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Ethnic Conflict and Violence in SRI LANKA

**Report of a Mission to Sri Lanka
in July-August 1981 on behalf of the
International Commission of Jurists**

by

**Professor Virginia A. Leary, Faculty of Law and Jurisprudence
State University of New York at Buffalo, USA**

**with a supplement by the ICJ staff
for the period 1981–1983**

INTERNATIONAL COMMISSION OF JURISTS

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PREFACE

In view of the events of July-August 1983 in Sri Lanka, the International Commission of Jurists has decided to reprint the report "Ethnic Conflict and Violence in Sri Lanka" by Professor Virginia A. Leary, written after her mission to Sri Lanka in July-August 1981.

The analysis she made of the ethnic conflict is still valid and provides the necessary background to understand the recent grave outbursts between the Sinhalese and Tamil communities.

A supplement has been prepared by the staff of the International Commission of Jurists which brings up to date the relevant legislation and traces the incidence of terrorist violence and counterviolence since Prof. Leary's mission.

As will appear from the footnotes in the Supplement, some of the information has been taken from a report by Mr. Tim Moore, Honorary Treasurer of the Australian Section of the International Commission of Jurists. He visited Sri Lanka to attend a trial of two priests arrested under the Prevention of Terrorism Act. As the trial was postponed, he took the opportunity to enquire into ethnic violence and other problems relating to the Rule of Law. The report of Mr. Tim Moore's mission is available from the International Commission of Jurists, Australian Section, G.P.O. Box 173, Sydney, 2001, N.S.W., Australia.

*Niall MacDermot
Secretary-General
International Commission of Jurists
Geneva, August 1983*

ETHNIC CONFLICT AND VIOLENCE IN SRI LANKA

INTRODUCTION

Introduction to Sri Lanka

Sri Lanka (formerly known as Ceylon) is a large island (65,609 square kilometers) situated 29 miles off the southern tip of India. The ethnic composition of its population of 14 million is 72% Sinhalese, 20.5% Tamil, (Ceylon and Indian), 7% Moors (Muslims), 0.5% Burghers (descendents of the Dutch and Portuguese) and others.

The official language of Sri Lanka is Sinhala with Sinhala and Tamil having equal status as national languages. English is widely spoken. The official religion is Buddhism, the religion of the majority of the Sinhalese population. The Tamils are predominantly Hindu, although a substantial minority of the Tamil speaking population are Muslims and Christians.

Sri Lanka obtained its independence from Great Britain in 1948. Prior to British occupation in 1796 it had been colonized by the Portuguese and Dutch. It is a unitary democratic republic with a mixed presidential--parliamentary political system. Universal adult franchise was introduced in Sri Lanka as early as 1931 and since independence the country has held elections every

six or seven years. Two major political parties, the United National Party (UNP) and the Sri Lankan Freedom Party (SLFP) have governed the country alternately since independence. Both these parties are predominantly Sinhalese. The SLFP, in coalition during part of the time with two Marxist parties, was in power from 1970 to 1977. The country was governed under a state of emergency for much of this period, following a major insurrection in 1971. Many civil liberties were severely curtailed. The coalition government adopted a policy of land redistribution and economic self-sufficiency. The defeat of the SLFP in 1977 has been widely attributed to economic difficulties, inefficiency and corruption.

The UNP came into power in 1977 with a strong market economy orientation, an open door for foreign investment and imports and strong encouragement of tourism. It also pledged to restore civil liberties neglected by the preceding regime. J.R. Jayewardene, the UNP leader, is President of the country. At the present writing, the UNP has more than a 2/3 parliamentary majority. The Tamil United Liberation Front (TULF) has become the opposition party in parliament with only 17 seats. The UNP has 139 seats. The next election is scheduled for 1983.

Although Sri Lanka has a very low per capita income it has a high level of literacy and education, low infant mortality rates and relatively high average life expectancy. Like many other developing countries, however, it has major problems of poverty and unemployment. Many skilled laborers and professional persons have emigrated. Its economy has traditionally been agricultural

with an emphasis on tea, rice, rubber and coconuts. An attractive country with beautiful beaches, diversified scenery, ruins of ancient cities, and friendly people, it has become a popular tourist area for Europeans.

Recent Events: Background to the ICJ Mission

On August 17, 1981, the government of Sri Lanka declared a state of emergency in order to control an outbreak of violence directed against the minority Tamil community. This state of emergency was the second declared within three months; the communal violence was the third major attack against Tamils since independence in 1948 and the second since the election of the present government in 1977. The August violence followed several months of increasing tension between the two major ethnic groups. In April 1981, a number of Tamil youths were apprehended and detained by security forces under the Prevention of Terrorism Act. At least 27 youths were held incommunicado without access to lawyers or family members. The arrests followed a bank robbery in which two policemen were killed, attributed to an extremist group called the Tamil Liberation Tigers.

In early June, local elections for District Development Council members took place throughout the country. In the north of the country in the overwhelmingly Tamil area the elections were held during a state of emergency and in an atmosphere of violence. During the campaign, a candidate and two police officers were killed. Police and security forces, apparently in

reaction to the killing of the policemen, went on a rampage in the Tamil City of Jaffna burning the market area, the home of a member of Parliament, the TULF party headquarters and the Public Library containing 95,000 volumes.

In July, a police station in Anacottai in the Tamil area was attacked, two policemen were killed and many firearms stolen. The attack was again attributed by government sources to a terrorist group of Tamil youths. Also in July, in an unusual, nearly unheard of, parliamentary procedure, members of the UNP, the parliamentary majority party (composed predominantly of Sinhalese), approved a motion of no confidence in the leader of the opposition political party, Mr. A. Amirthalingam of the Tamil United Liberation Front. The vote was preceded by verbal attacks by majority party members against the Tamil leader for criticizing the government abroad for its handling of the Tamil question.

At the end of July, the Court of Appeal in Colombo in a widely publicized and emotionally charged proceeding, began hearing petitions for writs of habeas corpus for four of the 27 Tamil youth detained incommunicado by the Army since April under the Prevention of Terrorism Act. The immediate occasion for undertaking the International Commission of Jurists' mission was the continued incommunicado detention of Tamil youths, but the events described above formed the backdrop of ICJ concern about the state of human rights in Sri Lanka and are intimately related to the application of the Terrorism Act.

