the mines under extremely dangerous conditions for over 24 hours with threats to harm them unless their demands were met. Supervisory staff were similarly "kidnapped" at several other places of work, and there have also been acts of sabotage committed by workers. Criminal charges have been brought against the perpetrators of several such acts.

Although several trade unions have made significant progress in recognising the rights of women, and many of them have an almost 50% female membership, the representation of women at decision-making level in trade unions remains extremely low. In addition, trade unions seem unable so far to take on issues concerning the most marginalised sectors of the work force, including part-time and home workers, child-workers, migrant workers, and agricultural and domestic labour.

2.6 Conclusion

Several key issues concerning workers' rights remain to be addressed. The main challenges at present lie in legal and constitutional reform. First, it is essential that the government's undertakings in the Workers' Charter are implemented in such a way as to ensure the full protection of workers' rights in keeping with Sri Lanka's obligations under international human rights law. Revisions to the Constitution should ensure that the rights to freedom of association, expression, and to form and join trade unions are fully protected, and that no restrictions on these rights are permitted which exceed those envisaged under the ICCPR and ILO standards. Third party applications to the Supreme Court should also be permitted in fundamental rights cases.

3. Human Rights and Plantation Workers in Sri Lanka

3.1 Introduction

In any country it is the under-privileged sections of the society whose rights are most violated. In Sri Lanka the Tamil plantation workers constitute one such community. They suffer from on-going violations of civil and political rights, compounded by the effects of long-term

socio-economic deprivation which was intensified by their being disenfranchised immediately after independence in 1948. This section traces the development which has relegated this community to an inferior status in relation to the rest of the population: the denial of their civil and political rights through disenfranchisement led to their being deprived of economic and social rights, which in turn made it more difficult for them to organise and to improve their situation.

This sequence of events is briefly traced as background to the present situation for workers in the plantations. It is illustrated with reference to the present status of education of Tamil children in the plantation areas, as there is a direct link between lack of education and the under-development of this community. Estate housing is also examined, as it provides another example of the denial of a basic human right to a whole community.

Two major events during 1995 had an adverse impact on the already fragile human rights situation in the plantations: (1) the intensification of the North East conflict after the break-down of the peace negotiations in April; and (2) the launch of the second phase of privatisation of the plantations in mid-1995. The impact of these two events on human rights in the plantations is discussed later.

3.2 Human Rights Violations - The Beginnings

3.2.1 Early History - An Overview

According to the last Census of Population (1981), Up Country Tamils constituted 5.5% of the total population of Sri Lanka. It is estimated that about 80-85% of this population are plantation workers.

At independence in 1948, the majority of the Island's Up Country Tamils, along with the rest of the population, were British subjects. As such, they had the right to a nationality as citizens of Ceylon (as Sri Lanka was then called), a colony of Great Britain. The parents and grandparents of most plantation workers were also residents of Ceylon. Thus during the colonial era there was no discrimination against this community in respect of political rights.

The rise of the labour movement during the 1930s witnessed large sections of plantation workers being drawn into trade union and political activities, often allied with the left parties. This enabled them in 1947 to elect seven members of their community to the State Assembly and influence the outcome of the vote in about 20 other constituencies. The community began gradually to emerge from the captive labour situation in the plantations to which they had been confined during the colonial era. However, they were deprived of civil and political rights through new citizenship laws enacted in 1948 and 1949, which put an abrupt end to this process and relegated them once again to the confines of the plantations.

3.2.2 Citizenship rights

The deprivation of citizenship violated the Up Country Tamils' right to a nationality; they became stateless, deprived of political rights, which in turn paved the way for the denial of their economic and social rights. The life and living conditions of the whole community were adversely affected. They are yet to recover from this major setback.

The citizenship laws were so rigid that few Up Country Tamils, especially the plantation workers, could qualify for citizenship. The position of the stateless persons - which included the overwhelming majority of the plantation workers - remained unresolved for over 15 years, and even then outstanding issues remained unaddressed. In October 1964, under the Sirima-Shastri Pact, the Sri Lankan and Indian governments agreed that out of the total Up Country Tamil population of 975,000, Sri Lanka would confer citizenship rights to 300,000 persons and repatriate to India 525,000, who would receive Indian citizenship. This left the decision on the remaining 150,000 stateless people to be made later. The Pact was reviewed in 1974, and the two governments agreed to accept a further 75,000 persons each. These decisions were reached without any consultation whatsoever with those affected or their leaders.

For a variety of reasons, the Sirima-Shastri Pact was not implemented as planned. In addition, it was discovered that far fewer people applied for Indian citizenship than had been envisaged in the Pact. Only in 1986 and 1988 were the citizenship laws amended to increase the numbers eligible for Sri Lankan citizenship from 300,000 to 469,000.

The 1988 citizenship legislation⁶ entitled any stateless person of Indian origin who had not applied for Indian citizenship and who was lawfully resident in Sri Lanka to obtain a Certificate of Citizenship. However,

⁶ Grant of Citizenship to Stateless persons (Special Provisions) Act No. 39 of 1988.

the Act also said that nobody could be required to produce such a certificate for any purpose. Instead, if required to do so, such a person could produce a sworn affidavit that he or she is a citizen. The affidavit would be accepted as adequate proof of citizenship unless otherwise proven by anyone challenging it.

However, although the issue of statelessness and the right to a nationality have now been largely resolved legally, Up Country Tamils still contend that the disabilities which they were subjected to in their everyday life while stateless, especially in their dealings with the government, still linger on. For example, government Gazette notifications inviting applications for vacant posts in the public services still stipulate that the applicant must provide proof that he or she is a citizen of Sri Lanka by descent or registration, despite the fact that the 1978 Constitution was supposed to do away with such a distinction.⁷

Without political rights, the plantation workers had for decades no way in which they could participate in the government of the country through their elected representatives. Consequently, they had very little

⁷ The 1978 Constitution is contradictory in this regard. On the one hand, it did away with the earlier distinction between citizenship by descent and citizenship by registration; but it also specified that certain discriminations which were imposed on citizens by registration under the 1948 Citizenship Act still applied. This means that discriminatory provisions relating only to citizens by registration remain in force. The great majority of Up Country Tamils are citizens by registration.

influence on the policies and programmes of successive governments, which tended to be populist and therefore responsive mainly to the demands of voters from the majority community. Plantation Tamils were thus denied access to their due share of the education, health, housing and other services which were a monopoly of the state, and for which there were competing claims in the context of limited resources. In this way, the denial of political rights led to the denial of economic and social rights to this community. It is ironic that a substantial part of the resources to provide infrastructure and state services for the rest of the population came from the surplus generated by plantation labour.

The Up Country Tamil community, even at the time of independence, was one of the most under-privileged communities in the Island. With the denial of political rights for several decades, and the associated denial of economic and social rights, the community remained severely disadvantaged in comparison with other sections of the population.

It should, however, be mentioned that some meaningful steps have been taken to improve the life and living conditions of the plantation workers, especially since the 1980s. The introduction of equal pay for equal work in 1986 was a major breakthrough in addressing gender discrimination among the plantation workers. The Social Welfare Programme for improving health (mother and child-care), water supply, sanitation and housing, funded by grants from the Norwegian and Netherlands governments and implemented in the state-owned

plantations, contributed to improved health conditions among the plantation workers. This project still continues. The Plantation Schools Education Development Programme, funded by the Swedish International Development Agency (SIDA), which began in the mid-1980s and is still on-going, has contributed to improving the primary education of the children of plantation workers.

However, the backlog is so great and the resources available so limited that it will take several decades before the standard of living of the community as a whole is raised to the national level. This is illustrated below by examining educational and housing provision in the estate areas.

3.2.3 Education

The disadvantaged status of the Up Country Tamil community in comparison with the rest of the population is especially marked in the field of education. Education plays an important role in human development, whether in respect of an individual, a community or a nation. In view of its importance, the right to education is recognised as a fundamental human right, enshrined in Article 26 of the UDHR and Article 13 of the ICESCR.

The vast strides made by Sri Lanka in the field of education in the 1940s and the 1950s were unsurpassed in the region. However, equal access to education was denied to the plantation community. During

the colonial era and for decades after, education remained the responsibility of the estate management, who saw no need for an educated workforce and assigned a low priority to educating the children of plantation workers. Most estate schools were poorly equipped and staffed; most had only a single teacher and catered only up to Year Three.

With a great deal of prodding by community leaders, the estate schools were finally taken over by the government in 1975. But the quality of schooling was so low - as described below - and the resources available so limited that it will take several decades for the standards of the Tamil schools in the plantation areas to be raised to the national level.

The neglect of Tamil schools in the plantation areas is best illustrated with reference to the Nuwara Eliya District, which has the largest concentration of Tamil plantation workers. In 1992, the most recent year for which data is available, the Sinhala and Tamil populations comprised 187,280 and 317,600 respectively. Yet the number of Sinhala medium and Tamil medium schools was 220 and 258 respectively (i.e. one school for every 851 of the Sinhala population compared to one school for every 1,231 of Tamil population). Not only were there fewer schools proportionate to the Tamil population than the Sinhala, but there was also considerable disparity in the type of schools provided. There were 38 1AB grade Sinhala-medium schools, which conduct classes up to Advanced Level, while there were only nine such

schools in the Tamil medium. The number of students studying in Sinhala-medium Advanced Level classes was 2,871, whereas there were only 457 students in Tamil-medium Advanced Level classes. The situation today is unlikely to be very different from 1992, and is also similar in the other five districts where there is a sizeable concentration of Tamil plantation workers. There is also an acute shortage of qualified teachers in Tamil-medium schools in the plantation areas, as illustrated in the tables below.

Teacher/Pupil Ratio (Number of pupils per teacher)

District	Sinhala Schools	Muslim Schools	Tamil Schools
Nuwara Eliya	18.87	21.50	43.88
Kandy	20.04	20.85	32.37
Matale	20.12	23.06	29.44
Badulla	17.98	21.99	36.44
Ratnapura	23.00	21.50	36.59
Kegalle	17.95	17.38	27.99

Trained / untrained teachers in the six districts listed above

Total no. of teachers	46,350	3,268	4,397
No. of untrained teachers	14,697	871	2,869
Percentage of untrained teachers	31.7	26.6	65.2

Source: School Census Report, Ministry of Education 1992

The poor educational facilities in plantation areas have contributed to low educational achievement among the estate population in comparison with the urban and rural sectors of Sri Lanka. For

example, in 1992 literacy rates in the estate sector were 66.1%, compared to 87.1% in the rural sector and 92.3% in the urban sector.⁸

Employment in the public services in Sri Lanka remains highly competitive. The lack of adequate educational facilities for plantation youth has placed them at a serious disadvantage and has contributed to the gross under-representation of this community in the public services, as shown in the table below.

Ethnic group	Population ratio	Percentage employed in state services	Percentage employed in provincial services	Percentage employed in semi-government services
Sinhala	73.9	91.2	87.7	88.1
Sri Lankan Tamil	12.7	5.9	7.1	8.2
Up Country Tamil	5.5	0.1	0.2	0.5
Moor	7.0	2.0	4.6	2.2
Other	0.9	0.8	0.4	1.0

Source: Census of Public Sector and Corporation Sector Employment 1985, Department of Census and Statistics, 1992.

Another important factor relating to the employment of Up Country Tamils in the public services is that only a very few of them occupy senior positions; the vast majority are confined to the minor grades.

⁸ Department of Census and Statistics, Labour Force and Socio-Economic Surveys (1992).

The under-representation of Up Country Tamils in the public service is part of a vicious circle which perpetuates disadvantage. In a political context where ethnic, caste and other group loyalties predominate, minority groups with least representation, and therefore least influence in the state services, are placed at a serious disadvantage in getting their share of the services provided by the state. In the long run, their disadvantageous position is reinforced. This can be illustrated with reference to the fate of two educational projects specifically designed for the welfare of this community: the Sri Pada College of Education and the Vocational Training Centre project at Hatton.

The German government, which funded the Sri Pada College of Education project, recognised that the Indian Tamils in Sri Lanka's tea plantation area are a particularly disadvantaged population group primarily due to the inadequate basic and further training of the teachers. A new college of education was intended specifically to remedy this situation. However, when the construction phase of the project was over, and disregarding the original objectives of the project, the authorities adopted a quota system for college entry in 1992, with 25% of places being reserved for Sinhala students from the plantation area. In making this change, there was no consultation with those whom the project was originally intended to benefit. The name of the college was also changed from the neutral "Kotagala College of Education" to "Sri Pada College of Education," a name with majority-community

Buddhist connotations, thus adding a majoritarian cultural overtone to the whole project.

Apart from the Sri Pada College of Education, in the Island as a whole there are six colleges of education where the medium of instruction is Sinhala, and two Tamil-medium colleges of education: one in Vavuniya and the other in Batticaloa. In addition, there is a college of education in the East catering exclusively to Muslim students. The geographical distribution of these colleges and the media of instruction indicate that the interests of all the language and ethnic groups have been reasonably catered for, with the exception of the Up Country Tamils.

In this context, the plantation Tamils perceived the imposition of a quota system at the Sri Pada College as tantamount to the distortion of a foreign-funded project meant specifically to serve the needs of their community. Their agitation proved futile and the quota system still remains, thus reducing plantation Tamils' opportunity of access to professional education.

The case of the proposed Vocational Training Centre at Hatton provides an example of lack of political will to proceed with a project intended to benefit the plantation youth. There are a large number of vocational training centres - a minimum of one in each district - established and maintained by the government, including six in the plantation areas of Ratnapura, Badulla, Nuwara Eliya, Kandy and Kegalle. The medium of instruction in all these institutions is Sinhala. This, combined with

the relatively high educational qualifications stipulated for entry, prevents Tamil youth from the plantations gaining entry to these colleges.

In order to overcome this problem, it was proposed in 1988 to set up a Tamil-medium Vocational Training Centre in Hatton. Foreign funding for the initial investment and for part of the operational costs was secured. However, largely due to the indifference and apathy of the bureaucracy, this project has still to begin. Even construction work has not commenced. This again illustrates the denial of the right to technical and vocational education⁹ for the children of plantation workers, which in turn has an impact on their right to free choice of employment.¹⁰

3.2.4 Housing

Adequate shelter, with proper sanitation and water supply, is a basic prerequisite for ensuring an adequate standard of living, yet it has largely been denied to plantation workers. The vast majority of plantation workers still live in 100 year-old, over-crowded and dilapidated, barrack-type line rooms. A recent survey on plantation housing carried out for the government by the Technical Assistance Team attached to the Plantations Housing and Social Welfare Trust¹¹ revealed that there

⁹ See Article 26 of the UDHR and Article 13(2) (b) of the ICESCR.

¹⁰ See Article 23 of the UDHR and Article 6 of the ICESCR.

¹¹ Survey on Estates Housing Conditions (July 1994) p. 11

are 183,130 worker families resident in the plantations, comprising a total population of 788,231 people. The number of housing units available for this population is 178,333. Of these, only 2% of the housing stock is in good condition and a further 18% could be rehabilitated with minor repairs. At the other end of the scale, 4% of the housing stock is totally dilapidated and beyond repair while about 42% requires such extensive repair that only half of it could probably be rehabilitated.

Besides the housing shortage and the poor state of repair of the existing dwellings, the above survey found that 64% of the houses suffer from inadequate light and an equal percentage from poor ventilation. Only 12% have electricity. Fifty two per cent have no paved access path and 42% have no water source within 100 metres of their residence. The survey concluded that in many cases, estate residents are crowded into damp, smoky and dark hovels, severely affecting their health and creating enormous social problems and causing psychological stress. Housing has been given high priority by successive governments since the mid-1950s, but not in the estates. A number of low-cost housing projects in other areas have been initiated by the government, and the state has also provided facilities such as alienation of state land and soft loans for private house builders. The UNP government of 1977-94 went further and treated housing as a key policy area, providing substantial investments for housing development. However, the benefits accruing to the plantation workers from these major government programmes were minimal.

Without citizenship, the plantation workers were prevented from buying any land in the country and could not own private houses. They were also excluded from the numerous land settlement and colonisation schemes implemented since the 1930s, which benefited other sections of the population. Even though the issue of citizenship has now largely been resolved, access to adequate housing and land remains a major problem for this community, given their disadvantaged socio-economic position. Although both the previous UNP government and the present PA government agreed in principle to vest ownership of the line rooms in their present occupants, this has yet to be done.

3.3 Major Events of 1995 Affecting the Plantation Community

3.3.1 The resumption of hostilities and arbitrary arrests in Colombo

The collapse of the peace talks between the government and the LTTE and the resumption of hostilities in April 1995 led to an increase in the already widespread arbitrary arrests and detentions of Tamils in Colombo, on the assumption that they could be accomplices of the LTTE. A large number of plantation youth were among those arrested. The pattern of these arrests, and the failure by the security forces to observe the procedural safeguards contained in the emergency regulations, are discussed in Chapter II on Integrity of the Person.

3.3.2 The impact of privatisation

The privatisation of state-owned enterprises forms a significant component of the structural adjustment programme that is being

implemented by the government on the advice of the World Bank and the International Monetary Fund. For a variety of reasons, the privatisation of state-owned plantations was carried out in two stages. Initially, in 1992, the management of the plantations was entrusted to the private sector for a five-year period. The second phase, launched in 1995, took the form of issuing long-term, 50-year leases to the companies already managing these estates.

The plantation workers as a whole were opposed to privatisation. They feared that conditions of employment in the private sector would be worse than the state sector. All the unions representing the plantation workers therefore demanded that before the estates were handed over to the private sector, the government should require a collective agreement to be concluded between the private sector companies and the trade unions which incorporated the following main conditions: a guarantee of a minimum of 300 days of work each year; work norms not to be increased arbitrarily without corresponding benefits to workers; employment to be provided in the estates for the children of resident workers entering the labour market; ownership of line rooms and home garden plots to be vested in the present occupants; continuation of the on-going social welfare programme covering housing, water supply, sanitation and health. Instead, however, the private sector management offered worse terms and conditions of employment than the workers had been entitled to earlier. This was clearly unacceptable to the trade unions. Privatisation has therefore proceeded without any collective agreements being concluded between the trade unions and the management.

Experience under private sector management since privatisation appears to have confirmed the workers' fears. There have been widespread reports that the number of days of work given per month was reduced from the accepted norm of 25 days to 15, or even less. There have also been reports of work norms being arbitrarily increased and the workers subjected to various forms of harassment. This was confirmed in a survey carried out in a representative sample of estates by the non-governmental organisation, *Satyodaya*. The survey compared a six month period before privatisation with a similar period after privatisation in respect of the number of days worked, work norms and other conditions of work and welfare services.¹² This state of affairs gave rise to widespread discontent and labour unrest, culminating in a long strike involving about 35,000 workers in the Maskeliya area towards the end of 1995. The issues involved remained unresolved at the end of the year.

With the privatisation of the plantations, the earlier practice of providing employment in estates to the children of plantation workers entering the labour market was discontinued. This led to a large-scale exodus of plantation youth into Colombo and other urban centres in search of employment. Lacking education, and without any training in vocational skills, these youth are often employed in

¹² See Paul Caspersz, Harsha Kumara Wanninayake and Sangaran Vijesandiran, *The Privatisation of the Plantations*, Satyodaya Centre (Kandy 1995).

such occupations as domestic work and shop assistants. It was this group of plantation Tamils which was most affected by the arbitrary arrests and detentions in Colombo. As the scale of arrests increased, and with the experience of repeated arrests and extortion, many of them returned to their estates to escape such harassment. There, some were again arrested by the local police on suspicion of involvement in terrorist activities, and many remain confined to their estates. These experiences thus have a direct impact on the freedom of movement of plantation youth, and on their right to seek the employment of their choice.