Purpose and Scope of Mission; Sources of Information

In July, 1981, the ICJ requested the author of the present report, then on a private visit in Sri Lanka, to undertake a study of the human rights aspects of the Terrorism Act and events related to its adoption and application. The ICJ observer was in Sri Lanka from July 12 to August 2 and from August 18 to 23, a total period of four weeks, and was thus present during the attack on the police station in Anacottai, the vote of no-confidence against the opposition Tamil leader, the habeas corpus hearing in the Court of Appeal and the period of the state of emergency immediately following the communal violence.

During the mission in Sri Lanka, the undersigned interviewed government officials, opposition party members, lawyers, professors, sociologists, trade union officials, journalists, and members of human rights organizations. The Ministries of Justice and Foreign Affairs were informed of the ICJ study and were helpful in making known the government's point of view concerning the current crisis in Sri Lanka. The observer attended several sessions of the habeas corpus proceedings, met the President of the Court of Appeal, the attorneys for the petitioners and the Deputy Solicitor General representing the government. She also interviewed families of detainees held under the Terrorism Act, visited areas of Jaffna which had been burned in June and interviewed residents of Jaffna.

Sri Lanka is a country in which citizens--even those in opposition to the government--appeared to feel free to express

their opinions. Individuals interviewed did not request anonymity or lack of attribution and government officials were uniformly courteous. In addition to information obtained through interviews, the observer was also able to obtain extensive written material on historical aspects of the racial situation,¹ recent racial incidents and the situation of human rights in general. There appears to be no systematic censorship of the press or the mails; however, all of the major English language newspapers except one and radio and television are government controlled.² The privately owned English language newspaper carried in full the Amnesty International report concerning the recent incommunicado detention of Tamil youths.

A number of allegations were heard, however, of selective reporting which exacerbated racial tension, including by the privately owned English language paper. Concern was also expressed over a proposed bill which would provide that every newspaper make a deposit with the Insurance Corporation in order to meet any claim for damages that might result from being found guilty in a libel action, the amount of deposit to be determined by the Cabinet. Concern was expressed that the deposit might be so large as to put small newspapers with limited financial resources out of circulation.³

Other recent human rights issues in Sri Lanka which have caused concern are the deprivation by Parliament in 1980 of the civic rights for a period of seven years of Mrs. Sirimavo Bandaranaike, leader of the Sri Lankan Freedom Party and twice Prime Minister of Sri Lanka, and the adoption of the Essential

Public Services Act in 1979 which enables the government to declare any of a wide variety of services as essential services, thereby outlawing strikes or temporary cessation of work in such services.

While the International Commission of Jurists is concerned about these issues, the present report is limited to the most serious human rights problem in Sri Lanka at the moment, namely, the racial problem, violence resulting from racial conflict and the draconian provisions of the Terrorism Act as a means of coping with the violence. The report is based on observations and interviews of the undersigned while in Sri Lanka, on written material obtained in Sri Lanka and on press and other reports of events occurring since the visit of the undersigned.

ETHNIC CONFLICT IN SRI LANKA

Historical Background to Present Ethnic Conflict

The present racial tension between the Sinhalese and Tamil populations in Sri Lanka has deep historical roots, dating back to the first century A.D. It is claimed that the Sinhala race was founded in Sri Lanka in the fifth century B.C. by an exiled prince from northern India and that the Sinhalese are of Aryan origin. The Tamils are Dravidians and came from southern India. There are two separate Tamil communities in Sri Lanka: the "Jaffna" or "Ceylon Tamils" and the "Indian" or "Estate Tamils". They are both of the same ethnic origin and speak the same

language. The "Ceylon Tamils" came at a date disputed by historians, but there were Tamil incursions from South India at least by the first century, A.D. Major Tamil invasions took place from 700 A.D. to 1300 A.D. culminating in the establishment of a Tamil kingdom in the North. Buddhist historical chronicles report frequent wars between Sinhalese and Tamil kings. At the time of the Portuguese conquest in 1621 an independent Tamil kingdom existed in the North.⁴ The "Indian Tamils" were brought to Ceylon as indentured laborers by the British to work on the tea and rubber plantations in the 19th and early 20th centuries. At present, Ceylon Tamils constitute 11% of the population of Sri Lanka and Indian Tamils 9%. The two Tamil communities have remained largely separate with the Ceylon Tamils concentrated in the northern part of the Island, particularly in the area known as the Jaffna peninsula. A substantial number of Ceylon Tamils, however, are resident in Colombo and some southern areas. The Indian Tamils are primarily resident in the hill country in the central part of Sri Lanka. The Ceylon Tamils are, in general, a prosperous and well educated group; the Indian Tamils live and work in conditions of misery and poverty. At independence in 1948 the Indian Tamils were deprived of citizenship and disenfranchised. Under an agreement with India in 1964, Sri Lanka agreed to repatriate 60% of the Indian Tamils and to grant citizenship to the remaining 40%. The agreement has been only partially carried out. The ethnic conflict, until recently, has been largely between the Ceylon Tamils and the Sinhalese. In August 1981, however, and to an extent in 1977 the Indian Tamils

were attacked when communal violence broke out.

The Sinhalese population of Sri Lanka has historically considered the Tamils as invaders, infringing on Sinhalese territory. Sinhalese myths and legends often refer to the triumph of Sinhalese kings over rival Tamil rulers. One scholar has written,

"History and historiography have created an emotive climate of ethnic animosity which often results in violence, preventing compromise and a negotiated settlement of ethnic differences."⁵

The identification of the Buddhist religion with Sinhalese nationalism is also an important element in understanding the roots of ethnic conflict in Sri Lanka. Sri Lanka is regarded as one of the major world centers of Buddhism. It is widely believed that Buddha himself consecrated Sri Lanka; a relic of the Buddha's tooth is enshrined in Kandy in central Sri Lanka. Buddhist temples abound. The Sinhalese population is overwhelmingly Buddhist. The Tamil speaking population is predominantly Hindu although there is a substantial minority of Muslims and Christians. The Constitution provides that the Republic of Sri Lanka "shall give to Buddhism the foremost place" and that it is the duty of the state to protect and foster the Buddhist faith. Freedom of religion is guaranteed in the Constitution but other religions are not mentioned.

It is frequently pointed out that, although a majority group within Sri Lanka, the Sinhalese have a minority complex since they are a minority ethnic group within Asia. Tamils in Asia

outnumber the Sinhalese by five to one. There are more than 50,000,000 Tamils in South Asia, primarily in the South of India only a few miles across the sea from Sri Lanka. This insecurity of the Sinhalese may have contributed to the racial tension in the Island.

At independence, the Ceylon Tamil population held a disproportionately high percentage of employment in the prestigious Ceylon civil service and of admission to the most important faculties of educational institutions. This has been attributed variously to the excellent English education provided by Christian missionary schools in the Tamil area, to the relative difficulty of earning a living in the more arid Tamil area, thus driving Tamils to employment in government service and the professions, and to the consciousness by Tamils of their minority status. The British maintained a neutral position with regard to the ethnic groups but the superior ability of the Tamils in English gave them advantages during the colonial era.

To combat the advantages of Tamils the Sinhalese majority population after independence adopted two policies that have been the source of much of the subsequent discontent of the Tamil population: a "Sinhala only" language policy and a quota system on the basis of race, referred to as "standardization" for entrance to university faculties. In the eyes of the Sinhalese, these were "affirmative action" provisions designed to compensate for the former disadvantage of Sinhalese. In the eyes of the Tamils, they were discriminatory provisions adopted by the majority population which placed their language in an inferior

position, required them to learn the majority language and blocked their access to education which constituted their most important route to economic advancement. It also became more difficult for Tamils to enter government service, apparently because of the adoption of Sinhala as the official language.

In 1948, at independence, the Tamils had 33% of the voting power in the legislature. Upon the disenfranchisement of the estate Tamils, however, this proportion dropped to 20%. The Sinhalese obtained more than a 2/3 majority in the Parliament making it impossible for the Tamils to exercise an effective opposition to Sinhalese policies affecting them. The Tamils had requested a system limiting the Sinhalese representation in Parliament to one half and allocating the other half for the minorities. This suggestion, was rejected. The Sinhalese made a reasonable counter-proposal for 57% Sinhalese representation to 43% other communities. This was refused by the Tamil leaders who insisted on a 50-50 division.

The first Constitution of Ceylon was drafted by an Englishman, Lord Soulbury and adopted by an Order in Council rather than by a constitutive assembly. It remained in force until 1972. Section 29 of the Soulbury Constitution protected the rights of minorities. It read "No . . . law shall . . . make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or . . . confer on persons or any community or religion any privilege or advantage which is not conferred on persons of other communities or religions." Despite this

constitutional provision the Official Languages Act was adopted in 1956 providing that "Sinhala only" should be the official language, the Indian Tamil plantation workers were deprived of citizenship and disenfranchised, and a quota and standardization system was adopted which drastically curtailed the access of Tamils to higher education.

At the time of the adoption of the "Sinhala only" Act a proposal to include a clause on the use of Tamil was dropped because of pressure from extremist Buddhist groups. The threat of the Tamils to engage in island-wide peaceful protest in 1956 resulted in a compromise between the government and the leader of the Tamils called the Bandaranaike-Chelvanayakam Pact. It made provisions for the use of Tamil in the Tamil areas and provided for regional councils with powers in agriculture, education, and in colonization schemes⁶ and included a promise by the government to reconsider the disenfranchisement of the Indian Tamils. Certain elements of the Buddhist population reacted strongly against the Pact and it became a dead letter. In 1958 the first major outbreak of communal violence occurred with deaths in the hundreds, particularly among Tamils.

In the 1950s and 1960s there was increasing dissatisfaction with the foreign drafted constitution. This dissatisfaction, culminated in a demand for a new Constitution following an obiter dictum in a 1966 decision of the Judicial Committee of the Privy Council in London that Section 29 was an entrenched provision of the Constitution. During this same period, the Tamil Federal Party became predominant in the Tamil community. It urged that

Ceylon change from a unitary state to a federal structure. The proposal was strongly rejected by the Sinhalese majority who considered it a divisive proposal.

In 1970, the SLFP, strong advocates of Sinhala-Buddhist predominance, came into power in coalition with two Marxist parties. In 1972 legal links with the United Kingdom were severed with the adoption of a new Constitution by a Constituent Assembly (composed of the sitting Parliament) acting outside the framework of the Soulbury Constitution. The Constitution set up Sri Lanka as a republic, continuing the parliamentary system of government. The Tamil Party boycotted the Constituent Assembly because it had rejected a proposal that both Sinhala and Tamil be declared official languages. The Tamils had previously accepted Sinhala as the official language, but only on the basis that Section 29 of the Soulbury Constitution protected certain of their rights. Section 29 was now dropped from the new Constitution and the "Sinhala only" policy, which had previously been of statutory origin was now enshrined as a constitutional provision. The UNP had voted against the adoption of the 1972 Constitution and on coming to power in 1977 drafted the third Constitution which remains in force today.⁷ It provided for a modified Presidential-parliamentary system similar to the French system of government.

During the tenure of the SLFP from 1970 to 1977 the negative effects of the standardization and quota system of education on the Tamils became increasingly evident resulting in tension in the Tamil community.⁸ It also became increasingly difficult for

Tamils to obtain government employment. The disaffection of the Tamil youth over these policies can only be understood in the light of their traditional emphasis on education and government service. The most common complaints of the Tamils relate to discrimination in education and employment.

Beginning in the 1970s the Tamils increasingly supported the concept of a separate state of Tamil Eelam comprising much of the northern and eastern area of Sri Lanka. In 1976 the Tamil United Liberation Front (TULF) which had replaced the Federal Party as the dominant Tamil political party, declared itself in favor of a separate state of Tamil Eelam. In the 1977 elections the TULF received a strong majority in the North and a simple majority in the East, signifying the support of the Tamil population of these areas for the concept of separation.

Tamil Demand for a Separate State

The Tamil demand for a separate state is predicated on the conviction that as an identifiable people with a defined territory, they are entitled to self-determination under international law. They claim that the sovereignty of the Tamil nation which existed in 1621 at the time of the Portuguese conquest reverted to the Tamil community when the legal ties with Great Britain were severed in 1972 and that they are thus asking for restoration of sovereignty.

Until 1833 the successive colonial powers administered the Tamil territory separately from the rest of the country. In that

year, the British, for administrative purposes, began administering the island as a common unit. The Tamils maintain that sovereignty passed from the Tamil kingdom to the Portuguese, Dutch and British and that sovereignty continued to reside in the British crown until 1972 when legal ties with Britain were broken. The Tamils maintain that, in view of the boycott by their members of the Constituent Assembly which drafted the 1972 Constitution, they have never given up their sovereignty and the Sinhala nation has not obtained sovereignty over them either by conquest or consent.