3.4 Conclusion

In the human rights debate in Sri Lanka, most attention is focused on civil and political rights. This is due both to the large-scale violations of these rights experienced in the recent past and to the existence of well-defined norms to assess their implementation. In the case of economic, social and cultural rights, there is less consensus on the precise yardsticks to be used to measure the extent to which these rights are realised. As those most affected by the denial of economic, social and cultural rights are the under-privileged sections in any country, equity demands that increased attention be paid to these rights to ensure that effective steps are taken to ameliorate their living conditions.

While there are under-privileged sections within each community in Sri Lanka, the plantation workers constitute an under-privileged community, and this needs to be recognised by the government. Affirmative action needs to be taken in the fields of education, health, housing and access to services.

VII

Minority Rights

1. Introduction

There were several important developments during 1995 which had major implications for minority rights. First, the cessation of hostilities agreed between the LTTE and the government in January brought optimism that peace might be reached after years of armed conflict which has had disastrous effects on the rights of people living in the North East. Such hopes were dashed, however, when armed hostilities resumed in April. Nevertheless, the government continued to pursue a political strategy alongside the military, and in August it unveiled its proposals for devolution of power to eight regions for public discussion. Other proposed changes to the Constitution would also strengthen certain areas of minority rights if adopted, including the proposals on official languages.

This chapter concentrates on the developments noted above. It examines the devolution proposals as a means of reaching a long-term solution to Tamil minority grievances. It also looks at the effectiveness of some of the institutions established specifically to redress minority grievances, and examines the extent to which the government is committed to representing all communities within a pluralistic society.

Other human rights issues which affected members of minority groups in particular - such as the widespread arbitrary arrests and detention of Tamil people in the Colombo area, and the impact of the war on civilians - are discussed in the chapters on Integrity of the Person and The Internally Displaced.

2. The failure of Government Negotiations with the LTTE

On 6 January 1995, agreement on a cessation of hostilities was reached between the government and the LTTE, and four rounds of meetings between the two parties followed. The discussions focused on military and rehabilitation issues rather than on negotiating a political solution to the long standing grievances of the minority Tamil community.

President Kumaratunga had acknowledged during the election campaign in 1994, and subsequently, that the legitimate grievances of the Tamil community would have to be addressed through a system of devolution between the centre and the regions which would give the various communities a degree of control over their economic, social and cultural development. Although the government claimed in December 1994 that it had prepared an outline of its devolution proposals, which could form the basis for negotiations, the LTTE insisted that before political issues could be discussed, various other conditions for peace should be established.

The LTTE had four main demands: that the embargo on all non-military items should be completely lifted; that the ban on fishing

along the Northern coast should be revoked; that the military camp at Pooneryn should be dismantled; and that LTTE cadres should be allowed to carry arms in the East. The LTTE also complained that the government's negotiating team did not include government representatives of sufficient authority and status.

After the PA had come to power in August 1994, the then Prime Minister Chandrika Kumaratunga had by Gazette notification lifted the embargo on 28 of the items which had been barred since 1991 from transportation to the North, including medicines, fertilizers, chemicals and fuel.¹ However, although on paper all restrictions on the movement of these 28 items had been lifted, the military still continued to impose restrictions. While the negotiations continued, each side accused the other of bad faith and of preparing for war while talking peace.

The talks broke down completely in April, after the fourth round. The government had by then announced that it would lift the ban on fishing in certain areas and on 14 April had lifted restrictions on the movement of all non-military items; but the LTTE nevertheless announced its withdrawal from the cessation of hostilities and a couple of hours later, early on 19 April, sank two naval ships in Trincomalee harbour. On 10

¹ For further details see Chapter III, n. 14 on Emergency Regulations.

April the government reimposed the embargo on the North and the armed conflict resumed, escalating later in the year.

3. The Government's Devolution Proposals

Despite the return to armed hostilities, which was opposed by moderate Tamil parties in the South, the government continued to reiterate its commitment to reaching a negotiated political settlement. In August 1995 it published its proposals for devolution of power for public consultation. These proposals would feed into a process of constitutional reform which was already in progress. After a revised version of the devolution proposals was published in January 1996, they were submitted to the Parliamentary Select Committee on Constitutional Reform. To be adopted, the proposals would have to win a two-thirds majority in parliament, and then be approved at a national referendum. The fate of these proposals thus remains highly uncertain.

The August 1995 proposals contained considerably greater devolution of powers than the 13th Amendment to the Constitution had provided following the Indo-Sri Lanka Accord. They sought to address the long-standing grievances of the Tamil people in a meaningful manner, although not every aspect of the proposals was yet spelt out. They proposed devolution of substantial legislative and fiscal powers to eight Regional Councils, thereby seeking to redress an imbalance in the

relationship of power between the communities and the regions. The proposals included devolution of powers over lands within the region, industrial development, direct foreign investment, and education among others. They also proposed that Regional Councils would have authority to negotiate foreign investment, international grants and development assistance directly. These were the key areas in which the Tamil community had felt the severest impact of discrimination in the past. If these provisions are implemented, the regions would be able to determine their own development to a considerable degree, without arbitrary or capricious interference by the centre.

One significant issue that was not addressed in the devolution proposals was the unit of devolution, in that the eight "regions" were not defined. The unit of devolution - and in particular whether the North and East would comprise a single, merged unit for devolution (which is the demand of the Tamil parties) or constitute two separate units - has long been an issue of contention.

4. Other Proposed Constitutional Reforms affecting Minority Rights

A welcome proposal put forward in the context of the constitutional reform process was in the area of language rights, which has been a serious bone of contention since Sinhala was made the sole official language in 1956. Although in 1987, the 13th Amendment to the

Constitution of Sri Lanka made Tamil "also" an official language (implying a subordinate status to Tamil), this provision failed to be meaningfully implemented. The status of Tamil as an official language, and the parity of Sinhala and Tamil as official languages, were addressed in the proposed constitutional chapter on language approved by the Parliamentary Select Committee on Constitutional Reform in June 1995.

The proposed language provisions read: "The official languages of Sri Lanka shall be Sinhala and Tamil" and they clearly state that Tamil and Sinhala shall be the languages of administration, languages of legislation, languages of the courts and languages of instruction. The proposals also state that Sinhala shall be the language for maintenance of records in all provinces other than the North and East, where records shall be kept in Tamil. However, in any Divisional Secretariat where linguistic minorities exceed one quarter of the population, the records shall be maintained in both languages. The proposals include English alongside Tamil and Sinhala as national languages, and as a language of legislation. The 1978 Constitution only requires all laws and subordinate legislation to be translated into English, whereas these proposals would require all laws and subordinate legislation to be enacted in Sinhala, Tamil and English.

Despite the articulation of the pluralistic nature of Sri Lanka and the concept of equal protection to all communities and religions, the government's draft of certain proposed constitutional provisions, issued in January 1995, continued to give foremost place to Buddhism

and this in the form of an entrenched clause.² Equality of treatment and genuine pluralism entail that the state refrain from identifying itself primarily with one religion as against others, or from bestowing its patronage over one religion to the exclusion of others. It should also not privilege in the process. Thus the chapter on Buddhism in the proposed Constitution would constitute unequal treatment, and imply a subordinate status to other religions and communities in Sri Lanka. This would be contradictory to the equal protection clause, and to the text of the preamble which states: "Wherein the dignity of the individual shall be upheld through the guaranteeing of human rights and fundamental freedoms without distinction and in full equality before the law."

5. The Official Languages Commission

Another welcome development in relation to language rights was the promise of new forms of action by the Official Languages Commission, which had not hitherto been a very effective body. On 9 June 1995, the Commission resolved to take appropriate action if the language rights of any community are denied by an authoritative body. Public as well as private institutions would not be able to wilfully deny the language rights of any individual. Any person who is denied their language rights, as granted by the Constitution, can bring it to the notice of the Commission for appropriate action. Official Languages Commission Act No. 18 of 1991, under which the Commission was

² Ministry of Justice and Constitutional Affairs, *Draft Provisions of the Constitution Containing the Proposals of the Government of Sri Lanka Relating to Devolution of Power*, Chapter II (1995) p. 11.

established, gives the Commission significant powers to plan and implement the government's language policy, including the power to punish public officials for non-compliance. To ensure that both Tamil and Sinhala languages were used, the Commission targeted sign-boards and name-boards in all government departments; government circulars containing important information; and facilities for translation in all government departments.

6. The Government's Commitment to Pluralism

The PA government has repeatedly stressed the pluralistic nature of Sri Lanka, and claims to represent all the communities of the Sri Lankan society. Indeed, its devolution proposals were promoted as a means of facilitating participatory democracy. Nevertheless, certain practices of the government during 1995 brought into question the government's claims to represent Tamils, Sinhalese, Muslims and other groups in Sri Lanka. Firstly, the government's efforts to either deny or minimise the significance of incidents of Tamil civilian casualties as a result of the war, while condemning Sinhala civilian casualties at the hands of the LTTE, was disappointing and led to the concern that the state response was influenced by the ethnicity of the victim. The censorship imposed under emergency regulations from September to December 1995, sought to prevent the general Sri Lankan population from learning about the civilian casualties and mass displacement of people in the North. According to *Article 19's* report on the operation of the censorship:

Humanitarian organizations which sought to report suspected violations of humanitarian and human rights law by the military came under strong public attack from the government. ... The broad scope of the censorship ... went far beyond any legitimate interest in protecting national security or public order. Government censorship and restrictions on access to the North not only kept the public uninformed, but also made the process of providing humanitarian assistance to the victims of war more difficult and may have concealed violations of humanitarian and human rights law.³

The disputes between the government and other organisations and individuals about the scale of the displacement which resulted from the conflict sent a similar message.⁴ Again, atrocities against Sinhala civilians in the East by the LTTE in late October 1995 received wide media coverage; but journalists were barred from visiting the North to investigate allegations of killings of Tamil civilians in bomb attacks there, and the incidents were not properly investigated.

Other issues which called into question the government's commitment to genuinely addressing minority concerns included the general failure to implement the safeguards on arrest and detention contained in Presidential Directives issued in 1995. These require arresting officers

³ Article 19, *Silent War: Censorship and the Conflict in Sri Lanka* (London, 1996) p. 213. The censorship is discussed further in Chapter IV on Freedom of Expression and Media Freedom.

⁴ See Chapter X on The Internally Displaced for a discussion of this dispute.

to issue certificates of detention to next of kin when taking suspects into custody, but were only rarely implemented.⁵

7. Education

Education in the North East has been severely affected by the war. In the North the war and embargo on school supplies has had a considerable impact on educational provision. Students have had to contend with bombed out school buildings and a lack of school furniture, chemicals for science classes, writing paper, exercise books and school bags. The lack of electricity and limited fuel supply has compounded the difficulties, especially for the Jaffna University. In addition, since some of the schools had to be closed, others became over crowded. In the Vanni district alone, 115 schools were used as Welfare Centres, resulting in the complete disruption in the schooling of children in these areas.

8. Conclusion

The main steps taken to address Sri Lanka's long-standing minority grievances in 1995 were the publication of the government's devolution proposals, and the initiatives of the Official Languages Commission. However, the future of the devolution proposals is very uncertain for several reasons. These include the extent of opposition to the proposals in the South, the opposition's non-committal attitude, and

⁵ See Chapters II and III on Integrity of the Person and Emergency Rule respectively for discussion of these Directives, which were issued under emergency provisions, and the pattern of arbitrary arrests of Tamils in the Colombo area.

the fact that the original proposals were weakened in the subsequent draft.

Despite these initiatives, and despite the declared intent of the government to address minority grievances in meaningful ways, Tamil people in Sri Lanka continued to suffer hardship during the year as a result of the civil war. In the South, they were subject to arbitrary arrest, detention, and some were extrajudicially executed or disappeared, while in the North they suffered from bombing and shelling as well as from massive displacement.

The quest for a political solution to the North East problem acceptable to all parties remains a complex and uncertain one. The challenge is to incorporate into a new constitution a scheme of devolution which is responsive to the aspirations for genuine sharing of power and which secures the requisite legislative support and national consensus. The government has remained steadfast in its pursuit of constitutional reform despite the many setbacks and frustrations. However, in seeking to reconcile security considerations with human rights and humanitarian issues, it is important to ensure that the safety, security and welfare of minorities is not subordinated.

VIII

Children's Rights

1. Introduction

In last year's volume,¹ we discussed the rights of particular categories of children: those in breach of criminal law, those who were abused and sexually exploited, and those in employment. This year, we continue this appraisal of the rights of children by examining children in war situations, legal reforms made in 1995 with special impact on children, and the comments and conclusions of the Committee on the Rights of the Child following its scrutiny of Sri Lanka's adherence to the Convention on the Rights of the Child (CRC). It should be noted at the outset that the situation of Sri Lankan children as described in the two previous Law & Society Trust reports² remains much the same, and that to date only a few of the legal provisions relating to children have been reformed to enhance the protection of children's rights.

An initial note has to be made regarding the lack of systematic data collection on children. The last national census was carried out in 1981.

¹ Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo 1995), Chapter XV pp. 271-295.

² Ibid and Law & Society Trust, *Sri Lanka: State of Human Rights 1993* (Colombo, 1994) Chapter VII pp. 236-255.

Although another census was scheduled for 1991, this has yet to be undertaken by the Department of Census and Statistics. The lack of comprehensive data is a significant obstacle to a proper evaluation of the situation of the Sri Lankan child.

2. Children in War

The situation of children in war can be divided into three categories: (1) children living in conflict areas; (2) children displaced by war; and (3) the child combatants. This section summarises provisions of the Geneva Conventions and the CRC relating to children in war.

It then highlights some key problems faced by children living in conflict areas and children displaced by war, but concentrates on child combatants.

2.1 International standards relating to the protection of children in war

The key international standards which contain provisions for the protection of children in war are the four Geneva Conventions of 1949 and the two 1977 Protocols additional to the Geneva Conventions. In addition, the CRC, in Article 38, reiterates some of the protections found in the Geneva Conventions. Of these instruments, Sri Lanka has ratified the four Geneva Conventions and the CRC; it has not ratified the Additional Protocols to the Geneva Conventions.

Of particular relevance to a situation of internal conflict such as that prevailing in Sri Lanka are Article 3, common to the four 1949 Geneva Conventions, and Protocol II, which relates to "the Protection of Victims of Non-International Armed Conflicts." These contain general protections for children on the same basis as for other categories of people, while Protocol II also contains certain provisions which recognise children as being particularly vulnerable and requiring special protection.³

The provisions of common Article 3 and Protocol II are binding on all parties to a conflict once the relevant instrument has been ratified by a state. The Government of Sri Lanka would thus significantly enhance the protection of all civilians - including those vulnerable to under-age recruitment and attacks by the LTTE - by ratifying Protocol II at the earliest opportunity.

In situations of internal conflict, children are protected under common Article 3 as persons taking no active part in the hostilities. Common Article 3 requires that they be treated humanely, without violence to their lives, persons or dignity. Article 4 of Protocol II prohibits, among

³ See Denise Plattner, "Protection of Children in International Humanitarian Law," *International Review of the Red Cross*, No. 240, 1 May 1984; Jean de Preux, "Special Protection of Women and Children" in *International Review of the Red Cross*, No. 248, 1 September 1985; Maria Teresa Dutli, "Captured Child Combatants", *International Review of the Red Cross*, No 278, 1 September 1990.

other things, violence to the life, health and physical or mental well-being of persons, collective punishments, hostage-taking, and acts of terrorism, where the victims are people taking no direct part in the hostilities, or have ceased to participate in the hostilities. In addition, Article 4(3) requires that children "shall be provided with the care and aid they require." It prohibits the recruitment into the armed forces or armed groups of children under 15 years, and also prohibits their indirect participation in hostilities (for example, by gathering information, transporting arms, transmitting orders or committing acts of sabotage). Children under 15 who do take direct part in hostilities and are captured remain protected by the special provisions of this article, which also requires particular attention to be paid to children's education, the reunion of families, and - where necessary and possible, and with the consent of their parents or those responsible for them - they should be temporarily evacuated from conflict areas to a safer area of the country.

2.2 Children living in conflict areas

The actual number of children living in conflict areas is not known. The main problems they face are scarcity of basic facilities, constant lack of security and the absence of safe space.

The unpredictable consequences of some forms of military action, such as indiscriminate bombing, are most damaging to the psyche of the

child.⁴ The resumption of war between the government and the LTTE in April 1995 led to an intensification of armed action and the killings of civilians on all sides. Shelling and aerial bombardment by the armed forces and indiscriminate bombing and massacres by the LTTE have heightened the trauma suffered by children.

Government forces began large-scale operations in June 1995. There were several incidents of large-scale killings of civilians, including children, as a result of both government offensives in the Jaffna peninsula and attacks by the LTTE on Sinhala civilians living in "border" areas of the East. For example, in July 1995, the air force bombed the premises of the Catholic Church of Sts. Peter and Paul in Navali, Jaffna, killing 60 people who were seeking refuge there. In September, according to Medecins sans Frontiers (MSF), 107 persons were admitted to the Base Hospital in Point Pedro and 64 persons died from the fighting on 21 and 22 September alone, of whom 34 of the dead and 27 of those admitted to hospital were children under the age of twelve.⁵ In October, the LTTE began a series of massacres of Sinhalese villagers living in "border areas", deliberately killing over 125 civilians, including at least 40 children.

These examples demonstrate that the special protection of children required under international humanitarian law is not provided by either

⁴ "A Profile of the Sri Lankan Child in Crisis and Conflict", UNICEF, (Colombo, October 1990), p. 5.

⁵ Medecins sans Frontiers, "Activity Report" (Paris, September 1995).

side to the conflict in Sri Lanka. The security of civilians living in or close to combat areas has not been adequately addressed. In addition to taking steps such as re-establishing educational facilities as soon as possible after such attacks to try to "normalise" the situation, the state should also address the long-term emotional rehabilitation of the children affected.

Where civilians have been attacked by security forces, an immediate judicial inquiry should be held. In addition, members of groups such as the HRTF, who would be viewed as independent observers to whom complaints could be made, could make regular visits to the areas concerned.

The state needs to take steps to eliminate the indiscriminate bombing and shelling of civilian targets. Full investigations should be held into reported incidents with a view to identifying mechanisms for preventing their recurrence in the future, as well as to ensure that if such targets were deliberately chosen, appropriate action is taken against those responsible.

2.3 Displaced children

By 1993, an estimated 400,000 children had been displaced by the conflict and lived in places other than their ordinary place of residence.⁶

⁶ "Report on the Implementation of the Convention of the Rights of the Child", Marga Institute (Colombo, January 1994) p. 60.

The resumption of hostilities between the LTTE and the government also led to a massive displacement of persons between October and December 1995. Many remained in areas under LTTE control. The number of children living in camps and their needs had yet to be properly assessed in early 1996.

According to the United Nations Children's Fund (UNICEF),⁷ the displaced children they interviewed suffered a range of emotional responses to traumatic experiences. These include: various fears, extreme sadness, angry and irritable behaviour and lack of hope, especially in older and adolescent children.⁸ Other effects include an increase in physical symptoms related to stress and fear and difficulty dealing with situations that arise in daily life. Maladaptive behaviour, including the withdrawal either from others or from day-to-day situations at home and school, or into conflict related fantasy, is another effect that was noted.

UNICEF recommended various simple measures to reduce the effect of trauma. They range from play activities designed to help children deal with trauma to regular access to schools. The report also notes that children's families also need to be taught to deal with their experience in order to help the children come to terms with their's. Regretfully,

⁷ Supra n 4.

⁸ Ibid p.5.

there is no report of any comprehensive follow-up action by the state based on this UNICEF report.

Displaced children and their families need to be provided with their basic survival needs. Those living in government-controlled areas do have these needs met, but the situation of those living in LTTE-controlled areas is more difficult to determine. The state needs to create a mechanism of co-operation with relief organisations working to address basic needs in these areas.

As well as the great emotional trauma from the conflict and from displacement suffered by many children, some have also been physically handicapped. There is a great need for special programmes to address the needs of these children and their families, but there is a great lack of personnel trained in appropriate fields. Both the governmental and non-governmental sectors have been trying to provide training, and these efforts should be intensified.

2.4 The child combatant

Article 4(3) of the Additional Protocol II to the Geneva Conventions states that children under 15 shall neither be recruited into the armed forces or armed groups, nor be allowed to take part in hostilities. It thus prohibits both the direct and indirect participation of children in hostilities. Article 38 of the CRC reiterates the prohibition on the recruitment of children under 15 years into armed forces or groups.

However, under the Sri Lankan Children's Charter the government has in principle increased this limit for participation in state military action to 18 years.

While the state does not recruit children to the armed forces, the LTTE has been reported to recruit children as young as 10 years into the organisation as combatants and commonly to include children under 15 years in their armed cadre. The recruitment of children for direct combat began in 1987, when the Indian Peace Keeping Force (IPKF) took control of the North East under the Indo-Sri Lanka Accord. By 1990, when the IPKF withdrew from Sri Lanka, the use of children by the LTTE had become institutionalised. The number of children currently within the LTTE, and the number who have died in combat, are not known.

During 1995 there were several recorded instances of child-fighters within the LTTE, and their recruitment of children intensified. From January to April, during the cessation of hostilities, they recruited a large number of children from the East. In March, they began recruiting in the North, and intensified their efforts after the resumption of hostilities in April. In July some 200 LTTE combatants, many of whom were children, were killed by the army after they attacked four army camps at Welioya. Again, eye-witnesses reported that several of the LTTE cadres who attacked Sinhala border villages in October were very young, and ruthlessly massacred villagers, including babies.

A report on child combatants published in 1993⁹ stated that the tactics employed by the LTTE in their recruitment drives fell short of actual physical coercion. The LTTE held propaganda drives in schools as well as putting pressure on families to permit their children to enrol. However, in 1995 the LTTE's approach to recruitment differed slightly. Addressing the minds of the children included walking into schools in the LTTE-controlled areas and holding talk shows, as well as publicly screening films of successful LTTE operations. There was also evidence of children being forcibly recruited by the LTTE, especially in the East.¹⁰

Children join the LTTE for many different reasons. Many volunteers are unaware of the rigours of the training that they may undergo. Several join out of a sense of desolation or lack of a better alternative. They also fear the Sri Lankan security forces and may have bitter memories of past experiences, emotions which are effectively harnessed by the LTTE in their drive for enlistment.¹¹ In June 1995, in an unprecedented move, parents and teachers attempted to resist the enlistment drive of the LTTE. Their attempts were met with threats of severe reprisal.

The treatment of the child prisoner of war is of special concern. UTHR (Jaffna) recorded several instances in 1995 of the military returning former child combatants to safety, in keeping with the principles of

⁹ Irene Cohns and Guys Goodwin-Gill, "Child Soldiers", Henry Dunant Institute (August 1993).

¹⁰ University Teachers for Human Rights (Jaffna), *Briefing No. 2* (1995), "Children in the North-East War: 1985-1995".

¹¹ *Ibid.*

international humanitarian law, as outlined above. After people in Kallar complained to the STF that the LTTE had forcibly taken four boys from a public bus, the children were rescued by the STF at the Cheddipalyam check-point. Similarly, 40 youth from around Batticaloa town who had escaped or deserted from the LTTE and then surrendered to the army had been returned to their parents. Such responses by government forces need to be strengthened and institutionalised.

The use of child-combatants by the LTTE will have long-lasting, serious effects. The government needs to begin taking steps to address these issues, including by creating a cadre of trained personnel to work with child combatants. These would include need therapists and counsellors, as well as trainers for the teachers and social workers who will be the children's immediate contact group.

3. Law Reform

In August 1995, the Penal Code, the General Marriages Ordinance and the Marriage and Divorce (Kandyan) Act were reformed. The impact of these reforms on children's rights is summarised below.

3.1 Penal Code

3.1.1 Contents

Amendments made to the sections on sexual offences placed considerable emphasis on children. New offences relating to children were introduced, and for several existing offences an enhanced penalty was introduced when the victim is a child. In some cases, the amendments also imposed minimum prison sentences.

The following new offences were introduced:

- * Obscene publications relating to children and cruelty to children, both carrying a penalty of between two and 10 years' imprisonment;
- * sexual exploitation of children, carrying a penalty of between five and 20 years' imprisonment;
- * trafficking in children for the purpose of adoption, carrying a penalty of between two and 20 years' imprisonment;
- * custodial rape and gang rape of girls under the age of 16, carrying a penalty of between 15 and 20 years' imprisonment;
- * incest, carrying a penalty of between seven and 20 years' imprisonment;
- * grave sexual abuse of persons under the age of 18, carrying a penalty of between seven and 20 years' imprisonment; and
- * publication of details of victims of sexual abuse, except under specified conditions, carrying a penalty of up to two years' imprisonment.

The amendments also raised the age specified for statutory rape from 12 to 16 years. The definition of grievous hurt was expanded to include cut or fracture of cartilage and dislocation or subluxation of bone, joint or tooth. The section on procuration was amended to prohibit the procuration of men as well as women. The sections on unnatural carnal intercourse and gross indecency were amended to impose an enhanced penalty on the adult offender when the other person involved is under 16 years.

3.1.2 Change in nature of the law relating to children

These reforms attempt to make some sections of the Penal Code more responsive to the interests and needs of children. The restrictions on reporting the details of victims of sexual abuse is welcome, especially given the type of media coverage sexual offences have recently received. The enhanced penalties in cases where the victim is a child, including minimum custodial sentences, signal that these are now considered "grave crimes" and help deal with the problem of suspended sentences.

The wording of Section 286A on obscene publication, exhibition and other related offences dealing with children deserves special mention. Section 286A prohibits the employment of children to appear or perform in any obscene or indecent show, or to model for or appear in any obscene or indecent photograph or film. It also makes the parent or guardian of any child who is caused to do such acts an offender. The section also prohibits the distribution, showing, advertising or possession of any film or photograph for the above purposes. It is unfortunate that it does not deal with obscene images of children in themselves, which is a growing problem on electronic mail. The emphasis has been shifted from the effect of such publication on the consumer to the exploitation of the child, which is objective, easier to prosecute and embodies the underlying principles of the CRC, which emphasise "the best interests of the child" as a primary consideration.

3.1.3 Problems with the reforms

The reforms have yet to deal with the ambiguities created by the law when the Penal Code is read together with the Code of Criminal Procedure Act, the Evidence Ordinance and the Children and Young Persons Ordinance (CYPO). The wording of some of the amendments could create complications in prosecutions.

(a) Sections 365 and 365A of the Penal Code: unnatural carnal intercourse and gross indecency

Read together with the CYPO, children (that is, persons under 16) are not offenders per se under these sections. The amendments impose an enhanced penalty on the adult offender when the other person involved is under 16 years. The problem with these two sections is that it is assumed that both parties have consented to the act, thereby precluding the possibility of male rape.

(b) Section 365B of the Penal Code: gross sexual abuse

This section has as its point of reference Section 363, which deals with rape. Since rape is defined as only being inflicted on women and girls, by implication gross sexual abuse is restricted to the abuse of women, and not to men or boys. It is also unfortunate that the section does not impose a statutory minimum age of consent. The reference to a statutory age of consent in Section 363 is not applicable here.

(c) Section 363 of the Penal Code: rape

Section 363 was reworded to include the possibility of rape in the case of judicially separated couples and to raise the age of consent to 16 years. However, rape of a woman still married to the perpetrator is still not contemplated by the Code. Of relevance to children is that while Section 363(e) increases the age of consent to 16, it then qualifies this by stating that in cases where the victim is married to the offender, the age of consent remains at the earlier age of 12 years. Thus, a charge of rape within marriage remains impossible, even where the wife is a child. The differential age of consent depending on the marital status of the victim should be removed.

3.2 Reforms of the laws on marriage

Sri Lanka has four concurrent systems of personal law, including three separate laws on marriage. These are the Marriages (General) Ordinance (1907), the Marriage and Divorce (Kandyan) Act (1952), and the Marriage and Divorce (Muslim) Act (1951). These Acts contain different criteria for minimum age, consent, registration and dissolution of marriage, some of which were reformed in 1995.

The reforms raised the minimum age of marriage for both parties to 18 under the Marriages (General) Ordinance and the Kandyan Marriage and Divorce Act, making these laws compatible with the CRC, which defines "the child" as being under 18 years of age. They also removed all reference to consent by guardians, since the minimum age of marriage now coincides with the age of majority. Previously, the minimum age of marriage under these two laws was 12 years for girls

(except for girls of European or Burgher descent, for whom the minimum age was 14 years) and 16 years for males.

The Muslim Marriage and Divorce Act was not amended, however. It does not impose a minimum age of marriage for either party and even contains a recognition of the possibility of marriage of girls under the age of 12 years. Under this Act, no consent of guardian is required for the males, whereas a woman of any age needs the consent of her guardian in order to contract a valid marriage except under certain specified circumstances.

3.3 Problems with the reforms of the laws on marriage

Several provisions within the marriage laws remain in contravention of the CRC. In particular, the different provisions on age of marriage and consent for Muslims are discriminatory, as is the different minimum age for statutory rape under the Penal Code depending on the marital status of the victim, thus violating Article 2 of the CRC, which expressly prohibits "discrimination of any kind," including on the basis of religion or ethnic origin. Discriminatory provisions which need to be removed include: the express exclusion of Muslims from the Marriage (General) Ordinance; the lack of a minimum age of marriage for Muslims; the requirement that Muslim women entering marriage need the consent of guardians; and the different requirements for Muslims on registering a marriage (in the case of Muslims, the woman's signature is not required, although her guardian is required to sign).

Section 363(e) of the Penal Code also contravenes the CRC in providing different ages of consent for married and unmarried women,

as discussed above. It therefore fails to provide the protection against the sexual abuse of children required under Article 19 of the CRC, and needs to be amended. While there is no minimum age of marriage for Muslims, children can be raped and abused by their husbands within marriage with no recourse to the law. In addition, girl children from other groups who were married before the age of consent was raised to 18 can continue to suffer similar abuse.

4. The Observations of the Committee on the Rights of the Child

Sri Lanka submitted its initial report on its progress in implementing the CRC to the Committee on the Rights of the Child ("the Committee") in 1994, before the legal reforms outlined above had been made.¹² The Committee considered the report and made its observations in June 1995.

The government had commissioned a leading non-governmental research organisation, the Marga Institute, to compile its report to the Committee, and had instructed all relevant authorities to assist the Institute in this task. However, as the NGO Forum pointed out, the report failed to highlight the gap between legal provisions and their implementation in Sri Lanka. Nevertheless, some of these issues appear to have been addressed at the meeting, as the Committee commented that it was "encouraged by the frank and co-operative tone of the dialogue, in which the delegation of the State party indicated not only the progress achieved with regard to implementation of the

¹² The NGO Forum on the Rights of the Child also submitted a report to the Committee.

provisions of the Convention but also the difficulties encountered during implementation."

The Committee commended the government's performance in some areas, noted several areas of serious concern, and made various recommendations for better implementation of the CRC. The Committee commended the co-operation between the governmental and non-governmental sectors, as well as the National Committee for Monitoring the Rights of the Child¹³ and the government's Plan of Action for 1992-1996. The government delegation's willingness to seek the advice from specialised national and international agencies was also noted with approval.

The Committee also commended the state representatives' undertakings, as expressed both in the report and at the meeting, to reform the law on child abuse, child labour and juvenile justice.¹⁴ (As described above, some - but by no means all - of these reforms were implemented in 1995). The Committee also welcomed the amendments made to the adoption law in 1992, which regulate international adoptions to safeguard the child from exploitation and trafficking, and the fact that Sri Lanka was one of the first signatories to the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, in 1994.

Of general concern to the Committee was the government's failure to take adequate cognizance of Article 4 of the CRC, which imposes a

¹³ This Committee was established under the previous UNP government.

¹⁴ These were the specific areas of children's rights which had been addressed in Chapter. XV of Law & Society Trust, *State of Human Rights 1994* (Colombo, 1995).

duty upon the state to do all it can to implement the rights contained in the Convention. This failure was reflected in the fact that only a small proportion of the national budget is dedicated to the protection of children, in contrast to the high level of military expenditure. However, the Committee also noted the difficulties which structural adjustment programmes and the civil war pose for the Sri Lankan State.

The Committee also expressed concern about the non-binding nature of the government's Charter on Children's Rights, and the lack of an effective mechanism to monitor the situation of the child. The lack of co-ordination between the various government departments, as well as between the central and provincial authorities, was also commented upon.

Another issue of general concern was that Sri Lanka had not implemented Article 12 of the CRC, which requires the state to:

assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

4.1 Problem areas identified by the Committee

The Committee identified several substantive issues, as well as several categories of children, as giving rise to particular concern. In relation to children's health, the Committee expressed particular concern at high levels of malnutrition among children and the poor access displaced

children have to health facilities. It also noted the high rate of suicide among children.¹⁵

Regarding education, the Committee noted several problematic areas, including the lack of access to educational facilities for displaced children and inadequate educational facilities for rural children. The lack of state-run programmes for pre-school children and the high rate of school attrition¹⁶ were also noted with concern, as was the fact that corporal punishment is acceptable in Sri Lankan society, and especially in schools.

The Committee also expressed concern about the legal provisions for marriage (some of which have since been amended), the age of criminal responsibility and the ambiguous status of offenders between the ages of 16 and 18 years,¹⁷ and the regulation of national adoption. It also commented upon the difficulties parents encounter in registering births.

The Committee also identified certain categories of children as giving rise to special concern: girls in general, children born out of wedlock, children from lower income groups and rural areas, sexually abused children, children whose mothers work abroad, displaced children, children in conflict with the law, children in domestic service and children affected by armed conflict, including child combatants and their treatment in military custody.

¹⁵ See also Chapter IX on the Right to Health.

¹⁶ See Law & Society Trust, *State of Human Rights 1994* (Colombo, 1995) pp. 180-183 on attrition.

¹⁷ See Law & Society Trust, *State of Human Rights 1994* (Colombo, 1995) pp. 272-282 on children in breach of criminal law.

4.2 The Committee's recommendations

The Committee made a number of recommendations on the steps the government should take in the areas of policy, law reform and administration to enhance the implementation of the CRC. These included:

- * strengthening the Children's Secretariat and the National Committee for the Monitoring of the Rights of the Child;
- * establishing an independent monitoring mechanism on the situation of children;
- * improving co-ordination between the various authorities dealing with children's rights and human rights;
- * creation of an effective data collection system on the situation of the child;
- * re-assessment of budgetary and resource allocation to the protection of children;
- * implementation of Articles 12, 13 and 15 of the CRC, which concern the right of children to express their views, and have them taken into account, in all matters which affect them:
- * the right of the child to freedom of expression; the right of the child to freedom of association and peaceful assembly; and
- * publication of the contents of the government's report to the Committee, as well as the Committee's concluding remarks.

On law reform, the Committee recommended that national legislation should be harmonised with the provisions of the CRC and that the Charter on Children's Rights should be made enforceable. In addition, it identified various areas of law as requiring specific attention. The specific recommendations on law reform included:

- * raising and standardising the minimum age of marriage (which has since been implemented, except with regard to the Muslim community);
- * raising the age for engaging in labour¹⁸ and imposing compulsory education up to the age of 15 years;
- * raising the age of criminal responsibility and treating all persons within the criminal justice system who are under the age of 18 years as children;
- * applying the same standards as are in place for inter-country adoption to domestic adoptions;
- * prohibiting publication of names of victims of child abuse in the media (this has since been implemented); and

¹⁸ See Law & Society Trust, *State of Human Rights 1994*, (Colombo, 1995), pp. 290-295 on the status of employed children.

- * ratifying ILO Convention No.138 on Domestic Labour and the International Convention on the Protection of the Rights of All Migrant Workers and Their Families.¹⁹

The administrative and other measures recommended by the Committee included:

- * creating a group of trained personnel and establishing rehabilitation mechanisms for sexually abused and exploited children;
- * establishing an alternative care structure to assist mothers of children born out of wedlock;
- * initiating a campaign to prevent the spread of the HIV virus and providing special supervision of tourist areas to eliminate problems associated with child sexual exploitation;
- * establishing a national, state-sponsored pre-school system; ensuring that displaced children have access to basic services;
- * conducting a study on suicide to help combat this phenomenon; and
- * conducting a study on the effects of the armed conflict on children, including child participation in hostilities and the treatment of captured child soldiers.

¹⁹ The government has since acceded to the latter Convention. See the Foreword.

4.3 Children's rights not covered by the committee: the right to a nationality

Sri Lankan women face absolute discrimination in the area of citizenship law, which has an impact on their children. Whereas the foreign spouse and children of a Sri Lankan man are automatically entitled to Sri Lankan citizenship, this does not apply where foreign men are married to Sri Lankan women. In the latter case, neither the foreign husband nor their children are entitled to Sri Lankan citizenship.

5. Conclusion

The situation of children in Sri Lanka changed little in 1995, and the government clearly has a considerable amount of work to do to ensure that children's rights as defined by the CRC are properly guaranteed. The legal reforms relating to children introduced so far are mostly welcome, but address only a very few areas of concern in the field of children's rights. The issues of child labour (including domestic service) and the status and treatment of children in conflict with the law, both discussed in last year's report, still need to be addressed. The status of the child combatant also needs clarification.

Considerably more resources need to be devoted to the enhancement and protection of children's rights, as recommended by the Committee on the Rights of the Child, and the government should take all possible steps to ensure that the Committee's recommendations are implemented in full.

IX

The Right to Health

1. Introduction

Health and human rights are very closely associated. Violations of civil and political rights necessarily affect mental and physical health. In addition, health is now being recognised as a basic social and economic right. For people to die of diseases which are easily curable or preventable because the state has denied them health facilities is as much a violation of human rights as it is for a person to die following battery by law enforcement officers.

The World Health Organisation (WHO) in 1946 defined health as a "state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."¹ Community or public health has been defined as "ensuring the conditions in which people can be healthy."² Taking these two definitions together, health can be seen to encompass a vast field with many social dimensions. Health involves many more disciplines than are conventionally considered, including law, sociology and economics.

¹ WHO, "Constitution", in *Basic Documents*, 36th ed, (Geneva 1986).

² Institute of Medicine, *Future of Public Health*, National Academy Press (Washington D.C., 1988).