A resolution adopted by the TULF at their first national conference in 1976 was the first clear commitment of a Tamil party to a separate state of Eelam. It listed a variety of actions taken by the Sinhalese majority to the detriment of the Tamils including

- deprivation of the Indian Tamils of citizenship and franchise
- the "Sinhala only" language policy
- State planned colonisation of Tamil areas⁹
- giving Buddhism the foremost place under the Constitution
- denial of equal opportunity to Tamils in employment and education
- the systematic cutting off of Ceylon Tamils from the mainstream of Tamil culture in South India
- permitting and unleashing communal violence against Tamils
- terrorising, torturing and imprisoning Tamil youth

-- imposing an unacceptable Constitution on the Tamils.

The resolution also referred to the failure of the efforts of various Tamil political parties to win rights through negotiations with successive governments or through entering into pacts with successive Prime Ministers. The resolution ended with the statement that

"The Convention resolves that the restoration and reconstitution of the Free, Sovereign, Secular, Socialist State of TAMIL EELAM based on the right of self-determination inherent to every nation has become inevitable in order to safeguard the very existence of the Tamil nation in this country."

The TULF represents primarily the Ceylon Tamils resident in the northern and eastern provinces. The Indian Tamils are not members of the TULF. They are represented in Parliament by the Ceylon Workers Congress, their labor union and political party. Mr. S. Thondaman, CWC member of Parliament, is the Minister of Rural Industrial Development in the present government. The Indian Tamils, through the Ceylon Workers Congress, have not supported the demand of the Ceylon Tamils for a separate state. The TULF leaders have said, however, that their proposed state of Eelam would welcome any Indian Tamils who wish to live there. The TULF manifesto of 1976 states that "When we speak of the Tamil nation, we refer to the entirety of the people in this country to whom the mother tongue is Tamil." The differences in education and economic development between the Indian Tamils and the Ceylon Tamils is great, and, except for a shared sense of insecurity and discrimination on the basis of their common

ethnicity, the two communities have little in common.

In addition to the Ceylon Tamils resident in the North and East of Sri Lanka, there are a substantial number of Ceylon Tamils resident in Colombo and in other central and southern areas which are predominantly Sinhalese. These Tamils appear integrated into the social and business life of their communities. Since they do not constitute the main supporters for the TULF, it is unclear whether they support a separate state of Eelam. In view of their integration into communities outside the area claimed for the state of Eelam it is unlikely that they feel directly involved in the demand for independence. If communal violence against Tamils throughout the Island continues, however, this may change. A distinction should be drawn between the attitude of older Tamils who were educated in English, together with their Sinhalese contemporaries, and the younger group of Tamils who have been educated in the Tamil language schools totally separate from the Sinhalese. The older Tamils have Sinhalese friends from childhood and are less conscious of a separate identity than the younger Tamils.

An article in the Ceylon Daily News on August 8, 1981 pointed out that there "is a strong demand within the government parliamentary group that the separatist cry be banned by law." Mr. Harinda Corea, the Deputy Minister of Public Administration, has argued that a constitutional amendment banning separatist demands is possible with a 2/3 majority in Parliament and that a referendum is unnecessary. It will be recalled that the UNP has a 2/3 majority in Parliament at present.

While Tamils in the North are strongly in favor of self-determination, it is by no means certain that, in exercising that self-determination, they would choose independence rather than remaining part of Sri Lanka under a federal constitution. The Sinhalese majority, however, has rejected federalism in the past and seems no more likely to favor it at present. A step toward decentralization has been made recently, through the setting up of District Development Councils.

VIOLENCE IN SRI LANKA

The violence resulting from racial conflict in Sri Lanka has been of three types: communal, political or terrorist, and violence by security forces. In 1981, all three types have been present to a serious degree. The present section will discuss the three types of violence with emphasis on the events occurring recently.

Communal Violence.

Communal violence first appeared in Sri Lanka in 1958, ten years after independence. The early history of Ceylon was replete with a history of wars between Sinhalese and Tamil kingdoms, but the 1958 conflict was the first in which individuals of one ethnic group attacked members of the other group.

As mentioned earlier, the "Official Languages" Act was

adopted in 1956 and agitation by an extremist Buddhist group resulted in the failure to adopt a provision for the use of Tamil. The Tamils launched a "satvagraha" or peaceful protest which resulted in the Bandaranaike-Chelvanayakam Pact making certain concessions to the Tamils. The Pact was not carried out after another peaceful protest, this time by Buddhists. According to one commentator, the scheduled Tamil national convention and

"an announcement that a Sinhalese was killed in the East by a Tamil (although not for political reasons) sparked off nation-wide communal riots. Accentuated by false rumors, criminal elements took advantage of the breakdown in law and order to murder, loot and plunder. The violence continued unabated for six days, May 2nd to May 27th (sic). The spread of communal violence resulted in a tremendous problem of refugees."¹⁰

Hundreds of persons, primarily Tamils, were killed in this first episode of communal violence. Over 25,000 Tamil refugees were relocated from Sinhalese areas to Tamil areas in the North. The government was criticized for failing to declare a state of emergency early enough.

The next major outbreak of communal violence occurred in August 1977, only a few months after the election of the present government. The violence began as an aftermath to the 1977 elections and was first directed against the losing political party but quickly became communal violence. It appeared to be related to events occurring during the preceding administration but was also linked to the first evidence of political violence by Tamil youths. During the 1970-1977 government of Mrs.

Bandaranaike there had been increasing tension between Tamils and Sinhalese, particularly between the primarily Sinhalese police force in the northern Tamil area and Tamil youths. According to the Sansoni Commission (a Commission of Inquiry appointed by the President of Sri Lanka to investigate the 1977 violence), the communal violence was immediately sparked by the shooting of two policemen in the North by Tamil youths, by the inflammatory speeches of Tamil leaders and by the desire of the Tamil population for separation.¹¹

From the Tamil point of view, the violence of the youths and the demand for separation were a consequence of increasing discrimination against them during the previous administration. The allegation that the violence was a reaction to the Tamil demand for a separate state has been perceived as a threat that, if the Tamils persist in demanding separation, they can expect violence against them by the Sinhalese majority. The Sansoni report detailed widespread killings, assaults, rapes, and damage to Hindu temples in almost every area of the Island during the August-September 1977 events.

In August 1981, the third major outbreak of communal violence occurred. Since March, increasing tension had developed between the two ethnic groups because of terrorist attacks against police in the north, incommunicado detention of Tamil youths, arson and looting by police in Jaffna. The first act of violence occurred in early August following a clash at a sports meet between Sinhalese and Tamil students in Amparai. It was reported that the Tamil school was surrounded, teachers and

students attacked, Tamils in government offices assaulted and the Hindu temple set on fire in the first few days of August. Later, several Tamil colonies in nearby areas were attacked by Sinhalese colonists.

Subsequent August incidents of violence centered on three specific areas: the gem mining area of Ratnapura, Negombo near the capital city of Colombo, and the plantation towns in central Sri Lanka. Before the violence was brought under control by the declaration of a state of emergency by President Jayewardene on August 17, at least 10 Indian Tamils had been killed, numerous Tamil shops and businesses burned, and more than 5,000 Indian Tamils had fled to refugee camps.

Unlike the earlier events of violence in 1958 and 1977 the 1981 attacks of arson, looting and killing appear to have been, in part, the work of organized gangs. The International Herald Tribune reported that President Jayewardene, in an interview with a Reuters correspondent on August 14, stated that the attacks on Tamils in Ratnapura appeared to have been organized. The Guardian (London) reported on August 15 that "it seems to have been established that an unnamed group is organising the present violence for motives of its own." An editorial in The Hindu (India) of August 18, 1981 stated that "a close look into the riots would show that behind them is a planned and systematic effort to aggravate racial animosity." It was widely reported that attacks in Negombo as well as an attack against passengers on a Jaffna to Colombo train were made by organized gangs. Tamil sources stated that it could not be ruled out that people close

to the government were behind the organized violence. They also claimed that police and army forces did not intervene to prevent attacks until the declaration of the state of emergency many days after the attacks began.

Another new element in the recent incidents was the concentration of the violence against the Indian estate Tamils. Earlier communal violence had been directed primarily against the Ceylon Tamils. The attacks against the impoverished Indian Tamils had the effect of internationalizing the conflict since Indian passport holders were among those attacked. According to Indian sources, some 70,000 Indian passport holders in Sri Lanka are awaiting repatriation to India as a result of the 1964 agreement between the two countries. As mentioned earlier, thousands of these Indian Tamils fled to refugee camps during the August violence. Some sought refuge with the office of the Indian High Commissioner in Sri Lanka.

The August violence was widely reported in the Indian press and was the subject of editorials in major Indian newspapers. In Madras, India, hundreds of students demonstrated to protest the attacks against the Tamils. Prior to the declaration of the state of emergency, the Indian High Commissioner in Sri Lanka conveyed to the Sri Lankan government his government's concern over attacks against Indian Tamils. In Lok Sabha, the Indian parliament, a number of M.P.s expressed concern. In response, the Indian Minister for External Affairs, Narasimha Rao, stated that the incidents were an internal matter for Sri Lanka, that he had been assured that the violence was being brought under

control and that he hoped that there would be no disruption of the traditional good relations between the two countries.

The outbreak of violence in August 1981 has been attributed variously to organized gangs, to a "foreign hand", to a backlash of the Sinhalese population because of Tamil youth terrorism and demands for separation, and to animosity against Tamils stimulated by Sinhalese elements within the government. The Sri Lankan Minister of State for Information and Broadcasting, Amandatissa De Alwis, announced on August 16 that "a foreign hand" was behind the communal violence. He did not identify the foreign country allegedly involved. The accusations of involvement of the Sri Lankan government relate particularly to a no-confidence motion in Parliament in July against A. Amirthalingam, Tamil United Liberation Front opposition leader. The motion of no-confidence was passed with 121 Government members voting for it and two abstaining. (Mr. S. Thondaman, the Minister of Rural Industrial Development and the President of the Ceylon Workers Congress representing Indian estate Tamils, abstained). The M.P.s of the TULF and the SLFP did not participate in the vote. Such a parliamentary procedure is highly unusual since it is a vote by the Parliamentary majority party of no-confidence in the leader of the opposition party. It is clearly a deviation from normally accepted rules of parliamentary procedure.

The vote was preceded by comments by majority party members strongly critical of Mr. Amirthalingam for speeches abroad on the situation of the Tamils. An article in The Hindu (India) of

August 21, 1981 referred to these comments as "declamatory, Tamil-baiting rhetoric." The Sun (Colombo) of August 8 reported that as a follow-up to the no-confidence motion a group of government M.P.s led by Dr. Neville Fernando wanted Parliament to sit as a Judicial Committee to take action against Mr. Amirthalingam on the grounds that he violated his Oath of Allegiance and the Constitution by the requests to foreign governments to interfere in the internal affairs of Sri Lanka.¹² On the 13th of August, during the violent outbreak against the Tamils, Mr. Amirthalingam wrote to President Jayewardene referring to the influence of the parliamentary moves on the then ongoing violent incidents: "The law and order situation in all parts of the Island has deteriorated very badly and, as has become usual now, the Tamil people and their property are the targets. I am sorry to say that the climate for this was created by the inciting speeches of some governing party members of Parliament and even some responsible ministers [T]he impact of these speeches and statements on the Sinhalese masses has been to rouse them against the Tamils. The speeches were followed by slogans on walls and posters on the same lines as those speeches. The direct connection between the speeches and the posters and writings on the walls is obvious."

The International Herald Tribune of August 31 reported "In July, posters began appearing on walls in Colombo saying: 'Alien Tamils, you have danced too much, your destruction is at hand. This is the country of us Sinhalese.' Tamil leaders claim the posters were inspired by radical elements within Mr.

Jayewardene's government and party." The same article reported that the President had said the posters had been removed and action taken to prevent their publication under the state of emergency. On September 11, the New York Times quoted President Jayewardene as saying "I regret that some members of my party have spoken in Parliament and outside words that encourage violence and the murders, rapes and arson that have been committed." The article continued by stating that the President said he would resign as head of his party if some of its leaders continued to encourage ethnic hostilities.

In July, it was announced that a planned visit of the Indian President to Sri Lanka had been postponed. Indian newspapers alleged that the reason was recent racial tension in Jaffna, although government sources denied this.

With the declaration of the state of emergency on August 17th the situation in Sri Lanka stabilized and violence ceased.¹³ A large number of Tamils remained in refugee camps.

Political Violence or Terrorism

Terrorist acts by Tamil youth have exacerbated the already tense relations between Sinhalese and Tamils. The political violence or terrorism by Tamil youths, primarily against police in the Jaffna area, began substantially in 1977. The terrorist acts have been attributed to a group called the "Liberation Tigers," estimated to include fewer than 200 persons by government sources.¹⁴ A government pamphlet published in June

1981 stated that the group of terrorists had been involved in over 200 acts of violence in the previous three years including the killing of politicians, 18 police officials, acts of homicide and robberies of banks.¹⁵ The leadership of the Tamil United Liberation Front has condemned the violence and does not advocate violence to achieve the separate state of Eelam, although allegations have been made that individual members of the TULF have advocated violence as a means of achieving a separate state. The terrorist youth gangs are acting independently from the policy of the Tamil party and there is no evidence that they have substantial support from the Tamil population in the North.