As a party to the ICESCR, Sri Lanka should "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The Constitution of Sri Lanka does not recognise the rights to life or to health. It is to be hoped that the new or reformed constitution promised by the PA government will recognise the rights to life and to health. Adopting a human rights paradigm³ in the health field has the potential to greatly enhance the advancement of the general well-being and social development of the people.

Internationally, views on health and human rights are changing. For example, much of the public health legislation of yesteryear was proscriptive in nature. But now, with the emergence of such diseases as acquired immune deficiency syndrome (AIDS), there is a new emphasis on protective legislation, and a strong movement towards the development of "human rights impact assessments" in the formulation and evaluation of public health policies. Partly because health administrators have little background in human rights or economics, health policies are often formulated without careful consideration of whether they will achieve their goals and whether the intended health

³ Nahid F Toubia, "From Health or Human Rights to Health and Human Rights; Where do We go from Here?" *Harvard Health and Human Rights Journal*, Vol 1, No 2 (1995).

benefits outweigh financial and human rights burdens.⁴ The international implications of domestic health policies must be considered. The problem of human immunodeficiency virus (HIV) and AIDS, which is discussed below, is a case in point. The impact of health policies, programmes and practices on human rights should always be borne in mind.

For descriptive purposes this chapter is divided into two main sections. The first addresses general issues on health and human rights, focusing mainly on health as an economic and social right. This section draws extensively on statistical data from the 1994 *Annual Health Bulletin*, which was released by the Ministry of Health in late 1995. The second part addresses special issues in health and human rights, concentrating on HIV/AIDS, mental health and medical issues related to such human rights violations as battery in custody and violence against women and children.

2. General Issues

2.1 Systems of medicine and health service structure

There are many systems of medicine practised in Sri Lanka, including allopathic or western medicine and ayurvedic medicine. Each system

⁴ Lawrence Gostin & Jonathan Mann, "Toward the Development of a Human Rights Impact Assessment for the Formulation and Evaluation of Public Health Policies," *Harvard Health and Human Rights Journal*, Vol 1, No 1 (1994) pp 59 - 60.

is provided through state and private channels. In-patient and community health services are provided by the state for the majority of people in Sri Lanka.

In theory, the government "provides free health care service to every citizen of the country."⁵ However, in practice many people must buy prescribed drugs from private pharmacies when they are not in stock in hospitals. There are a number of private hospitals, most of which have opened in recent years. In addition, there are many private general practitioners. The private sector takes care of approximately 55% of the out-patient load.

Most people seek western medical treatment at these institutions. Many people also seek alternative systems of medicines such as ayurveda, acupuncture and homeopathy. The public health sector is almost totally dominated by western medicine. The state sponsors only western and ayurvedic medicine through its network of hospitals in an organised manner. There is an Institute of Acupuncture based in the Colombo South General Hospital, Kalubowila, which provides a free service. The former Council of Homeopathy, which was also state-sponsored, is now no longer functional.

The *Annual Health Bulletin of Sri Lanka* (1994) lists "promotion of the identity and development of alternative systems of medicines with

⁵ *Annual Health Bulletin of Sri Lanka*, Ministry of Health (1994), p. 68.

focus on Ayurveda, Unani, Siddha and Homeopathy” as a major strategy in attaining the health goals specified by the year 2002. However, less than 1.3% of the Health Ministry’s annual budget is spent on these systems.

Western and alternative forms of medicine have competed in an unproductive manner in recent years. The moves by the Sri Lanka Medical Council (SLMC) to prevent local doctors from teaching at the Institute of Indigenous Medicine of the University of Colombo, and the fact that the government has not enabled the Council of Homeopathy to function, exemplify this. Attempts to close down the Institute of Acupuncture, which was established in the 1970s after training western-system doctors in China, are also being made by the Ministry of Health. No training abroad has been provided lately.

Considering the prohibitively high cost of western medicine, the government should give more attention to cheaper, alternative medical systems, especially for disorders where alternative medicine is known to offer equally effective treatment. More comparative research in this area is required.

2.2 The obligations of the Sri Lankan Government in ensuring the rights of its people to health

By ratifying to various international instruments which have a bearing on health, the Sri Lankan Government has undertaken many binding

international obligations to ensure the rights of its people to health. These instruments include the ICCPR, the ICESCR, the CRC, the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

A country's performance in fulfilling these obligations can be judged using, *inter alia*, the following criteria:

1. Provisions for the reduction of Maternal Mortality Rate (MMR) and Infant Mortality Rate (IMR);
2. Provision for healthy development of child;
3. Improvement of industrial hygiene and occupational health;
4. Attention given to major health problems;
5. Provision for access to medical services;
6. Priority given to preventive health measures such as immunisation, safe water, sanitation and family planning;
7. Health manpower training;
8. Priority given to vulnerable groups such as women and children;
9. Priority given to people marginalised by mental and physical disability; and
10. Percentage of government spending on health and its distribution.

2.2.1 Provisions for the reduction of MMR and IMR

According to the 1994 *Annual Health Bulletin* the MMR is currently 0.4 per 1,000 hospital live births. The IMR is about 14-18.4.⁶ These rates are quite satisfactory, considering the socio-economic status of the country. For example, the IMR is 79 in India and 40 in the Philippines. It is nine in the USA and seven in the UK. Sri Lanka's low scores are partly attributed to the high literacy rate (about 80%) among Sri Lankan mothers.

2.2.2 Provision for healthy development of child

The healthy development of the child is dependent on education, nutrition, the domestic status of the child and the provision of direct health care services, such as immunisation and prevention of diarrhoeal diseases.

Statistics on the percentage of children immunised against tuberculosis, diphtheria, whooping cough and tetanus, polio and measles for 1994 were good, with an average coverage of over 80 per cent. The efforts of the Ministry of Health to cover areas disturbed by the conflict were praiseworthy. While the coverage was about 60-70% in Jaffna, it was between 70-90% in Batticaloa.

⁶ The lower figure is from *Asiaweek*, 2 February 1996; the higher from *Annual Health Bulletin*, Ministry of Health (Colombo, 1994)

Diarrhoeal diseases mainly affect children. Education of mothers regarding treatment with oral rehydration solution has significantly contributed to the reduction of mortality following diarrhoea. The mortality rate from diarrhoeal disease was 1.8 per 100,000 population in 1994. This is a reduction of 0.2 from the previous year. Research shows that approximately 23% of children under five years suffer from long-standing malnutrition and 15% suffer from acute malnutrition. The control of neonatal tetanus is also satisfactory, achieving a low rate of 0.04 cases per 1,000 live births.⁷

2.2.3 Improvement of industrial hygiene and occupational health

Sporadic episodes of industrial accidents and diseases have been reported. Lack of awareness about safety is a key cause of accidents. The Division of Occupational Health of the Ministry of Labour conducts seminars and lectures to educate health personnel. A WHO-sponsored training programme was conducted for public health inspectors in 1994. The failure to carry out the training programme on occupational health for Medical Officers of Health in 1994 was not adequately explained in the *Annual Health Bulletin*.

⁷ "Children Summit Goals being Achieved, UNICEF Report hails Lanka's Performance", *Sunday Times* (Colombo, 17 December 1995).

2.2.4 Attention given to major health problems

The patterns of major health problems in Sri Lanka are changing. However, resources have not been adequately redirected towards the newer needs and nor have new special campaigns been launched to tackle these problems. The institutions that were established many years ago to tackle epidemics and endemic diseases that were then prevalent still continue their work regardless of changed circumstances. The special campaigns include the anti-leprosy campaign, rabies control programme, sexually transmitted diseases/AIDS control programme, anti-malaria campaign and anti-filaria campaign. While the continuation of many of these programmes is justified, the continuation of others should be reviewed after a cost benefit analysis, as there is a need for new campaigns to tackle new problems.

For example, while there was good reason to inaugurate the anti-filaria campaign in 1947, in the light of newer health problems its continuation is questionable. In 1994 the anti-filaria campaign had to test 285 people to detect one person with a positive blood film, who would be treated and followed up for two years and then again be free to be a carrier. Instead of a specialised campaign for each mosquito vector borne disease, it would be better for them all to be handled by one specialised campaign.

Currently, suicide is a very serious problem. Sri Lanka has the highest suicide rate in the world,⁸ but has no organised counselling service to

⁸ Arthur Cleinman et al, *World Mental Health: Problems and priorities in low income countries*, Department of Social Medicine, Harvard Medical school, Oxford University Press (1995).

address it. Nearly 10,000 people commit suicide in Sri Lanka every year, of whom 60-70% suffer serious mental disorders.⁹ Road accidents remain the highest cause of accidental death for people aged between 15-24 years. Yet, the accident and emergency services are barely adequate.

The Ministry of Health has identified suicide as a major problem and admits that psychiatric support is grossly inadequate. It has also identified road accidents, poisoning, AIDS and drug addiction as other serious health problems in Sri Lanka. Resource allocation, now a major issue in medical ethics, does not appear to be handled by experts in the field in Sri Lanka.

2.2.5 Creation of conditions which would ensure access to medical services and medical attention

Access to basic health care is quite satisfactory in most of the island, but verifiable data from the troubled North East is not available to make a proper analysis of the people's right to access health care in these areas. There is a network of government hospitals throughout the island which provides free health services, although at times expensive medication has to be purchased privately by the patient. In addition, some patients enter government hospitals by paying a doctor employed

⁹ Nalaka Mendis, "Mental Health Care - Core Issues," *Daily News* (October 28, 1995).

by the state, but who also works in private practice. This practice has been criticised in the press, but continues unabated.

There have been some allegations of medical negligence in government as well as private hospitals. Some patients have also been verbally abused by doctors and nurses when they were exercising their right to know details of their illness.

The Ministry of Health has been unable to implement certain administrative orders that would advance the people's right to health care, due to the threat of trade union action. For example, the Health Minister issued an order in July 1995 requiring doctors to sign the time they come to work, as other government officers are required to do. The order was ignored.¹⁰

2.2.6 Priority given to preventive health measures such as immunisation, safe water, sanitation and family planning

(a) Education

A main emphasis in the preventive health field is the health education of the public. The Ministry of Health, through its hospitals and public health officials, has continued its public education programme on preventive health. However, it has not adequately utilised the electronic

¹⁰ "Privatisation; for anything but health", *Sunday Island*, 14 January 1996.

media. The few programmes on health education mainly focus on curative, rather than the more important preventive, aspects of health. This is partly because most of the programmes are sponsored by the pharmaceutical industry. The government should take steps to disseminate preventive health messages daily through the mass media, since health education is one of the most cost-efficient public health strategies.

(b) Immunisation

The immunisation programme, discussed above, has been extremely successful in Sri Lanka, achieving an overall 80% coverage. This success has been attributed to the high literacy rate of mothers, the requirement to produce vaccination certificates prior to admission to school,¹¹ effective health education and the existence of a good system of monitoring through a network of grassroots-level health workers.

(c) Safe water and sanitation

Access to safe water is intrinsic to health, and can be considered a basic human right.¹² All members of the present and future generations have

¹¹ D.C.Jayasuriya & Shanthi Jayasuriya, *The Health Legislation System of Sri Lanka*, Institute of Comparative Health Policy and Law (Nawala, Sri Lanka 1992)

¹² Hatim Kanaaneh, et al, "A Human Rights Approach to Access to Clean Drinking Water; A Case Study," *Harvard Health and Human Rights Journal*, Vol 1, No 2 (1995).

the fundamental right to a sustainable livelihood including the availability of water in sufficient quantity and quality.¹³ Access to clean water and adequate sewage disposal are also major foci of the WHO programme of *Health for All by the year 2000*. Access to safe water is a good indicator of sanitation. Communities that lack clean water facilities have a higher incidence of diseases that are transmitted through the faecal-oral route, such as gastro-intestinal diseases, and of skin diseases such as scabies, which are especially problematic in children.

According to the latest available island-wide census (1981), approximately 73% of Sri Lankans used wells as the source of drinking water, 18% used pipe-borne water and 7% used river or tank water. However, the urban and estate sectors predominantly used pipe water which is generally considered safe.

The 1981 census also indicated that approximately 35% of housing units did not have toilets, an extremely unsatisfactory figure. However, according to more recent data provided by the National Water Supply and Drainage Board, 74% of rural households and 84% of urban households do now have toilets.¹⁴ The fact that no national census has been conducted since 1981 is a major problem in independently analysing trends in sanitation.

¹³ Declaration of the Second International Water Tribunal, Article 1 (1992)

¹⁴ *Annual Health Bulletin* (1994).

(d) Family planning

Public awareness of family planning and contraception has been very satisfactory. Sixty-six per cent of married women aged between 15 and 49 use contraceptives. Partly as a result of this, Sri Lanka has reduced its population growth rate to 1.4.

2.2.7 Health manpower training

The number of medical schools¹⁵ and doctors trained in the island have increased substantially, particularly in comparison with the rate of increase in other fields such as the law.¹⁶ The total output of doctors for 1994 was approximately 500. In addition, graduates who have qualified abroad also enter government service.

Currently, interns are recruited about a year after they have graduated from university. Advertisements are placed in newspapers giving less than a week's notice for applications to be submitted at a given venue. Any person who is not in the island or does not read the notice in the newspaper cannot apply in time and is refused the appointment. The Ministry does not allow other persons to apply on their behalf, even if

¹⁵ There are Faculties of Medicine at Colombo, Peradeniya, Jaffna, Ruhuna, Sri Jayawardenapura and Kelaniya.

¹⁶ No new professional colleges of law have been created since independence. There is only one professional law college in Sri Lanka.

they have a legally executed power of attorney. Once interns have been assigned to hospitals, they are given hardly any time to prepare themselves and report to work at hospitals which may be far from their homes. The Ministry of Health should give earlier notice of intern recruitment and accept applications from the those possessing a valid power of attorney on behalf of the applicant. A basic legal and human rights background is essential for health administrators.

Graduates who have qualified abroad are required to sit a special examination, the Act 16 which is conducted through the Medical Council, prior to full registration. The exam is held only in Kandy and Colombo and the inadequate number of places to sit for the exam has deterred some doctors from serving the Sri Lankan public. It would be preferable for it to be held in a decentralised manner, in as many of the six medical faculties as possible.

Although the output of doctors has increased, Sri Lanka will take a very long time to achieve a satisfactory doctor: population ratio. Currently there is approximately one doctor per 5,888 persons, compared to 1:2,165 in India; 1:545 in Japan; and 1:391 in the USA.¹⁷

Another inefficiency in the recruitment system is the fact that most medical graduates waste almost a year before being recruited into

¹⁷ *ASIAWEEK*, 2 February 1996

government service. Each year, appointments are only made at one time, after students from all universities have graduated. Appointments are not made as and when vacancies arise. This policy is based on a mistaken concept of non-discrimination, in that it attempts to give equal access to government jobs to all medical graduates who sat their Advanced Level examination in a particular year. Therefore, any delay in the graduation of medical students from one faculty means that students of that batch in other medical faculties must also wait before they can receive appointments. It would immensely benefit the realisation of the peoples' right to health care if this policy were changed. The public would benefit from doctors who graduate early being appointed when vacancies arise. The current policy addresses the plight of a few doctors, whose appointments may be delayed for unavoidable reasons, but does not address the wider needs of the public. A change in policy would also deter medical students from engaging in actions which might contribute to delays in their graduation.

Too few postgraduates are trained. For example, the Postgraduate Institute of Medicine (PGIM) of Colombo University, with over 35 fields of study, produced less than 190 postgraduates in 1994. The government invests a substantial amount of money every year on this institute without adequate dividends. Currently, the PGIM has the monopoly on training medical postgraduates. Facilities for postgraduate medical training should be more broadly provided in all medical faculties at universities.

More attention also needs to be paid to the training of nurses and paramedic personnel. There is also a need for quality assurance of such persons working at private hospitals, many of whom are informally trained but assigned critical life-saving responsibilities.

2.2.8 Priority given to vulnerable groups such as women and children

The priority given to children, with new legislation passed to handle crimes related to children, has been satisfactory.¹⁸ The indices of maternal health have also been good. The Penal Code was amended in 1995 to curb sexual violence against women.¹⁹ Sexual harassment has now been made an offence. However, the attention given to women's reproductive health and the right to choice on reproductive matters has been most disappointing.

(a) Women's right to reproductive health

Good reproductive health implies a state where people are able to have a responsible, satisfying and safe sex life and the capability to reproduce with the freedom to choose if when and how often to do so²⁰

Deadly and chronically debilitating septic abortions have become a major threat to the realisation of women's right to reproductive health. Article 12 of the CEDAW provides that:

¹⁸ See section 3.4 below.

¹⁹ Penal Code Amendment Act No. 22 of 1995. See Chapter VIII on Children's Rights.

²⁰ M.A.U. Marasinghe, "Presentation on Health Implications on Reproductive Health," Seminar on Reproductive Health, Scientific Sessions of the 125th Anniversary Sessions of Colombo Medical School, (July 1995.) p. 7.

States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

Most septic abortions result from induced abortions under non-sterile conditions. In Sri Lanka, a woman cannot choose to have an abortion legally except when it is intended to save her life.²¹ However, it is well known that termination of pregnancy is a common surgical procedure in many nursing homes. It may be recorded by the hospital as a dilatation and curettage (D&C) to treat a gynaecological disorder. Only the doctor and the patient, and not even the nurses and attendants, may know the real reason for the D&C. Abortions in nursing homes are usually done under strict aseptic conditions, so the women are rarely subject to any complications. The procedure known as "menstrual regulation" costs less and takes only a few minutes of the doctor's time. An average of about three women are admitted to hospital daily with complications arising from criminal abortions. An estimated 20% of beds in gynaecology units are occupied by such women.²²

The problems of morbidity and mortality caused by illegal abortions have been pointed out by members of both the legal and medical

²¹ Section 303, Penal Code.

²² Wilfred S.E Perera, "Changing trends in maternity care in Sri Lanka," *Ceylon Medical Journal*, 1993, Vol 38, No 2 (June 1993). pp 64-71.

professions.²³ However, the government has not yet taken any meaningful action. The cabinet accepted changes of laws to regularise abortion in 1995, and draft legislation proceeded up to the bill stage, but was suddenly withdrawn. Given that the chance of a mother dying in childbirth is greater than her dying as a result of an abortion carried out during early gestation, she should have a right to choose an early, legal abortion as it would increase her chances of survival. In addition, the lives of many young girls have been destroyed through teenage pregnancy, often resulting from sexual exploitation in domestic service or from other violence, as a visit to the Gangodawila Home near Colombo will confirm.²⁴

2.2.9 Priority given to people marginalised by mental and physical disability

(a) General mental health services

Mental health has long received inadequate attention.²⁵ Mental illness remains stigmatised and despite educational programmes on equality,

²³ For example, Jayawardena H, "Abortion - Illegal, yet common," Bar Association of Sri Lanka (BASL) *Law Gazette*, Colombo, 1993 (Vol 3, No1); Jayawardena H, "A Conflict of Ethics and Human Rights", LAWASIA International Law Conference, BASL, BMICH - Colombo, 1993; Sirisena J, Fernando S, "Criminal Abortion", paper delivered at the *Annual Scientific Sessions of the Medico Legal Society of Sri Lanka*, BMICH, Colombo (1994).

²⁴ Savithri Goonasekera, "Presentation on Socio-legal Aspects of Abortion," Seminar on Adolescent Reproductive Health, Scientific Sessions, 125th Anniversary, Colombo Medical School (July 1995) p. 15.