On March 25, a bank was robbed in the town of Neerveli in the Jaffna Peninsula area and two policemen were killed. The robbery was attributed to a terrorist gang and one month later, the army and police, without warrants, arrested 27 young Tamil men under the Prevention of Terrorism Act for implication in the robbery. This Act and its application will be discussed more fully in a later section of this report. At the end of May, further violence developed during the campaign for District Development Council elections. These elections were to be a significant step towards decentralization and were regarded as a positive act by the government in responding to the demands of the Tamil population for more control over their own affairs. Unfortunately, the election in Jaffna turned into a tragic event further exacerbating the racial conflict. On May 24, Mr. A. Thiagarajah, a Tamil who headed the UNP list of candidates, was assassinated. Since the UNP is the governing majority party in

the country and a predominantly Sinhalese party, the killing was perceived as a threat to Tamil politicians not to enter the UNP lists. On June 9, 1981 Mr. Gamini Dissanayake, Minister of Lands and Land Development, stated in Parliament that "those who take to politics opposed to the Tamil United Liberation Front run the risk of death."¹⁶ On May 31 two policemen were killed during a TULF rally, in disputed circumstances. According to some sources, the policemen shot each other during a dispute. According to others, the two were shot in the back of the head by unknown assailants. The ICJ observer was unable to verify personally the veracity of either account of the deaths. This event precipitated a rampage by police in Jaffna (which is described in the next section under violence by security forces) and led to the imposition of a temporary state of emergency in Jaffna.

On July 28, a terrorist gang of about 15 persons attacked a police station in Anacottai, six miles out of Jaffna. One policeman was killed, another, who was seriously wounded, died later. The gang escaped with firearms including 17 rifles, two shotguns, a sub-machine gun and a thousand rounds of ammunition. The attack was the first attack against a police station in Sri Lanka since a Sinhalese youth insurrection in 1971. It was immediately condemned by the leadership of the TULF who described it as a senseless act of violence. The government reacted with a number of strong measures. Police personnel were pulled out of six stations in outlying areas and replaced by army officers. Army units were moved into Jaffna. Trucks and armored vehicles

carrying army personnel on patrol in Jaffna were evident during the visit of the ICJ observer in early August. The Police Department requested the Defense Ministry to permit police to require national identity cards at all times in the Jaffna peninsula. The increased security measures took on the tone of an army of occupation in Jaffna.

The government is clearly deeply concerned about the problem of terrorism in the north. They have applied the provisions of the Prevention of Terrorism Act to detain a number of youth. The government issued a regulation, under emergency legislation, on August 25 providing for the death penalty or life imprisonment for unlawful possession and transport of weapons and explosives in four Tamil areas. A consideration of whether such measures will prove effective depends on an understanding of the causes of violence among a segment of the Tamil youth.

Tamil publications have explained the development of youth violence in the Jaffna peninsula.¹⁷ Although full scale violence did not erupt until 1977 the roots of it can be traced to events occurring during Mrs. Bandaranaike's reign from 1970 to 1977. In 1971 a major insurrection occurred in Sri Lanka. It was led by Sinhalese youth and there appeared to be no participation of Tamils. During the insurrection, 92 police stations were attacked by Sinhalese youth, 37 members of the police and 26 members of the armed forces were killed. The insurrection was eventually suppressed. Funds for the insurrection had been obtained through bank robberies and hold-ups. Tamil youth, who increasingly suffered the effects of discriminatory measures in

language, education and employment, apparently learned some of the tactics of violence from the earlier insurrection. These discriminatory measures, and the unsuccessful efforts of the Tamil representatives to combat them, led a group of Tamil youth to abandon hope for a peaceful solution to the ethnic problem and to turn to violence. Police harassment and cruelty against young Tamils also appears to have played a part.¹⁸ Early instances of violence against police officers appeared to be directed against particular officers considered responsible for brutality against Tamils. Although much of the cruelty and harassment against Tamil youth occurred in the 1970-77 period of the previous government, particularly brutal attacks by police and armed forces occurred during a state of emergency declared in the Jaffna peninsula in 1979 by the present government.

Thus far, no Tamil youths have been convicted of terrorist offences. The complaint is frequently heard that the Tamil population has not assisted the government in apprehending terrorists.

In July, some 150 Tamil youths flew to East Germany and from there sought political asylum in West Berlin, claiming to be persecuted at home. The Sun (Colombo) reported on August 1 that "According to officials both in West Berlin and Colombo, the Tamil youth, who claim to be persecuted at home, are being lured to Berlin by unscrupulous agents promising them work or asylum." Officials in West Germany repatriated a number of the youth to Sri Lanka. The West German section of Amnesty International then began legal proceedings charging "persons unknown" with

kidnapping in connection with the repatriation.

Violence by Security Forces

Violence or state terrorism by police and armed forces is the third type of violence that has been prevalent in Sri Lanka. The most recent serious incident occurred in early June in Jaffna, but it has been a recurring fact since 1974. In that year, during a session of an international Tamil cultural Conference, the police waded into a large group of persons, ostensibly in order to prevent a particular person from speaking, and a stampede resulted causing nine deaths, the majority of them through electrocution by a fallen wire. The government refused to appoint a Commission of Inquiry and the Tamils set up their own Commission which reported the growing antagonism of police forces against Tamils in the north.

Numerous incidents of detention of Tamil youths and maltreatment were reported during the 1970s. The Sri Lankan Movement for Inter-Racial Justice and Equality (MIRJE) reported that, following the adoption of the 1972 Constitution, "hundreds of Tamil youths were arrested and left to languish in gaols for long periods of time without being charged and convicted in accordance with the law. Several of them were taken into custody, ostensibly for questioning, but were most inhumanly tortured whilst in custody. . . The high handed action of the police on the final day of the Fourth International Tamil Research Conference held in Jaffna, in January 1974, when nine

lives were lost, has left bitter memories among the Tamil youth."

In 1979, under the present government, a state of emergency was declared in Jaffna as a result of terrorist attacks. On August 1, 1979, the Civil Rights Movement of Sri Lanka stated that "CRM is gravely concerned at the allegations that several persons have died after being taken into custody by the police after the declaration of emergency in the North last month. According to information available to CRM it appears clear that at least some of these persons had been tortured before they died." Allegations of the killing and torture of Tamil youth by police and armed forces during the 1979 emergency are widespread.

Of more immediate concern is the action of police in the burning of Jaffna in June 1981. The situation in Jaffna between March and June has been explained previously. A bank robbery in March had been followed by the detention incommunicado of a number of Tamil youths, and on May 31, two policemen were killed, and two wounded during an election rally. According to both government and Tamil sources, a large group of police (estimated variously from 100-200) went on a rampage on the nights of May 31-June 1 and June 1-2 burning the market area of Jaffna, the office of the Tamil newspaper, the home of V. Yogeswaran, member of Parliament for Jaffna, and the Jaffna Public Library. The widespread damage in Jaffna as a result of the actions of the police were evident during the visit of the ICJ observer in Jaffna in August. According to government sources, the police, who had been brought to Jaffna from other parts of Sri Lanka, mutinied and were uncontrollable. They had allegedly been

enraged at the attacks on police at the election rally and at earlier failures to bring police killers to justice. In the early days of June several killings of Tamils were reported, allegedly as a result of police action. Tamil leaders pointed out that it was the responsibility of the government to maintain law and order and that several Cabinet ministers and high security officials were present in Jaffna when some of the violent events occurred.¹⁹

The destruction of the Jaffna Public Library was the incident which appeared to cause the most distress to the people of Jaffna. The ICJ observer heard many comments from both Sinhalese and Tamils concerning the senseless destruction by arson of this most important cultural center in the Tamil area. The Movement for Inter-racial Justice and Equality sent a delegation to Jaffna to investigate the June occurrences. The Delegation's report, in referring to the arson of the Public Library, stated,

"If the Delegation were asked which act of destruction had the greatest impact on the people of Jaffna, the answer would be the savage attack on this monument to the learning and culture and the desire for learning and culture of the people of Jaffna There is no doubt that the destruction of the Library will leave bitter memories behind for many years."

The 95,000 volumes of the Public Library destroyed by the fire included numerous culturally important and irreplaceable manuscripts.

A state of emergency in the Jaffna area was declared on June

2. On June 4 the District Development Council elections were held. Results were announced after reports of many irregularities including lost ballot boxes. The TULF won every seat in the Jaffna District. On June 11, the government announced that it would appoint a Commission of Inquiry to investigate the events between April 20 and June 2, thus not including the events occurring after the declaration of a state of emergency and during the election. On June 24, Bishop Lakshman Wickremesinghe, Chairman of the Civil Rights Movement, wrote to President Jayewardene urging that the Commission's mandate be extended to include the election period,

"The allegations that malpractice occurred during this election because the orders given by the Commissioner for Elections were overruled and the officers trained and sent by him were intimidated in Jaffna, on the orders of certain senior personnel in your government who have your confidence, is disquieting to say the least. Whatever may have been the unforeseen circumstances, the allegation that such representatives of the Government in power used these circumstances to interfere with due electoral procedures is something which must be investigated impartially, in order to safeguard the operation of the democratic process in the future, and especially in 1983 when the general elections are due to be held."²⁰

It is apparent that relations between the population of Jaffna and the police and security forces seriously deteriorated following the burning of Jaffna by the police in early June. The problem has undoubtedly been accentuated by the heavy deployment of the army in Jaffna following the attack on the Anacottai police station in July, the emergency regulation imposing the

death penalty or life imprisonment for the illegal possession of arms in Tamil areas and the proposed requirement that identity cards be carried at all times, particularly in the north. The great majority of police and army personnel assigned to Jaffna are Sinhalese who understand neither the language nor the culture of the Tamils. In addition, in view of the attacks on them, they appear to have a feeling of fear and insecurity. It has also been alleged that when heavy reinforcements of police have been brought into the area inadequate provision has been made for their food and housing. In July, newspapers reported that 43 policemen assigned to Jaffna requested transfers from the area. Violence by the police has not, of course, been universal. The report of the MIRJE Delegation to Jaffna in June pointed out that "The Delegation must however make it clear that it does not hold that all the police personnel operating in Jaffna and its environs during this nightmare week were equally guilty. Some of them were not guilty at all, and indeed some used their positions to deter and prevent their subordinates from committing violence."²¹

* * * * *

In 1975, Walter Schwarz wrote the following in a study prepared for the Minority Rights Group entitled The Tamils of Sri Lanka:

"If Sri Lanka is not to experience communal violence or terrorism and counter-terror on a scale which would invite comparison with Northern Ireland or Cyprus, there will have to be more readiness for compromise and moderation than has yet been shown Is it too late for an attempt to evolve an inter-

communal approach to the language question and the related matters of education and employment? It would be a pity if Sri Lanka's leadership waited for bombs to explode, and for the prisons to fill up again before conceding that the Tamils need reassurance that they have a place in the future of the island."²²

Unfortunately, the situation thus envisaged in 1975 has come to pass: there have been two serious outbreaks of communal violence since 1975 and political terrorism and security force counter-terror have become all too prevalent. The evocation of the situation in Sri Lanka evolving into that of a Northern Ireland or Cyprus no longer seems remote.

GOVERNMENT EFFORTS TO COPE WITH RACIAL CONFLICT AND VIOLENCE

When the United National Party won the election in 1977 there were high hopes among Tamils that the racial problem would improve in comparison with the situation under the previous government. The UNP manifesto prior to the election stated,

"The United National Party accepts the position that there are numerous problems confronting the Tamil-speaking people. The lack of a solution to their problems has made the Tamil-speaking people support even a movement for the creation of a separate State. In the interests of national unity so necessary for the economic development of the whole country, the Party feels such problems should be solved without loss of time. The Party when it comes to power, will take all possible steps to remedy their grievances in such fields as (1) Education (2) Colonisation (3) Use of the Tamil language (4) Employment in the Public and semi-public Corporations. We will summon an All-Party Conference as stated earlier and implement its decisions."

A new Constitution was adopted in 1977 by a Select Committee of Parliament but the TULF refused to participate in the drafting and adoption on the grounds that the government had failed to summon the promised All-Party Congress to consider the Tamil problem. The All-Party Congress referred to in the UNP manifesto was never held.

Language Problems

The government maintained that with the adoption of the new Constitution the Tamil problem had found a fair and just solution. The 1978 Constitution contains extensive provisions on the use of Sinhala and Tamil. It provides that Sinhala shall be the official language but that both Sinhala and Tamil shall be national languages. Both languages may be used in Parliament and local governments, official documents must be published in both Sinhala and Tamil, a person is entitled to be examined in either national language at any official examination and persons are entitled to education in the medium of either language. In the Northern and Eastern Provinces the Tamil language is to be used as the language of administration in addition to Sinhala. Although persons sitting for official examination may take them in either Sinhala or Tamil they may be required also to have a sufficient knowledge of the official language for admission to government service or to acquire such knowledge within a reasonable time. Government officials are not required to have a

knowledge of Tamil. The failure to accord equal status to the Tamil language remains a bone of contention.