²⁵ Jayawardena H, "Social, Legal and Ethical Aspects of Mental Health", paper delivered at the World Mental Health Conference, Rajiv Gandhi Foundation, India, (April 1994).

mentally ill patients continue to experience discrimination. The country's psychiatric health facilities are barely adequate. Mentally ill patients are generally unable to demand their rights, and the priority given to mental illness in the health budget is low.

Because the problems associated with mental health are so severe in Sri Lanka, they are discussed in more detail below, as a "Special Issue."

(b) Protection of persons with physical disability

With the improvement of the traditional health indices (such as the MMR and IMR) throughout the world, more emphasis is now placed on the facilities available to marginalised groups such as disabled persons as indices of development and social justice.

The percentage of physically disabled persons who attend school is significantly less than the percentage of able-bodied persons. Disabled persons tend to be poor throughout the world, and to have less opportunities than others. They are more dependent on the health care system than others. Giving priority to the achievement of their rights would help to break the vicious cycle of dependence, segregation, lack of opportunity and poverty.²⁶

²⁶ Aart Hendricks, "Disabled Persons and Their Right to Equal Treatment; Allowing Differentiation While Ending Discrimination", *Harvard Health and Human Rights Journal*, Vol 1, No 2 (1995).

Because of the armed conflict in the North East, many more persons are becoming disabled and handicapped daily in Sri Lanka. However, there have been no new health or legal provisions to meet their needs.

The UN Human Rights Committee²⁷ stated that the "principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant."²⁸ Sri Lanka needs to adopt legislation to protect handicapped persons, in keeping with this principle. Such legislation should expressly forbid discrimination on grounds of disability where the individual concerned is otherwise qualified for the activity or programme at issue.

The Department of Social Services is responsible for the rehabilitation of disabled persons. It provides equipment such as hearing aids, wheel chairs, spectacles and crutches; occupational therapy; pre-school education for children with hearing defects; and rehabilitation centres. There are centres for occupational therapy in Seeduwa, Katawala, Angunankolapalassa, Wattagama, Wathuragama and Ragama. However, the current world trend is towards community-based rehabilitation, which seeks to improve the quality of life of disabled people by equalising opportunities, promoting and protecting their human rights and guaranteeing service delivery.²⁹

²⁷ See Overview, Chapter I, n. 1.

²⁸ Committee on Human Rights, General Comment No 18, Non-Discrimination, UN Official Records, Supple. No 40 (A/45/40), pp 173-175, paras. 8 & 10.

²⁹ *Report of Activities for 1993-95*, Disability Studies Unit, Faculty of Medicine, University of Kelaniya (1995).

The Disability Studies Unit of the University of Kelaniya, in collaboration with the University of Uppsala, Sweden, has conducted international courses and local training workshops on community-based rehabilitation. During 1995 it prepared curricula and teaching materials for health and social workers on community-based rehabilitation.

2.2.10 Percentage of government spending on health and its distribution

The government spends approximately Rs 8,272 million, or 1.6% of the gross national product, on health. This amounts to 4.2% of total government expenditure. Of this, the Ministry of Health spends Rs 5,049 million and the rest is spent by the Provincial Health Ministries. The *Annual Health Bulletin* does not adequately explain how the Provincial Councils allocate this money.

The Health Ministry's breakdown of expenditure for 1994 is as follows:

Service	Rupees spent	Percentage of budget
Administrative and staff services	1,244,122,000	24.6
Patient care services (curative)	3,130,280,000	61.9
Community Health Services (preventive)	606,534,000	12.0
Indigenous Medicine	68,850,000	1.3
Acupuncture, Homeopathy, Deshiya Medicine, etc. not indicated		

Source: *Annual Health Bulletin*, 1994, Ministry of Health

Considering the financial constraints created by the conflict in the North East, some consider the low percentage spent on health to be justified. However, many health analysts consider the way in which the health budget is allocated to be grossly cost-inefficient.

The Ministry of Health has sometimes been referred to as the "Ministry of Ill-Health," because it spends much more on curative medicine than on preventive medicine. The Ministry should give high priority to community health, as increasing investment in community health greatly reduces expenditure on patient care services. High-tech, costly patient care services reach only a very limited percentage of the population. For example, the surgical and maintenance cost of one renal transplant patient could perhaps be used to save the lives of thousands of other ill children.

The average cost of indigenous forms of treatment is much less than the cost of western medical treatment, yet little attention is given to them. Less than 1.5% of total health expenditure is spent on indigenous medicine, acupuncture, homeopathy and deshiya medicine. Given that over 50% of patients who come to the outpatients department have disorders that need counselling, reassurance and placebo forms of therapy - rather than specific western medical treatment - there appears to be a gross wastage in spending. Alternative medical practitioners should be given a basic training in identifying conditions that should be referred for specific forms of western

medical treatment when indicated, and vice-versa. Although such a policy would not have been accepted by the previous generation of doctors, it is now increasingly recognised that each system of medicine has its own strengths and weaknesses, and that they can be mutually reinforcing. A co-operative, multi-system approach would be more cost-efficient than the current competitive situation in realising the right to health, and should be treated as a matter of priority.

3. Special Issues

3.1 HIV/AIDS and Human Rights

The first case of AIDS in Sri Lanka, recorded in 1986, was contracted abroad. Until recently, the disease spread through contact with foreigners and persons who had travelled abroad. Now, with the spread of the disease through local contacts, AIDS is becoming a major public health problem. By the end of 1995 AIDS had reportedly killed over 50 people in Sri Lanka. Of recorded cases, over 60 people had AIDS, and over 160 were HIV positive. However, over 6,000 people are suspected of being infected.

AIDS patients suffer the same social ostracism and discrimination that were suffered by patients with other incurable diseases in the past. However, discriminating against HIV/AIDS patients has disastrous public health consequences. Patients who suffer discrimination may go underground, and cease to be accessible to public health personnel.

As AIDS displays no special features, and there is only evidence of opportunistic conditions that could occur even without AIDS, the diagnosis of AIDS can take time. Patients who fear they have the illness might not divulge HIV-related information, fearing discrimination. Since there is currently no cure for AIDS, having a voluntary HIV test is of more benefit to society than to the affected individual. This altruistic behaviour should not be discouraged.

In Sri Lanka, as in other parts of the world, the AIDS epidemic has highlighted the issue of patients' rights. The government has yet to enact meaningful HIV/AIDS specific legislation. It is essential that a Human Rights Impact Assessment relating to AIDS legislation and policy be conducted before any such legislation is adopted. Issues that should be addressed include non-discrimination, freedom from inhuman treatment and punishment, the right to confidentiality, the right to liberty and security, the right to freedom of movement, the right to family life, the right to work and education, the right to health and welfare and the right to equality before the law.

The HIV Law and Ethics Committee of the Ministry of Health, which is in its infancy, is responsible for recommending policy regarding the above matters to the Ministry. Its members include doctors, lawyers, academics, police personnel and members of non-governmental organisations. This multi-disciplinary approach is commendable. The Committee has forwarded recommendations on legal reforms to the campaign against sexually transmitted diseases.

3.2 Battery by law enforcement officers

Battery by law enforcement officers, a common form of torture, has a major impact on physical and mental health. In Sri Lanka, this kind of battery can be divided into two main categories: during relative peace and during periods of civil unrest and conflict.

3.2.1 Battery during relative peace

Here, the primary aim of the perpetrator is generally to extract information while keeping the victim alive. In the author's experience as a forensic medical practitioner, the common weapons used in battery are police batons, sticks, PVC pipes, rubber hose pipes, ropes, shoes and boots. The purpose of battery is to extract information quickly regarding an alleged crime. Maximum pain is inflicted leaving the least amount of scars or marks. Usually there is no intention of causing death. Therefore, the head is often spared, while the palms and soles may have many invisible injuries. If the victim adopts the foetal position to protect the face and abdomen, injuries tend to be distributed more on the back. Assault on fleshy areas such as buttocks, thighs and shoulders are commonly seen. Injuries to the external genitalia, though not as common, have been recorded. Bruising is the hall-mark of battery in Sri Lankan police custody.³⁰ Other injuries include scratches and lacerations. Injuries caused by sharp weapons are not common.

³⁰ Hemamal Jayawardena, *Forensic Medicine and Medical Law*, Siddhartha Press, (1995).

3.2.2 Battery during civil unrest and conflict

Here, the aim of the perpetrator has been not only to extract information, but to punish the victim and to "teach a lesson" to sympathisers of rebel groups. No respect for human life whatsoever is shown. There have been periods when mutilated parts of bodies were dumped and displayed at public places, such as during Southern insurrection by the JVP in the late 1980s, and in the first months of "Eelam War II" in the North East, which began in August 1990. In other cases, bodies have been secretly buried in mass graves. Both police and armed forces personnel have been implicated in such torture and killings. This form of torture, fortunately, is not currently seen. However, the effects of these incidents continue to be experienced by survivors and witnessed by forensic medical personnel.

With regard to the exhumations of mass graves which were undertaken by the Office of the Judicial Medical Officer at Suriyakanda, Rakwana, Hokandara, Minuwangoda and Bulathsinhala in 1994, preliminary reports were submitted the same year. However, lack of modern facilities for identification of skeletal remains has been a major problem in bringing the perpetrators to justice. A modern human remains identification laboratory with DNA-based identification techniques should be opened in Sri Lanka, preferably attached to a university. Facilities for training in forensic anthropology should also be improved.

3.3 Mental health

The following table illustrates the latest available morbidity and mortality statistics of mental illnesses:

Year	Morbidity per 100,000 population.	Mortality per 100,000 population.
1975	174.3	1.5
1980	225.2	2.1
1985	207.0	1.1
1990	211.3	0.4
1993	241.1	0.4
1994	247.7	0.4

Source: *Annual Health Bulletin (1994)*, Ministry of Health

About 3,200 beds are available for psychiatric patients in the state sector. Over 15 districts do not have a single psychiatrist. According to the *Annual Health Bulletin*, the Provincial Hospital at Matara has a psychiatrist but no in-patient facilities.

Sri Lanka records the highest suicide rate in the world. Suicide and self-inflicted injuries are the second most common cause of death in the 15-24 age group and the third most common cause of death in the 25-49 age group. Suicide in early childhood is uncommon in Sri Lanka and abroad.³¹ The common methods of suicide seen in forensic practice are poisoning with agro-chemicals, hanging, drowning and being run over by a train.

³¹ Suicide in a child as young as five has been reported in Copeland, A.R., "Childhood Suicide: A Report of Forensic Cases" *Journal of Forensic Science*, JFSCA, Vol 30, No 3 (July 1985) pp 965-967.

The lack of specialist psychiatrists is a major problem in Sri Lanka. For a population of over 17 million people, there were less than 35 psychiatrists in the state health sector in 1994. Of these, 16 worked within the Colombo District. The PGIM produced only one psychiatrist in 1994. This also shows the need for independent postgraduate training institutes in other medical faculties. There are no proper facilities to train clinical psychologists and psychotherapists. However, the recent introduction of a Masters Degree programme in Applied Psychology at the Faculty of Graduate Studies of the University of Colombo is a step in the correct direction.

3.3.1 Civil war and mental health

Due to the conflict in the North East, the country has virtually been separated into two units. The exposure of children and young adults to the cruelties of conflict throughout the past decade is bound to result in major psychiatric manifestations which need to be addressed urgently. Because of the current political situation, however, reliable and verifiable medical data from these areas are not available. However, many of the problems faced by families who survived trauma in the South during the JVP insurrection, which are better documented, are likely to be similar to the problems faced by families in the North East also.

The civil unrest of the late 1980s in the South, which led to tens of thousands of violent killings, has left an imbalance in the home environment, because so many men who were the bread-winners have

been killed or disappeared. A similar situation prevails in the areas of the North East which are most affected by the conflict.

The husband is the main wage earner in most families and the disappearances and killings have left many thousands of widows who now must care for their families alone. The psychological trauma occurs first with the death or the disappearance of the loved one, followed by the pressures of poverty. There is continuous stress while bringing up children in a terror-struck environment. These victims are mainly being helped by local NGOs.³²

An increased incidence of post-traumatic stress syndrome in survivors of torture is also reported. Sufferers of this disorder develop characteristic symptoms following a psychologically distressing event that is outside the range of usual human experience. Symptoms include the re-experiencing of the traumatic event, avoidance of stimuli associated with the event or numbing of general responsiveness, and increased arousal.³³

3.3.2 Aging population, inter-generational competition and mental health

An analysis of the age structure of the population through the years shows that the population pyramid is becoming a rectangle, due to the

³² Nancy Baron, "Empowering War Widows", *Torture*, Vol 4, No 1, 1994.

³³ A.A.Stone, "Post-traumatic Stress Disorder", *Anxiety Disorders*, Harvard Law School, pp 147.

reduction in the birth rate and an increase in life expectancy. Unless facilities are improved to care for the aged (geriatric care), mental health problems are bound to arise in the older age group.

Another problem associated with the phenomenon of an aging population is "inter-generational competition."³⁴ This phenomenon is manifest in moves to increase the age of retirement in spite of much unemployment in the younger age groups, calls for re-employment of older people and the continuation in power of senile politicians.

As people grow older, their physical and mental health declines. Amnesia and depression can be significant problems. Elderly people should not be segregated or discriminated against. Care for the aged was not generally a social problem in Sri Lanka, as strong religious and cultural conditioning saw that children cared for their parents in their old age. But with the breach of the traditional extended family model, the state is gradually being burdened with the care of the elderly. Elderly people who are fit to be discharged are frequently left in hospitals because their relatives fail to take them home for care, and there are no other facilities available for them.

3.3.3 Migrant workers and mental health

The surge of women going abroad for employment, especially to the Middle East, leaving children and husbands behind, has contributed to

³⁴ Hemamal Jayawardena, "Social and Legal Issues Related to Mental Health in Sri Lanka", Rajiv Gandhi Foundation (April 1994).

an increase in psychiatric problems and criminal behaviour among young children. Many cases of sexual offences and drug related problems have been attributed to the absence of mothers and wives from home.

3.3.4 Legal issues

There are many inadequacies in the law dealing with mental health in Sri Lanka. The main statute is the Mental Disease Ordinance (MDO), enacted in 1873 with minor amendments made since, the last being in 1956. In addition, certain provisions of the Criminal Procedure Code Act No. 15 of 1979, the Vagrants Ordinance (1842) and the Houses of Detention Ordinance (1907) are relevant to mental health care.

The nineteenth century MDO reflects the restrictive attitudes of the then legislators and enables violations of individual civil liberties without adequate process of the law. At that time, mental patients were shut off from society on the unfounded presumption that all mentally-ill persons are dangerous to society. This further stigmatised mental diseases, many of which are no different from other illnesses because they can be controlled. In more developed countries, statutory requirements for involuntary civil psychiatric confinement have become increasingly restrictive.³⁵

³⁵ Levinson, R.M., Briggs, R.P and Ratnar, C.H., "The Impact of a Change in Commitment Procedure on the Character of Involuntary Psychiatric Patients" *Journal of Forensic Sciences*, JFSCA, Vol 29, No 2 (April 1984) pp. 566-573.

The MDO does not clearly define mental disease. The phrase used is, "person of unsound mind." Such a broad definition can easily be abused. According to Section 2, any police officer, *gramaseva niladhari*, or individual having reason to believe that a person is of unsound mind, may apply in writing to the relevant District Court for that person's state of mind to be inquired into. An application by an individual should be accompanied by a certificate from a medical practitioner that the person so suspected has been under his observation, and that he believes him to be of unsound mind. However, no such medical certificate is required when a police officer or *gramaseva niladhari* makes the application.

Section 3 empowers the District Court to inquire into and determine the person's state of mind. It can hear evidence and remand the suspected person for further observations. However, there is no mandatory call for medical evidence in the Ordinance. Section 5 gives the discretion to the Minister to order the removal to a mental hospital of a person who has been found by the District Court to be of unsound mind. There is no requirement to prove that the mentally-ill person is dangerous to himself or to society under these sections; the only concern for the state is whether the person has been found to be of "unsound mind." It is clearly dangerous for police officers and *gramaseva niladhari* to have such wide discretion in making the initial diagnosis of a "person of unsound mind."

Section 7 of the MDO deals with emergency admission. Here, the removal of a person to a house of observation is envisaged only when

"it appears to be necessary that a person suspected to be of unsound mind should, **either for his own sake or that of the public,**" be so confined (emphasis added). The application is made by way of an affidavit to a justice of peace who can make an emergency order. The superintendent of the house of observation is required to apply to the District Court within 24 hours for an inquiry into the state of mind of the suspect. This section is also problematic, because it empowers a justice of the peace to confine a person for 24 hours on suspicion, a power which can easily be abused - especially in the light of the political patronage involved in making appointments to justices of the peace positions in recent years.

The MDO needs total remodelling. Its inadequacies cannot be discussed fully here. There have been fora³⁶ in which the medical and legal professions have highlighted these problems, but so far the government has not indicated any intention to change these provisions.

Many people who beg on the streets of Sri Lanka are incapable of working because of their mental health status. Such people are vulnerable to legal provisions on "vagrancy". Persons suffering from abnormal behaviour can be apprehended by the police under Section 2 of the Vagrants Ordinance, which states that, "every person behaving in a riotous or disorderly manner in any public street or highway shall be

³⁶ *Law, Psychiatry and Mental Health Care in Sri Lanka*, Workshop papers of Law & Society Trust, Sri Lanka Foundation Institute (16 November 1985).

liable to a fine..." Vagrants can be detained under a Magistrate's order under Section 2 of the Houses of Detention Ordinance, which defines a vagrant as "any person found asking for alms." Such proceedings are instituted in the Magistrate's Courts under Section 136(1)(b) of the Criminal Procedure Code, Section 115(2) of which permits Magistrates to remand such suspects for up to 15 days.

3.4 Violence against children

Reports of child abuse have increased in recent years. The forms of abuse include child neglect, battery, sexual abuse and psychological abuse. The injuries from child abuse may be minimal, severe or fatal. In addition, there may be deprivation of nutrition, care and affection with indications that such deprivation is non-accidental. Minor injuries such as soft tissue bruising, laceration of the mucosa of inner aspect of upper lip, tearing of upper lip (caused during the adult trying to prevent the child from crying) and bite marks, as well as more serious injuries such as sub-conjunctival haemorrhage, long bone fractures, burns, scalds and visceral injuries have all been reported in Sri Lanka. The *Sri Lanka Bar Association Law Journal* recently published a case of a battered domestic servant who had sustained over 175 injuries.³⁷

³⁷ Hemamal Jayawardena, "The Case of a battered domestic child servant," *Bar Association Law Journal*, Vol V, Part II (1994).

Considering the gravity of the problem, Sri Lanka amended the Penal Code in 1995 to include new provisions regarding cruelty to children.³⁸

The new Section 308A(1) of the Penal Code reads as follows:

Whoever, having the custody of charge or care of any person under eighteen years of age, wilfully assaults, ill treats, neglects or abandons such person or causes or procures such person to be assaulted, ill treated, neglected, or abandoned in a manner likely to cause him suffering or injury to health (including injury to, or loss of sight or hearing, or limb or organ of the body or any mental derangement), commits the offence of "Cruelty to Children."

Other amendments relevant to child abuse include, Section 363(e) which increased the age limit for statutory rape from 12 to 16 years; Section 360B which introduced the new offence of "sexual exploitation of children;" Section 364A, which defined "incest" as an offence; Section 286A which makes obscene publications using children a specific offence; and Section 365B which deals with "grave sexual abuse" of persons under 18 years.³⁹

3.5 Violence against women

Discrimination and violence against women are prevalent in most parts of the world. In Sri Lanka, they are probably as common, but not as

³⁸ Penal Code Amendment Act No 22 of 1995

³⁹ See Chapter VIII on Children's Rights for further discussion of these provisions.

openly reported. The legal systems of most countries are partly to be blamed, as traditionally the courts have turned a blind eye to domestic violence, claiming that "private" matters are not within their purview. However, this approach is now changing.

3.5.1 Wife battery

The term "battered wife" is usually reserved for a woman who has been subjected to repeated, deliberate and demonstrable physical injury by her husband. This definition is not satisfactory, as some forms of violence - such as holding the hair and shaking the head vigorously - may not leave demonstrable evidence at the time of examination. Out of 25 alcohol-related clinical judicial medical examinations conducted by the Department of Forensic Medicine of the University of Kelaniya during the last quarter of 1995, three were diagnosed as "wife battery."⁴⁰ Most of the other cases related to street fights and road traffic accidents.

Most battered women in Sri Lanka are financially dependent on their often alcoholic husbands. Although no social class is immune, wife battery is more common at the lowest socio-economic levels. Injuries are mostly caused by punching and kicking. When weapons are used, they are mainly clubs, sticks and firewood. The main injuries are bruises,

⁴⁰ Data compiled by Chandima Sirithunga for the Department of Forensic Medicine, University of Kelaniya (April 1996)

tears, cuts and scratches, mostly to the head, neck, hands and legs. The chest, stomach and the back are comparatively spared.

The problem of domestic violence has escalated partly due to the indifference of authorities, even when complaints are made. The move made in 1993 to introduce special units in major police division head offices to deal with violence against women and child abuse is welcome.⁴¹ However, its practical implementation has been very slow.

3.5.2 Sexual harassment

In September 1995, the Penal Code was amended⁴² to repeal the earlier Section 345 (assault or use of criminal force on a woman with the intent to outrage her modesty) and replaced it with the new offence of "sexual harassment:"

Whoever, by assault or use of criminal force, sexually harasses another person, or by use of words or actions, causes sexual annoyance or harassment to such other person, commits the offence of sexual harassment and shall, on conviction, be punished with imprisonment...."

⁴¹ See Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995) p 320.

⁴² Act No 22 of 1995

4. Conclusions and Recommendations

Sri Lanka's overall performance in providing its people with their basic right to health may be considered satisfactory compared with other countries in the region. However, vast improvements can be made by reviewing certain policies and addressing certain neglected areas. The allocation of health resources needs review. New priorities in the allocation of resources to special programmes need to be considered, and old programmes may need to be revised where necessary. A special programme to address the problem of suicide is urgently needed.

A higher percentage of the health budget should be invested in community health and indigenous medicine, based on a genuine commitment to a multi-systems approach to health. Such systems of medicine as acupuncture and ayurveda should be promoted more vigorously, and a co-operative approach should be fostered between the different medical systems. While the government's efforts to improve maternal and child health are commendable, with very good maternal mortality rates achieved, inadequate attention is paid to women's reproductive health. Laws should be changed to legalise abortion, at least when there are specific medical and social reasons.

Except in the North East where the ongoing conflict has created many practical problems, the steps taken to assure access to medical services have been good. Emphasis on preventive health measures such as health education, immunisation, family planning and sanitation has also been satisfactory.

Postgraduate medical education is in need of reform and should be decentralised with all faculties of medicine undertaking postgraduate medical training. Similarly, the holding of the Act 16 Examination should be decentralised.

More attention should be paid to mental health services and the protection and rehabilitation of disabled persons. The laws relating to mental health need to be completely revised, and new legislation is needed to protect the rights of the disabled.

A human rights approach to the health policy should be introduced by setting up a division for Human Rights Impact Assessment in the Ministry of Health. Until then, persons with a legal or human rights background should be included in action committees. The formation of the HIV Law and Ethics Committee is a step in the correct direction. The right to life and the right to health should be recognised in domestic law. The government has an obligation to provide for the right to health of its people, and the people have a duty to use the facilities conscientiously.

X

The Internally Displaced

1. Introduction

Sri Lanka's relatively stable conditions of displacement were upset in 1995 when government forces launched a major military offensive in the North. The offensive - Operation Riviresa - ended after government forces took control of Jaffna city in early December, ending over six years of control of the city by the LTTE. The offensive resulted in the dislocation of close to a half million people, some of whom fled fearing the advance of government forces but many of whom left on the orders of the LTTE.

This chapter looks at the conditions of those displaced by the conflict in the light of the applicable human rights and humanitarian standards.¹ The government kept a tight control on information coming out of the conflict zone and the picture that is presented here necessarily has gaps.²

¹ For a discussion of the standards applicable, drawn from international human rights and humanitarian law, as well as the relevant domestic norms, see Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995) Chapter XIII pp. 228-259.

² See Chapters III and IV on Emergency Rule and Freedom of Expression respectively for more details about censorship and the control of information from the conflict areas, and from the Vanni, to which many of those displaced from the Jaffna peninsula fled.

It has been difficult to obtain independent accounts of the status of the displaced, and those relief agencies which work in the area and have first-hand information have been cautious about sharing it.

Because of the intensity of the military offensive in October and the large scale humanitarian consequences which ensued, this chapter focuses primarily on the displacement which resulted from this operation.

2. The Numbers Displaced

There are no accurate figures on the ethnic composition of the displaced. Most are Tamil, although large numbers of Sinhalese and Muslims have also been displaced. A few years ago UNHCR unofficially estimated that about 78% were Tamil, 13% Muslim and 8% Sinhalese.³ Many of the over 100,000 Muslims evicted from the North by the LTTE in October 1990 remain displaced.

The numbers displaced began to rise steadily after the resumption of the conflict in April 1995, but precise figures are not known. According to the Ministry of Rehabilitation and Reconstruction, there were a little over one million internally displaced people at the end of

³ Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo, 1995) p. 237.

1995,⁴ an increase of about a half million people over the 1994 figure. At the end of 1994 there were approximately 525,000 internally displaced.⁵ In addition, it was estimated that at the end of 1994 a further 140,000 were displaced abroad, some of whom have sought asylum status.⁶

Figures on the displaced issued by the Ministry of Rehabilitation and Reconstruction indicated a sharp rise in the numbers of people displaced following Operation Riviresa.

Month	Approximate numbers of displaced people
December 1994	525,000
August 1995	625,111
October 1995	649,049
December 1995	1,017,181

Source: Ministry of Rehabilitation and Reconstruction

The number of displaced people in Sri Lanka is calculated on the basis of the numbers who receive dry rations from the state, and the Ministry of Rehabilitation and Reconstruction periodically releases these

⁴ NGO Forum on Sri Lanka, *Key Issues with Regard to the Human Rights Situation in Sri Lanka: March 1996* (Lobby Document prepared for the UN Commission on Human Rights, 1996) p. 7.

⁵ Law & Society Trust, *Sri Lanka: State of Human Rights 1994*, (Colombo, 1995) p 228.

⁶ Ibid.

figures with a breakdown for each district. Local and foreign relief officials believe that in some areas the figures may be too low, whereas in other areas under LTTE control, the LTTE may have inflated the figure to attract a larger share of dry rations into those areas. The figures given above for August and October 1995 do not include those labelled as "economically affected" by the Ministry of Rehabilitation, although they too draw rations from the state. Non-governmental organisations (NGOs) estimated that approximately 450,000 people were displaced as a result of Operation Riviresa,⁷ including people who had been displaced previously, as well as many who were displaced for the first time.

Prior to the October offensive, the numbers of displaced had not been publicly contested by the government. Soon after the offensive began in October, however, a "war of words" waged over the number of people affected. The French humanitarian organisation MSF published an appeal in the *South China Morning Post* in Hong Kong, stating that 500,000 had been displaced by the offensive. This was followed by a statement by United Nations Secretary-General Boutros Boutros-Ghali warning of an impending humanitarian disaster in Sri Lanka and calling for international assistance.

The government reacted strongly to the UN Secretary-General's statement. Contending that only about 200,000 had been displaced by

⁷ Mario Gomez, *The People In Between: Sri Lankans Face Long Term Displacement as Conflict Escalates*, US Committee for Refugees (March 1996) pp 3-5.

the October offensive, the government announced that it would not permit any independent relief operations to be conducted in the country, and that all relief would have to be co-ordinated through the state. While this did not reflect a major shift in the government's relief policy, it highlighted the government's sensitivity to international public opinion and exposure. The government's determination to keep the conflict and its impact on the civilian population out of the international spotlight was also reflected in the censorship it imposed on 21 September, and in the military's refusal to permit journalists to enter the conflict areas.⁸

3. The Jaffna Exodus

People began leaving Jaffna in large numbers at the end of October 1995, before government troops reached the city. Some people fled the bombing and the shelling which accompanied the military operation, but most fled because they were forced to do so by the LTTE. According to the UTHR, Jaffna, LTTE members used loudspeakers to call on people to leave the city, and went from house to house threatening them to leave.⁹ Whereas previously the majority of people displaced by conflict in Sri Lanka have been from more economically

⁸ See Chapter III on Emergency Rule and Chapter IV on Freedom of Expression for further details.

⁹ See also Article 19, *Silent War: Censorship and the Conflict in Sri Lanka* (London, March 1996) p 23.

deprived classes, this time a large segment of those forced to flee were members of Jaffna's middle and upper classes. When the army took control of the city centre in early December they found a largely deserted city with few inhabitants.

Most of the displaced fled initially to Chavakachcheri and Thennamarachchi. The first phase of this took place in heavy rains. Most people could take only their basic belongings and because of the rain and the large numbers on the roads, movement was extremely slow and traumatic. They were then ferried in LTTE-operated boats across the Jaffna lagoon to the Vanni. In mid-December 1995, local and foreign NGOs estimated that about 221,000 of the displaced were still in the Jaffna peninsula, mainly in the eastern part under LTTE control. The balance 232,000 were thought to have crossed over to the mainland and were scattered in the districts of Killinochchi, Mullaitivu, Mannar and North Vavuniya.

No accurate figures were available relating to the population of Jaffna before the October offensive. The last official census took place in 1981, before the conflict intensified, and would not reflect population movements and changes since then. The estimated numbers of people displaced quoted by the relief agencies were calculated on the basis of a total population figure of approximately 720-750,000 for the Jaffna District. Other estimates put the population of Jaffna District at anything between 600-800,000 before the recent offensive.

4. The Relief Operation

The government set up a "focal point" within the Ministry of Finance, Planning, Ethnic Affairs and National Integration to coordinate relief operations after the October displacement. The Ministry of Rehabilitation and Reconstruction also oversees displacement-related work. A group of NGOs consisting of Save the Children Fund (UK), Redd Barna, Forut, CARE, MSF-Holland, MSF-France, SEDEC, and Oxfam (UK) formed an "NGO Emergency Group" to assist with the relief effort.

Throughout the years of conflict, the government has provided food, medical supplies and other basic services to the displaced, including those located in LTTE-controlled areas. It is often alleged that the supplies are insufficient, but the government on the other hand contends that some of the supplies it sends are siphoned off by the LTTE for its cadres. The government has also provided resources to pay the salaries of health and education workers in the North. Some months prior to the October offensive, however, the government cut back significantly on food and other supplies being sent to the North. It also reduced the supply of cash being sent to the North.

There are two major supply routes to the North for food and non-food items. One is by ship, escorted by the ICRC, sailing from the port of Trincomalee in the East, to Point Pedro in the Jaffna Peninsula. The ICRC and the Government Agent (GA) of Jaffna are responsible for the distribution of supplies sent this way.

The other major route is by road. Until a new system was introduced in 1995, trucks were loaded in the South and sent to LTTE-controlled areas after being checked at the Thandikulam checkpoint in Vavuniya. The District of Vavuniya is partly controlled by the government and partly by the LTTE. In 1995 a system referred to as "cross loading" was introduced. Supplies sent on trucks to Thandikulam are re-loaded onto trucks sent from the LTTE-controlled areas of Mullaitivu, Killinochchi and Mannar districts. The GAs of these districts take responsibility for the distribution of the supplies sent in this way. A major actor in the relief operation in LTTE-controlled areas is the Tamil Rehabilitation Organisation (TRO), which is linked to the LTTE.

4.1 Food

Food to the displaced is supplied almost entirely by the government. For some months prior to the October offensive local and foreign NGOs reported a drop in the quantity of food and other supplies being sent to the North. At the end of November, however, local and foreign NGOs reported that food distribution was satisfactory.

4.2 Health

The October displacement resulted in huge demands being made of basic health facilities in Killinochchi, Mullaitivu and Mannar Districts.

Provision for health care in those areas was anyway barely adequate, and the huge influx of people from Jaffna stretched resources even further. There were reports that 114 people had died in the welfare centres in Killinochchi and Chavakachcheri due to "ill health."¹⁰

In the early period of the displacement, the lack of shelter and poor sanitary conditions provoked concerns that dysentery, cholera and other epidemics might break out. Although the rains ceased in the middle of November and the situation eased considerably, sanitation facilities and drinking water were scarce.

During Operation Riviresa, Jaffna Hospital - which had been run by the ICRC - was shut down and its facilities relocated to Point Pedro. The inviolability of Jaffna Hospital had been largely respected by both sides.

In November NGOs reported a shortage of facilities for surgery in the north.¹¹ The Killinochchi hospital, the "best equipped" hospital in the Vanni area, was being used to maximum capacity and its facilities compared badly with those in hospitals in other parts of the country. The army was reluctant to allow items for surgery to be sent to the North, fearing they would fall into LTTE hands.

¹⁰ Inform, *Situation Report*, January 1996 (Colombo) p 6

¹¹ Gomez, *People In Between*, *supra* n 7 at p 8.

The initial phase of the movement took place during heavy rains. Because sanitation facilities and drinking water were scarce, in November NGOs listed providing toilets as a priority need.

4.3 Education

Education in the North came to a halt with the October offensive. At the end of the year, children in the affected areas had no access to schools. In November 1995, the head of the government's "focal point" for relief, S M J Senaratne, told the US Committee for Refugees that if the people did not return to Jaffna the government would make educational facilities available to them by May 1996.¹²

4.4 Shelter

Shelter was a major concern at the end of 1995. A majority of the displaced were housed in extremely overcrowded conditions with a single house accommodating as many as five or six families in some cases. Many displaced people stayed with friends and relatives, while others moved to camps.

4.5 Cash

At the end of 1995 there was a shortage of cash in the North. The government was reluctant to release cash to those areas because it feared

¹² Gomez, *People In Between*, *supra* n 7 at p 8. Schools all over the country were closed by the government in November 1995 as a security measure.

the LTTE would get hold of it. For government officials working in the North, this meant salaries could not be paid, or that only small amounts of money could be drawn from banks.

5. Freedom of Movement and the Right to Remain

The displaced suffered restrictions on freedom of movement imposed by both the LTTE and the government. At the end of 1995 the majority of people that had left Jaffna were living in areas under LTTE control, and the LTTE restricted their movement out of the area. On the other side, the government controlled their entry into government-held territory. Those who were allowed to enter the South were required first to establish their *bona fides* and show that they had a "guarantor" living in Colombo or other area of the country. In some cases the military required relatives from Colombo to travel to Vavuniya - the northernmost point where the government writ extends - to vouch for the displaced and shepherd them to Colombo.

The essence of the right to freedom of movement is the ability to move freely within a region or country, and the freedom to set up residence in an area of one's choice.¹³ Forced evictions or mass transfers of people

¹³ Article 13 (1) of the UDHR and Article 12 (1) of the ICCPR.

violate this right. The right to remain, or the right not to be displaced, is not expressly articulated by human rights or humanitarian law, but flows by implication from the right to freedom of movement.¹⁴

For the over one million Sri Lankans displaced by the conflict, the freedom to choose their place of residence and the freedom to move without restriction within their region or country, was seriously infringed in 1995. A large number of them were forcibly evicted from Jaffna in the latter part of the year and were by the end of the year still unable to return if they wished to do so.

For the displaced to be able to exercise their right to free movement effectively, they should be provided with independent and accurate information on their original places of habitation, or other areas to which they wish to move. The information should specifically include the security, welfare, and infrastructure conditions of those areas to which they wish to move. This right would inhere by virtue of their

¹⁴ See Article 16 of ILO Convention No 169 and Sub-Commission on Prevention and Protection of Minorities Resolution 1994/24 para 1, which affirmed the right of persons to "remain in peace in their homes, on their own lands and in their own countries," UN Doc. [E/CN.4/Sub.2/1994/56], 28 October 1994 at p 67. Also see Guy Goodwin-Gill, "The Right to Leave, The Right to Return and the Question of a Right to Remain", Paper prepared for the Colloquium, "The Problems of Refugees in the Light of Contemporary International Law Issues", organised by the Graduate Institute of International Studies and the Office of the United Nations High Commissioner for Refugees, Geneva, 26 - 27 May 1994. See also Maria Stavropoulou, "The Right Not to be Displaced," 9 *The American University Journal of International Law and Policy* Vol 9, No 3 (1994) p. 689.

status as a group forcibly evicted from their usual place of habitation. During 1995, the tight controls on information imposed by both the LTTE and the government¹⁵ made the exercise of this right impossible.

6. Right to Information and Free Expression

Information from and into the conflict zones was severely restricted in 1995. The government kept a tight rein on information coming out of the conflict zone, and the LTTE similarly tried to control information coming into, and leaving, the areas it controlled. The censorship imposed by the government, and the bar on journalists entering the conflict areas, are discussed in the chapters on Emergency Rule and Freedom of Expression.

The LTTE kept a tight control on information and free expression among the displaced by controlling the movement of the population. In addition, they sought to influence the content of information through their radio station, and through statements from their Paris and London offices. The displaced had little access to independent sources of information, and their ability to communicate with friends, relatives and the general public outside LTTE-controlled areas was limited.

7. Freedom of Association

7.1 Humanitarian organisations

Threats to the freedom of association of humanitarian organisations

¹⁵ See below.

¹⁶ See also Gomez, *People In Between*, *supra* n 7 at pp 12-13.

during 1995¹⁶ created an unfavourable climate for humanitarian relief work among the displaced. Humanitarian organisations became extremely sensitive about any activities (including sharing information) that they feared might jeopardise their relief work. While the relationship between civil society groups and the state often does not run smoothly, it was particularly troubling that this threat emerged only about a year after several NGOs, including humanitarian organisations, had welcomed the PA's promise to restore many human rights and democratic freedoms which had been steadily eroded during UNP rule.

International organisations such as ICRC, UNHCR and MSF have for many years been labelled as LTTE sympathisers by sections of the media. Yet, it was not expected that such organisations would come under attack from the government itself. In July 1995 the Ministry of Foreign Affairs criticised the ICRC after it had released a report stating that government bombs had fallen on a church at Navali, Jaffna, and killed civilians. In November there was a veiled attack on MSF on the ground that the organisation had inflated displacement figures to raise funding abroad.¹⁷

The Foreign Minister made a public statement alleging that some of the

¹⁷ The Hong Kong office of MSF had published an appeal in the *South China Morning Post* of 4 November 1995, which stated that 500,000 people had been displaced by the October military offensive. The government disputed these figures. MSF-Sri Lanka in a public statement regretted this advertisement, saying that this "unfortunate act" occurred as a result of "an internal miscommunication" between the Hong Kong office and MSF - Sri Lanka; see the *Sunday Island, Colombo*, 19 November 1995.

agencies involved in relief work were not acting impartially. He stated that this was one reason why the state could not permit any independent relief operations in the country. These statements of the Foreign Minister came soon after the UN Secretary-General released a statement in early November expressing concern at the impending humanitarian disaster in Sri Lanka.

Also in November, two Catholic priests linked to a Roman Catholic organisation, the Social and Economic Development Centre (SEDEC), were taken into custody by the Sri Lankan forces on the ground that they were attempting to "smuggle" cash and banned items to the North. While the two priests were cleared of the charges, SEDEC was subjected to an intense investigation and the priests were still in custody at the end of 1995.

Soon after the October offensive began, a human rights and peace group, the Movement for Inter Racial Justice and Equality (MIRJE), released a statement expressing concern at violations of basic humanitarian norms, and calling for a cessation of the offensive and a resumption of negotiations. The statement drew a sharp retort from the Presidential Secretariat, which described the statement as tendentious, mischievous and misleading.

The problems faced by the Sri Lanka NGO Forum, whose annual meeting could not be held because of protests against it, are described in the chapter on Freedom of Expression.

7.2 The displaced

The right to freedom of association of the displaced themselves was also denied in 1995, particularly by the LTTE. There was no opportunity for the displaced to organise and lobby on issues of concern to them, and the LTTE did not permit the expression of views and ideas which ran counter to its own. Although there were camp committees in some areas, these were primarily concerned with the distribution of relief and had on them representation from the TRO. Moreover, the representation of the displaced on the committees and their ability to participate effectively in the decision-making process is limited.

8. Internally Displaced Women

The majority of displaced people worldwide are women,¹⁸ and this is also the case in Sri Lanka where displaced women outnumber displaced men significantly. The collapse of familiar community and family structures, including the support of the extended family, has made women even more vulnerable. Their displacement has increased their economic and physical insecurity,¹⁹ and many displaced women have

¹⁸ Francis Deng, *Report of the Special Representative of the UN Secretary General on Internally Displaced Persons*, submitted to the 52nd session of the Commission on Human Rights, E/CN.4/1996/52 (22 February 1996) p 16. Also see Lawyers Committee for Human Rights, *African Exodus: Refugee Crisis, Human Rights and the 1969 OAU Convention* (1995) p 98.

¹⁹ See Roberta Cohen, *Refugee and Internally Displaced Women*, The Brookings Institution - Refugee Policy Group Project (1995).

had to take responsibility for all aspects of family life as in many families the men have either been killed or have disappeared.

International human rights law recognizes the family as the basic unit of society and in need of protection and support.²⁰ Human rights law also protects the right to privacy.²¹ Displacement, and the conditions of camp life, have affected these rights in particularly significant ways, especially for women.²²

Displaced women also have inadequate opportunities to participate in decision-making relating to life in camps. Participation needs to go beyond mere representation on camp committees. Women also need to be given the capacity to formulate and present their needs and views effectively.

Although displacement has affected Sri Lankan women in a profound way, there have been few systematic and sustained attempts at gathering information and documentation. Some studies have looked at the abuses women suffer and the impact displacement has had on their lives, but these have usually been confined to a small geographical area and there has been little follow-up or sustained monitoring.

²⁰ Article 16(3) of UDHR, Article 10(1) of the ICESCR and Article 23(1) of the ICCPR.

²¹ Article 12 of the UDHR and Article 17 of the ICCPR.

²² See Law & Society Trust, *Sri Lanka: State of Human Rights 1994* (Colombo 1995), Chapter XIII.

9. Conclusion

Over a million Sri Lankans, of a total population of approximately 18 million, were estimated to be internally displaced at the end of 1995. Many of their basic rights continued to be violated by both the government and the LTTE. Displacement has affected almost every category of rights recognised by international human rights law - civil, cultural, economic, political and social. Both as individuals, and as a group, the rights of the displaced are violated.

As individuals, their right to liberty of movement has been denied and they have to endure an increased threat to their security. They suffer horrendous invasions of their privacy and their rights to free expression, information and free association are frequently violated. Their rights to participate in public affairs and to enjoy their own culture are seriously impaired. Their opportunities for work are limited and in some cases non-existent. Their access to health care and housing is also limited. The right to education in some cases is totally denied; in others it is constantly under threat. Their family life has been shattered and the ties of community that existed previously have been destroyed.

The rights of the displaced as a collectivity have not been articulated with any degree of precision by international law so far.²³ Yet the

²³ An exception is Article 16 (1) and Article 16 (2) of ILO Convention No 169 relating to Indigenous Peoples, which states that such people shall not be removed from the lands which they occupy unless their relocation is considered necessary as an exceptional measure and takes place with their free and informed consent.

vulnerability of the displaced, arising out of their physical dislocation, entitles them to certain protections. Their physical dislocation has resulted in continuing discrimination which has yet to be effectively addressed.

Schedule I

Un Human Rights Instruments Ratified By Sri Lanka (31 December 1995)

1. *International Covenant on Economic, Social and Cultural Rights 1966*
2. *International Covenant on Civil and Political Rights 1966
(including the Declaration under Article 41)*
3. *Convention on the Prevention and Punishment of the Crime of
Genocide 1948*
4. *Slavery Convention 1926 and the Supplementary Convention on
the Abolition of Slavery, the Slave Trade and Institutions and
Practices Similar to Slavery.*
5. *Convention for the Suppression of the Traffic in Persons and of
the Exploitation of the Prostitution of Others*
6. *ILO Convention (No. 29) concerning Forced Labour 1930*
7. *ILO Convention (No. 98) concerning the Application of the
Principles of the Right to Organize and Bargain Collectively*
8. *ILO Convention (No. 135) concerning Protection and Facilities
to be Afforded to Workers' Representatives in the Undertaking*
9. *Convention on the Nationality of Married Women 1957*
10. *Convention on the Rights of the Child 1989*

11. *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field 1949*
12. *Geneva Convention for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of the Armed Forces at Sea 1949*
13. *Geneva Convention Relating to the Treatment of Prisoners of War 1949*
14. *Geneva Convention Relating to the Protection of Civilian Persons in Time of War 1949*
15. *International Convention on the Elimination of All Forms of Racial Discrimination 1966*
16. *International Convention on the Suppression and Punishment of the Crime of Apartheid 1973*
17. *Convention on the Elimination of All Forms of Discrimination against Women 1979*
18. *UNESCO Convention against Discrimination in Education 1960*
19. *ILO Convention (No. 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value*
20. *ILO Convention (No. 103) on Maternity Protection*
21. *ILO Convention (No. 160) on Labour Statistics*
22. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984*

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23. *Hague Convention Relating to the Inter-Country Adoption of Children*

24. *ILO Convention (No. 87) concerning Freedom of Association and Protection of the Right to Organize*

25. *Convention on the Prohibition of Bacteriological Weapons 1972*

Schedule II

Un Human Rights Instruments Not Ratified By Sri Lanka

1. *Optional Protocol to the International Covenant on Civil and Political Rights*
2. *Second Optional Protocol to the above aiming at the abolition of the death penalty 1989*
3. *Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity 1968*
4. *ILO Convention (No. 105) concerning the Abolition of Forced Labour*
5. *Declaration regarding Article 21 of the above (relating to the entertainment of complaints by one State Party against another)*
6. *Declaration regarding Article 22 of the above (relating to the entertainment of complaints by individuals)*
7. *Convention on the International Right of Correction*
8. *ILO Convention (No. 102) concerning Minimum Standards of Social Security*
9. *Convention Relating to the Status of Refugees 1951*
10. *Protocol to the 1951 Refugees Convention 1967*
11. *Convention Relating to the Status of Stateless Persons 1954*

12. *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families¹*
13. *ILO Convention (No. 143) concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers*
14. *ILO Convention (No. 122) concerning Employment Policy*
15. *ILO Convention (No. 141) concerning Organisations of Rural Workers and Their Role in Economic and Social Development*
16. *ILO Convention (No. 151) concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service*
17. *Convention on the Political Rights of Women 1953*
18. *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages*
19. *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)*
20. *Protocol Additional to the Geneva Convention of 12 August 1949, and relating to the Protection of Victims of Non-international Armed Conflicts (Protocol II)*
21. *International Convention against Apartheid in Sports*

¹ Although Sri Lanka acceded to this Convention in March 1996, it is yet to be ratified.

22. *Protocol Instituting a Conciliation and Good Offices Commission to the UNESCO Convention against Discrimination in Education 1962*
23. *ILO Convention (No. 111) concerning Discrimination in respect of Employment and Occupation*
24. *Convention for the Prevention and Punishment of Terrorism 1937*
25. *International Convention against Taking of Hostages 1979*

In addition, the Declaration under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination has not been made.

Schedule III

Text of the Devolution Proposals*

These proposals seek to redefine the constitutional foundation of a plural society within a united and sovereign Republic of Sri Lanka based on the following principles:

- (a) promoting a vision of Sri Lanka where all communities can live in safety and security and their human dignity is valued and equality of treatment is an accepted norm of public life;
- (b) ensuring that all communities be given the space to express their distinct identity and promote that identity including the right to enjoy their own culture, profess and practise their own religion, and nurture and promote their own language including the right to transact business with the state in the national language of their choice;
- (c) ensuring that all persons may fully and effectively exercise all their human rights and fundamental freedoms without any distinction and in full equality before the law;
- (d) giving recognition to Sinhala and Tamil as official languages and recognising English as a link language;
- (e) providing an effective constitutional framework for the sharing of power with the regions based on an internally consistent and coherent value system. There would be clarity

* This text denotes the proposals put forward by the government in August 1995. A revised version was published in January 1996.

and consistency in the distribution of power between the centre and the regions and the scheme would be one which is capable of effective implementation and include structures for the just and equitable resolution of centre-regions disputes;

- (f) ensuring that all communities participate fully in the life of the nation whether it be at the national, regional or local level, thereby encouraging the regions and the communities which inhabit them to become constructive partners in a stable and pluralistic democracy.

I. Structure of Devolution

1.1 Unit of Devolution

A Regional Council will be established for every province identified by a new schedule to the Constitution. One of the regions would be constituted by redemarcating the existing boundaries of the present North-East Province in full consultation with a view to reconciling Sinhala, Tamil and Muslim interests.

1.2 Regional Councils

A Regional Council will consist of such number of members as may be determined by law. A Regional Council will, unless sooner dissolved, continue for a period of five years. There will be a Speaker and a Deputy Speaker for each Council.

- 1.2.1 Legislative power in the regions will be vested in the Regional Council. Every region may make laws applicable to the region with respect to any subject set out in the regional list. The Regional Council will have no jurisdiction over the Reserved List.

1.3 Governor

There will be Governor for each region for which a Regional Council has been established, appointed by the President with the concurrence of the Chief Minister of the Region.

1.3.1 The Governor will vacate his office upon (a) resignation; (b) a two-thirds majority of the Regional Council passing a vote of no confidence; (c) removed by the President.

1.3.2 The Governor may summon, dissolve and prorogue the Regional Council on the advice of the Chief Minister.

1.4 Chief Minister and the Board of Ministers

The Governor will call upon the person who commands the confidence of the majority in the Regional Council to form the Regional Council.

1.4.1 The Chief Minister cannot be removed from office so long as he enjoys the confidence of the Regional Council.

1.4.2 Executive power in the region will be vested in the Board of Ministers who will be appointed by the Governor on the advice of the Chief Minister. The Board of Ministers and the Chief Minister will be collectively responsible to the Regional Councils.

1.5 Capital Territory

The territory comprising the cities of Colombo and Sri Jayawardenapura-Kotte will be excluded from the Jurisdiction of

the Regional Council constituted for the Western Region and will be administered directly by the Centre in such manner as the Centre may think fit.

II. Finance

- 2.1 There will be a National Finance Commission entrusted with allocating grants to the region, keeping in mind the objectives of balanced regional development.
- 2.2 Regional Councils will have the powers of taxation in certain specified areas, and the Constitution will require other revenue sharing arrangements.
- 2.3 Regional Councils will have the powers to borrow as well as to set up their own financial institutions. International borrowings above a prescribed limit will require the concurrence of the Centre.
- 2.4 Regional Councils may regulate and promote foreign direct investment, international grants and development assistance, subject to such conditions as may be specified by the Centre.

III. Law and Order

- 3.1 There will be a regional police service headed by a Regional Police Commissioner appointed by the Chief Minister, in consultation with the Governor of the Region. The Regional Police Commissioner will be responsible to, and function under the control of the relevant Chief Minister. The Regional Police Service will investigate all offences against persons and property.

- 3.2 There will be a national police service responsible for investigating offences against the state, threats to national security, offences related to elections, inter province crimes and international crimes. The national police service will be headed by the National Police Commissioner and will be responsible to the Central Government.
- 3.3 The recruitment, transfers within the region, dismissal and disciplinary control of members of the regional police service will be the responsibility of the Regional Police Commission.
- 3.4 There will be a National Police Commission, the functions of which will include the transfer of police officers from one region to another in consultation with the Regional Police Commission.
- 3.5 The National Police Commission and the Regional Police Commission will both be appointed by the Constitutional Council. In the case of appointment of the Regional Police Commission, the Constitutional Council will act in consultation with the Chief Minister of the region in question.

IV. Land and Land Settlement

- 4.1 Land will be a devolved subject and State land within a region will be vested in the Regional Councils. State land within a Region required for the purposes of the Centre in respect of a reserved subject may be utilised by the Centre in consultation with the relevant Regional Council in accordance with such procedures as may be established by law.
- 4.2 Priority in future land settlement schemes will be given to persons first of the district and then of the Region.

V. Education

- 5.1 Education and higher education will be devolved subjects included in the regional list.
- 5.2 Certain specified schools and universities may be declared "National" institutions administered by the Centre.
- 5.3 The recruitment, transfer and disciplinary control of teachers other than those in National Schools will be the responsibility of the Regional Council.
- 5.4 Training of teachers will be the responsibility of both the Centre and Regional Councils, depending on whether such teachers are to be recruited to the national or regional councils.
- 5.5 Curriculum development in regional schools will be the responsibility of the Regional Councils. Minimum standards will be set by the Centre.
- 5.6 There will be a National Education Commission composed of representatives of the Centre and the regions entrusted with the following functions:-
 - (a) identifying "National" schools and universities in consultation with regional chief ministers and stipulating criteria for admission into these national schools and universities;
 - (b) setting minimum standards with regard to training, examination, curriculum and employment of teachers.

VI. Administration of Justice

- 6.1 There will be a High Court in every region. The High Court will exercise criminal, appellate and writ jurisdiction within the region.
- 6.2 The Regional Judicial Service Commission, which will be appointed by the Constitutional Council in consultation with the Chief Minister of the region, will consist of the Chief Judge of the High Court and the two High Court judges next in seniority.
- 6.3 Regional Judicial Service Commission will be responsible for the appointment of Regional High Court Judges and minor judiciary within the Region. The Regional Judicial Service Commission will consult with the National Judicial Service Commission with regard to the transfer of judges.
- 6.4 The Governor will appoint a Regional Attorney-General who will advise the Governor on the constitutionality of laws passed by the Regional Council. If a law is seen to be unconstitutional, the Regional Attorney-General, after consultation with the Governor, will institute action before the Supreme Court or any other tribunal specially set up to resolve disputes between the Centre and the Region.

VII. Public Service

- 7.1 There will be a Regional Public Service Commission (appointed by the Constitutional Council in consultation with the relevant Chief Minister) responsible for the recruitment, disciplinary control and dismissal of all persons employed by, or seconded to, the Regional Councils.

- 7.2 The Regional Public Service Commission will consult with the National Public Service Commission (also appointed by the Constitutional Council) in effecting the transfer of all such persons outside the Region.

VIII. Commission on Devolution

- 8.1 There will be a Permanent Commission on Devolution appointed by the Constitutional Council to resolve disputes between the Centre and a region or disputes among the regions. The Commission will have powers of mediation as well as adjudication.

IX. Framework Relating to Devolution

- 9.1 The Constitution will provide:
- (a) that the Republic of Sri Lanka shall be united and sovereign. It shall be a Union of Regions;
 - (b) that the territory of the Republic will consist of regions, the names of which are set out in the First Schedule, and its territorial waters;
 - (c) that the legislative power of the people will be exercised by Parliament, Regional Councils and the people at a Referendum to the extent hereinafter provided; and
 - (d) that the executive power of the People will be exercised by the President of the Republic acting on the advice of the Prime Minister and the Cabinet of Ministers, and the

Governors acting on the advice of the respective Chief Ministers and Regional Boards of Ministers to the extent hereinafter provided.

9.2 Article 76 of the existing constitution will be deleted.

X. Substance of Devolution

10.1 Regional Councils will exercise exclusive legislative and executive competence within the devolved sphere. The subjects and functions will be distributed between the Centre and the Regions as set out in the Appendix.

Appendix - Lists

(A) The Regional List

1. Health and indigenous medicine;
2. Education and educational services, excluding national school and national universities and the setting of minimum standards for training, examination, curriculum, and teacher qualifications;
3. Agriculture and agrarian services;
4. Irrigation within a region;
5. Animal husbandry;
6. Fisheries;
7. Forestry and protection of the environment within a Region;
8. Industries and industrial development;
9. Energy;
10. Transport;
11. Minor ports and harbours;
12. Roads and waterways;
13. Housing and construction;

14. Urban planning;
15. Rural development;
16. Local government;
17. Co-operatives;
18. Supply and distribution of food within the region;
19. Promotion of tourism;
20. The regulation of cultural activity within a region including public performances;
21. Broadcasting and media, including television;
22. Relief, rehabilitation and reconstruction;
23. Social security;
24. State land and its alienation or disposal (State land within a region required for the purposes of the Centre in respect of a reserved subject may be utilised by the Centre in consultation with the relevant Regional Council and in accordance with such procedures as may be established by law);
25. Regional Police and law and order
26. Administration of Borstal and reformatory institutions;
27. Regional public service;
28. Sports;
29. Regulation of unincorporated associations and societies within the region;
30. Regional debt;
31. Domestic and international borrowing (international borrowings above a specified limit would require the concurrence of the Centre);
32. The regulation and promotion of foreign direct investment, international grants and development assistance to the region;
33. Regional financial and credit institutions;
34. Excise duties to be specified;
35. Turnover taxes on wholesale or retail sales to the extent to be

specified;

36. Betting taxes, taxes on prize competitions and lotteries other than National Lotteries;
37. Motor vehicle licence fees;
38. Stamp duties on transfer of properties, such as land and motor cars;
39. Fines imposed by courts;
40. Court fees, including stamp fees on documents produced in courts;
41. Land revenue, including the assessment and collection of revenues, and maintenance of land records for revenue purposes;
42. Taxes on mineral rights;
43. Offences against laws with respect to any of the matters specified in the List.
44. Fines in respect of the matters in the Regional List;
45. Planning at the regional level;

(B) Reserved List (Central Government List)

1. Defence, national security, national police, and the security forces;
2. Immigration, emigration and citizenship
3. Foreign affairs;
4. National census and statistics;
5. National planning;
6. Currency and foreign exchange, international economic relations and monetary policy;
7. Public debt of the Government of Sri Lanka;
8. Foreign loans of the Government of Sri Lanka;
9. Regulation of banking and other financial institutions;
10. Insurance;
11. Stock Exchange and futures markets;
12. Audit of the Government of Sri Lanka;

13. Taxes on income, capital and wealth of individuals, companies and corporations;
14. Custom duties, including import and export duties, and excise duties (excluding such excise duties as may be devolved on the regions);
15. Turnover taxes and stamp duties, goods and services taxes (including those taxes and duties devolved on the regions);
16. Pensions payable by the Government of Sri Lanka or out of the consolidated fund;
17. Atomic energy;
18. Maintenance and management of the national grid;
19. Minerals and mines (regulation and development of oil fields and mineral resources, petroleum and petroleum products);
20. National rivers;
21. Airports, harbours and ports with international transportation;
22. Inter-regional transport and railways;
23. Civil aviation;
24. Inter-regional highways;
25. Shipping and navigation; maritime zones including historical waters and territorial waters (exclusive economic zone and continental shelf);
26. Elections (excluding elections to local authorities);
27. Post and telecommunications;
28. National public service and the national public service communication;
29. National health administration (inclusive of existing special purpose hospitals and teaching hospitals affiliated to national universities; training, education and research relating to health; development of national health standards; administration of all special programmes);

30. Drugs, poisons and narcotics;
31. Administration of justice;
32. National universities;
33. National standards with regard to professions, occupations and training;
34. National standards relating to research development and training in the area of agriculture;
35. Inter-regional irrigation schemes;
36. Fishing beyond the territorial waters;
37. Management of central policy and research institutions in the field of education, for example, National Institute of Education; management and supervision of national schools; conduct of national public certification examinations, imposition of minimum standards for training, curriculum and teacher qualifications;
38. Adoption of children;
39. National industrial research and training;
40. Regulations of activities for the enhancement of quality standards;
41. Foreign trade inter-regional trade and commerce;
42. Patents, inventions, designs, copyright, trademarks and merchandise marks;
43. Monopolies and merges;
44. Inter-regional food distribution;
45. National media including central government broadcasting and television institutions;
46. National archives and museums, and archaeological sites declared by law to be of national importance;
47. National environment and national policy on tourism;
48. Specialised national housing programmes;
49. Specialised national poverty alleviation programmes;
50. Youth and women's affairs;
51. Buddhism;

52. Development of national sports administration and infrastructure;
53. Intervention in instances of national (natural and environmental) disasters and epidemics;
54. Labour regulation and standards;
55. Surveys for the purpose of any matters enumerated in the Reserved List;
56. Offences against laws with respect to any of the matters in the List;
57. Fees in respect of any of the matters in the List, but not including fees taken in any Court;
58. Public utility infrastructure development.

Schedule IV

Draft Proposals on Constitutional Reform: Chapter on Fundamental Rights*

8. Every person has an inherent right to life and no one shall be intentionally deprived of his life:

Provided that deprivation of life shall not be regarded as inflicted in contravention of this Article -

- (a) When it results from the execution of a sentence of death pronounced by a competent court on a person convicted of an offence punishable with death; or
 - (b) When it results from the use of force which is no more than absolutely necessary-
 - (I) in the defence of any person from unlawful violence;
 - (II) in order to effect a lawful arrest or prevent the escape of a person lawfully detained;
 - (III) in action lawfully taken for the purpose of quelling a riot or insurrection;
 - (c) When it results from lawful acts of war.
9. (1) No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

* Denotes the proposals put forward by the government in May 1995.

- (2) No restriction shall be placed on the right declared and recognized by this Article.
10. (1) No person shall be imprisoned or otherwise physically restrained except in accordance with procedure prescribed by law.
- (2) No person shall be arrested except by an authorized officer acting in accordance with procedure prescribed by law under a warrant issued by a judicial officer causing such person to be apprehended and brought before a competent court:
- Provided that any person authorised so to do by any law may, in the manner and in the circumstances, prescribed by law, arrest any person without such a warrant.
- (3) Any person arrested shall at the time of arrest be informed of the reason for his arrest.
 - (4) Any person arrested shall at the time of arrest be informed that he may communicate with any relative or friend of choice, and if he so requests, such a person shall be afforded reasonable means of communicating with such relative or friend.
 - (5) Any person arrested shall, if he so requests, be afforded reasonable facilities to consult and retain an Attorney-at-Law of his choice.
 - (6) Any person arrested shall not be detained in custody or confined for a longer period than under all the circumstances of the case is reasonable, and shall, in every case be brought

before the judge of a competent court within twenty-four hours of the arrest, exclusive of the time necessary for the journey from the place of arrest to such judge, and no person shall be detained in custody beyond such period except upon, and in terms of, order of such judge.

- (7) (a) Any person detained in custody or confined who is entitled, under the provisions of any law, to be released on bail or on his executing a bond, shall be so released.
- (b) The amount of bail and the amount of every such bond shall be fixed with due regard to the circumstances of the case and shall not be excessive.
- (8) Any person suspected of committing an offence shall be charged or indicted or released without unreasonable delay.
- (9) Any person charged with an offence shall be entitled to be heard in person or by an Attorney-at-Law of his own choosing and shall be so informed by the judge.
- (10) Any person charged with an offence shall be entitled to be tried -
 - (i) without undue delay;
 - (ii) at a fair trial;
 - (iii) by a competent court;
 - (iv) at a public hearing;

Provided that a judge may, in his discretion, whenever he considers it necessary, in proceedings relating to sexual matters, or where the interests of juveniles so require, or in the interests of national security or public order, or in the interests of order and security within the precincts of such court, exclude therefrom such persons as are not directly interested in the proceedings.

- (11) Every person shall be presumed innocent until he is proved guilty; provided that burden of proving particular facts may, by law, be placed on the accused.
- (12) No person shall be compelled to testify against himself or to confess guilt.
- (13) No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence, and no penalty shall be imposed or any offence more severe than the penalty in force at the time when such offence was committed: Provided that nothing in this Article shall prejudice the trial and punishment of any person for any act or omission which at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.
- (14) Any person who has once been tried by a competent court for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried for the same offence.
- (15) No person shall be punished with death or imprisonment except by order of a competent court in accordance with law.

The arrest, holding in custody, detention or other deprivation of personal liberty of a person, pending investigation or trial shall not constitute punishment.

- (16) All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.
- (17) The arrest, holding in custody, detention or other deprivation of personal liberty of a person, by reason of a removal order or a deportation order made under the provisions of the Immigrants and Emigrants Act or Indo-Ceylon Agreement Implementation Act No. 14 of 1967 or other such law as may be enacted in substitution therefore, shall not be a contravention of this Article.
- (18) No restriction shall be placed on the rights declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or for the purpose of securing due recognition and respect for the rights and freedoms of others.

Right of Equality

- 11. (1) All persons are equal before the law and are entitled to the equal protection of the law.
- (2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political or other opinion, place of birth or any one such grounds.

Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for employment or office in the Public Service, Judicial Service, Provincial Public Service or Local Government Service or in the service of any public co-operation, where such knowledge is reasonably necessary for the discharge of such employment or office:

Provided further that it shall be lawful to require a person to have a sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.

- (3) No person shall on the grounds of race, religion, language, caste, sex, political or other opinion, place of birth or any one of such grounds be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.
- (4) Nothing in this Article shall prevent special measures being taken by law, subordinate legislation or executive action where necessary for the sole purpose of the advancement of disadvantaged or underprivileged individuals or groups including those that are disadvantaged or underprivileged because of race, sex, or mental or physical disability.
- (5) No restriction shall be placed on the exercise of the rights declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or

the protection of public health or for the purpose of securing due recognition and respect for the rights and freedoms of others.

Freedom of Movement

12. (1) Every person lawfully resident within Sri Lanka is entitled to the freedom of movement within Sri Lanka and of choosing his residence within Sri Lanka.
 - (2) Every person shall be free to leave Sri Lanka.
 - (3) No restrictions shall be placed on the exercise of the rights declared and recognised by paragraphs (1) and (2) of this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security or public order or the protection of public health or morality or for securing due recognition and respect for the rights and freedoms of others.
13. Every citizen shall be entitled to return to Sri Lanka.
14. (1) Every person has the right to respect for his private and family life, his home and his correspondence and shall not be subjected to unlawful attacks on his honour and reputation.
 - (2) No restriction shall be placed on the exercise of the rights declared and recognised by paragraph (1) of this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order or national economy or the protection of public health or morality or for securing due recognition and respect for the rights and freedoms of others.

Freedom of Thought

15. (1) Every person is entitled to freedom of thought, conscience and religion including the freedom to have or to adopt a religion or belief of his choice.
- (2) Every person is entitled to freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.
- (3) No restrictions shall be placed on the rights declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, or for securing due recognition and respect for the rights and freedoms of others.
16. (1) Every person is entitled to the freedom of speech and expression including publications. This right shall include the freedom to hold opinions and to receive and impart information and ideas either orally, in writing, in print, in the form of art, or through any other medium.
- (2) No restriction shall be placed on the right declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society, in the interests of national security, public order or racial and religious harmony or the protection of the reputation or rights of others, preventing the disclosure of information received in confidence or maintaining the authority of Parliament, or maintaining the authority and impartiality of the judiciary.

17. (1) Every person is entitled to the freedom of peaceful assembly.
- (2) No restrictions shall be placed on the exercise of the rights declared and recognised by paragraph (1) of this Article other than such restrictions prescribed by or under any law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony, the protection of public health or for the purpose of securing the due recognition and respect for the rights and freedoms of others.

Freedom of Association

18. (1) Every person is entitled to the freedom of association.
 - (2) Every citizen is entitled to the freedom to form and join a trade union.
 - (3) No restrictions shall be placed on the exercise of the rights declared and recognised by paragraphs (1) and (2) of this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of national security or public order, racial or religious harmony or the protection of public health or morality or for securing due recognition and respect for the rights and freedoms of others.
19. (1) Every citizen is entitled by himself or in association with others to enjoy and promote his own culture and to use his own language.
 - (2) No restrictions shall be placed on the exercise of the rights declared and recognised by this Article other than such

restrictions prescribed by law as are necessary in a democratic society in the interests of national security, public order, racial or religious harmony or the protection of public health or for securing due recognition and respect for the rights and freedoms of others.

20. (1) Every citizen is entitled to the freedom to engage by himself or in association with others to engage in any lawful occupation, profession, trade, business or enterprise.
- (2) No restriction shall be placed on the exercise of the rights declared and recognised by this Article other than such restrictions prescribed by law as are necessary in a democratic society in the interests of the national economy or the environment or in relation to -
- (a) the professional, technical, academic, financial and other qualifications necessary for practising any profession or carrying on any occupation, trade, business or enterprise, and the licensing and disciplinary control of the person entitled to such fundamental right, and
- (b) the carrying on by the State, a State agency or a public corporation of any trade, business, industry, service or enterprise, whether to the exclusion, complete or partial, of citizens or otherwise.

Right to own Property

21. (1) Every citizen is entitled to own property alone or in association with others.

- (2) No person shall be deprived of his property except according to procedure established by law for a public purpose or for reasons of public utility or public order and upon payment of fair compensation.
22. The exercise and operation of the fundamental rights declared and recognised by Articles 10, 11, 12, 13, 14, 15, 16, 17 and 18 shall in their application to the armed forces, the police force and other forces charged with the maintenance of Public Order be subject to such restrictions as may be prescribed by or under any law in the interests of the proper discharge of the duties and the maintenance of discipline among them.
23. (1) In time of public emergency the existence of which is duly proclaimed, subject to paragraphs (2) and (3), measures may be prescribed by law derogating from the exercise and operations of the fundamental rights declared and recognised in this Chapter to the extent strictly required by the exigencies of the situation, provided that such measures do not involve discrimination solely on the grounds of race, language, caste, national or social origin. For the purpose of this Article "law" includes regulations made under the law for the time being in force relating to public security.
- (2) There shall be no derogation from any of the rights declared and recognised by Articles 8, 9, 10(1), 10(2), 10(10), 12, 13, and 15.
 - (3) There shall be no derogation from the right declared and recognised by Article 10(6) unless at the same time legal provision is made requiring -

- (i) a Magistrate having jurisdiction to be promptly informed of the arrest, and
- (ii) the person arrested to be produced before such Magistrate within such time as is reasonable in all the circumstances of the case.

Written Law

- 24. All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the provisions of this Chapter.
- 25. The subjection of any person on the order of a court to any form of punishment recognised by any written law shall not be a contravention of the provisions of this Chapter.
- 26. Every person shall be entitled to apply to the Supreme Court as provided by Article 129, in respect of the infringement or imminent infringement, by State action, including executive or administrative action, of a fundamental right to which such person is entitled under the provisions of this Chapter:

Provided that where the person aggrieved is unable or incapable of making an application under Article 129 by reason of physical, social or economical disability or other reasonable cause, an application may be made on behalf of such a person, by any relative or friend of such person if the person aggrieved raises no objection to such application:

Provided further that an application under this Article may be made, in the public interest, on behalf of any person or persons aggrieved, by any other person or by any incorporated or unincorporated body of persons.

Directive Principles of State Policy and Fundamental Duties

30. The following principles shall guide the State in making laws and the governance of Sri Lanka:

- (1) The State shall strengthen national unity by promoting co-operation and mutual trust, confidence and understanding among all sections of the people of Sri Lanka.
- (2) The State shall assist the development of the cultures and languages of the people.
- (3) The State shall safeguard and strengthen the democratic structure of government and the democratic rights of the people.
- (4) The State shall establish a just and free society the objective of which include:
 - (a) the full realization of the fundamental rights and freedoms of all persons;
 - (b) securing and protecting effectively a social order in which social economic and political justice shall inform all institutions of national life;
 - (c) the elimination of economic and social privilege, disparity and exploitation;
 - (d) the equitable distribution of the material resources of the community and social product;

- (e) the realization of an adequate standard of living for all citizens and their families including adequate food, clothing, housing and medical care;
 - (f) ensuring social security and welfare;
 - (g) raising the moral, cultural and educational standards of the people and facilitating the full development of the human personality;
 - (h) the creation of the necessary economic and social environment to enable people of all religious faiths to make a living reality of their religious principles;
- (5) The State shall develop the whole country by means of appropriate public and private economic activity.
- (6) The State shall protect and preserve and improve the environment and safeguard the reefs, shores, forests, lakes, watercourses and wildlife of Sri Lanka.
- (7) The State shall protect and preserve every monument or place or object of artistic or historic interest declared by or under law to be of national importance.
- (8) The State shall promote international peace, security and co-operation, and establishment of a just and equitable international economic and social order, and shall respect, and foster respect for international law and treaty obligations in dealings with and among nations.

31. It shall be the duty of every citizen to

- (a) uphold and protect the sovereignty, unity and integrity of Sri Lanka;
- (b) uphold and defend the Constitution and its ideals and institutions;
- (c) foster national unity and promote harmony amongst all the people of Sri Lanka;
- (d) respect the rights and freedoms of others;
- (e) value and preserve the rich heritage of our composite culture;
- (f) protect and improve the environment and conserve its riches;
- (g) safeguard and preserve artistic or historical objects and places of national importance;
- (h) safeguard and protect public property and combat its waste or misuse;
- (i) refrain from directly or indirectly participating in bribery or corruption;
- (j) uphold the rule of law and *abjure* violence;
- (k) work conscientiously in a person's chosen occupation.

32. The provisions of the Chapter do not confer or impose legal rights or obligations, and are not enforceable in any court or tribunal.

No question of inconsistency with such provisions shall be raised in any court or tribunal.

The Constitutional Council

65. (1) There shall be a Constitutional Council which shall consist of the following:
- (a) the Speaker;
 - (b) the Prime Minister;
 - (c) the Leader of the Opposition;
 - (d) a Chief Minister nominated by the Chief Minister of the Provinces;
 - (e) five Members of Parliament nominated by the Committee of Selection of Parliament, and
 - (f) two retired Judges of the Supreme Court or Court of Appeal nominated by the Speaker.
- (2) The Speaker shall be the Chairman of the Constitutional Council.
- (3) A member referred to in sub paragraph (e) of paragraph (1) of this Article shall unless he earlier resigns from office by a letter addressed to the Chairman of the Committee of Selection or is removed from office by such Committee or ceases to be a Member of Parliament, hold office for a period of six years.

- (4) A member nominated under sub paragraph (d) of Paragraph (1) of this Article shall, unless he earlier resigns from office by a letter addressed to the Speaker, is removed from office by the Selection Committee or ceases to be a Chief Minister, hold office for a period of five years.
66. (1) No person shall be appointed as a member of the following Commissions and public bodies except on the recommendation of the Constitutional Council-
- (a) the Public Service Commission;
 - (b) the Commission to Investigate Allegations of Bribery or Corruption;
 - (c) the Official Languages Commission;
 - (d) the University Grants Commission;
 - (e) the Election Commission; and
 - (f) such other public body as Parliament may by law determine.
- (2) It shall be the duty of the Constitutional Council to recommend to the President, persons for appointment as members of the Commissions or public bodies referred to in paragraph (1), whenever the occasion for such appointment arises.
67. (1) No persons shall be appointed to any of the following offices except with the approval of the Constitution Council;

- (a) the Attorney-General;
 - (b) the Heads of the Army, Navy and Airforce and the Police force;
 - (c) the Commissioner of Elections;
 - (d) the Parliamentary Commissioner for Administration (Ombudsman);
 - (e) the Auditor-General; and
 - (f) such other offices as Parliament may by law determine.
- (2) It shall be the duty of the President or the appropriate appointing authority to submit for approval to the Constitutional Council, names of persons for appointment to any of the offices referred to in paragraph (1), whenever the occasion for such appointment arises.
68. (1) There shall be appointed a Secretary to the Constitutional Council appointed by the Council.
- (2) The Constitutional Council shall meet as often as may be necessary to perform the duties imposed on such Council by the provisions of this Chapter and such meetings shall be summoned by the Secretary to the Constitutional Council.
- (3) The Chairman shall preside at all meetings of the Constitutional Council and in the absence of the Chairman from any meeting of the Constitutional Council, the Prime Minister shall preside at such meeting. In the absence of

both the Chairman and Prime Minister from any meeting of the Constitutional Council, a member elected by the members present at such meeting shall preside at such meeting.

- (4) The quorum for any meeting of the Constitutional Council shall be seven.
- (5) The Constitutional Council shall endeavour to make every recommendation or approval it is required to make by unanimous decision. In the absence of unanimous decision, the decision of the majority shall prevail.
- (6) In the event of an equality of votes on any question for decision at any meeting of the Constitutional Council, the member presiding at such meeting shall have a casting vote.
- (7) Subject to the preceding provisions of this Article, the Constitutional Council may regulate the procedure in regard to its meetings and the transaction of business at such meetings.

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Sri Lanka: State of Human Rights 1995

This report is a detailed account of the state of human rights in Sri Lanka focussing on events which occurred in the country in 1995.

The report considers civil and political rights in relation to the integrity of the person, freedom of expression and media freedom, and judicial protection of human rights; as well as workers' rights including the workers' charter, trade unions and the rights of plantation workers; children's rights; right to health; minority rights; and rights of internally displaced persons. Hence, the report represents an important watershed with regard to human rights in Sri Lanka.



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