Fundamental Rights

The 1978 Constitution also contains provisions guaranteeing fundamental rights. The preceding administration had been widely criticized for continuing a state of emergency during most of its tenure and for severe curtailment of civil liberties. According to one scholar, "The Section on fundamental rights in the 1978 Constitution, when taken with the provisions for an Ombudsman, the independence of the judiciary, and the restrictions on the exercise of emergency powers, is by far the most extensive charter of freedom that Sri Lanka has had in all its history."²³ Others have pointed out that the Constitution permits extensive restrictions in certain circumstances on many of the rights guaranteed. (Article 15)

Education

In the area of education, the present government made some changes by dropping a controversial provision for standardization of examination marks, but left basically intact a racial quota system. At the present time only 30% of the places available in universities are to be filled according to merit on an all-island basis. Fifty-five percent are allocated to revenue districts in proportion to their population and filled according to order of

merit within each district. Since the Tamil population is localized in certain districts, the effect of this percentage provision is to limit effectively the two populations to a proportionate share of university entrance, and to make it possible for students from one revenue district with lower marks to achieve university entrance while students with higher marks from another district are denied admission. The remaining 15% of places are allocated to revenue districts deemed to be educationally underprivileged. The conformity of these "affirmative action" provisions with international norms will be discussed in a later section, but they have been criticized by Tamils as constituting a form of racial discrimination, since entrance is based on merit only to a limited extent.

Colonization

An area in which the present government has not made concessions is that of colonization. Tamils have objected to State colonization schemes which import large numbers of Sinhalese into traditional Tamil areas. The Tamil concern about colonization is related to insecurity about their physical safety and to fears that Tamils will become a minority in their traditional homelands. The government maintains that since Sri Lanka is a single country citizens may freely move into any part of the country and that it is necessary to transplant some populations to more productive areas. The Tamils answer that they are not opposed to individual migration but only to large-

scale government colonization schemes which change the ethnic composition of an area. The present writer was not able to obtain statistics on the extent of colonization in Tamil areas and thus to determine the degree to which such schemes are a major problem.

Ratification of International Human Rights Covenants

One of the most positive steps the Jayewardene government has taken in the area of human rights is the ratification in 1980 of the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. The government also made the declaration under Article 41 of the Civil and Political Covenant which permits the Human Rights Committee to entertain complaints of non-observance by another state which has made a similar declaration. Sri Lanka has not yet ratified the Optional Protocol to the Civil and Political Covenant which would permit individuals to bring complaints of violations before the Human Rights Committee, but the government's willingness to accept international norms and thus to have its own actions evaluated in accordance with such norms is a welcome step.

Another positive step is the government support and development of the educational activities of the Human Rights Centre of the Sri Lanka Foundation. The Centre is a government controlled organization which does not entertain complaints concerning human rights, but carries on educational functions such as programs within schools to make the Human Rights

Covenants better known. Racial antagonism has been such a pervasive element in Sri Lanka that it would appear appropriate for a government controlled Human Rights Centre to undertake an intensive educational campaign for the elimination of racial intolerance. It has been frequently pointed out that the separate educational systems for Tamils and Sinhalese in Sri Lanka since independence has had certain negative effects on racial understanding. In addition, the traditional teaching of history in Sri Lanka has contributed to racial animosity. Although immediate short-term actions are necessary to defuse racial tension, a long-range program of education in racial tolerance and understanding seems essential.

Decentralization

The Tamils have consistently pressured for decentralization of government administration. This took the form of a demand for a federal structure of government prior to the TULF commitment to a separate state in 1976. But, while continuing to advocate separation, the TULF has simultaneously worked toward decentralization within the present structure. The present government has made some important concessions in this regard. It appointed a Presidential Commission to inquire into the idea of District Development Councils and, rather than opting for weak councils, adopted the system advocated in a Commission dissent by the TULF appointee, Dr. Neelan Tiruchelvam.²⁴ One commentator has written

"This was the first time that a predominant Sinhalese Government had implemented any measure of decentralization which was also approved by the Tamil political leadership, though not as a solution to their long-term demands. The reasons for this gesture appear to be manifold: First, the government in power with a two-third majority had a President who appeared firmly resolved to implement some of the 'democratic decentralization.' Secondly, the increased violence in the North and the ever haunting spectre of communal violence in the South appeared to warrant some type of reconciliation. Finally, even among the Sinhalese intelligentsia, there was increasing scholarship which appeared to point to the need for some solutions and a radical reassessment of past policies of integration."²⁵

The unfortunate circumstances connected with the June 1981 District Development Council elections in the Jaffna Peninsula, however, and the communal violence in August again seemed to dash hopes that the Tamil problem might be settled. The repeated reports that some members of the government were responsible for the irregularities in the local elections in Jaffna, as well as responsible for stirring up the racial animosity which led to violence has caused distrust of the UNP's sincerity in meeting reasonable Tamil demands.

Control of Violence

The present government has been unsuccessful in controlling the communal violence, security force violence and political violence that has escalated during its tenure. Two major

outbreaks of communal violence have occurred since 1977. The first, which broke out immediately after the UNP election, did not, however, relate to events occurring under the present regime. The communal violence which occurred on August 1981 appeared to many observers to be the product of organized gangs and to have been stimulated by anti-Tamil propaganda, some of it allegedly emanating from the United National Party. During the August violence the government and Sinhala controlled English language newspapers reported, but did not play up, accounts of the killings, widespread arson and looting which occurred directed primarily against the Tamil population. On the other hand, the English language papers headlined the terrorist attack by Tamil youth against the police station in Anacottai in July in which two policemen were killed. Censorship of news of violence would not be a wise solution, but government efforts might well be directed towards discouraging selective reporting which arouses racial animosity. Controlling elements within the government's own Party which contribute to anti-Tamil sentiment is clearly a necessity. As a minimum, the Tamils are entitled to protection of their physical security within Sri Lanka. This protection can no longer be taken for granted. Some Sinhalese have urged the Tamil leaders to refrain from advocating separation since it appears to be one of the causes of Sinhalese animosity and thus violence. Such urging hardly seems likely to be heard as long as Tamils feel discriminated against in education and employment and, as happened in Jaffna in June 1981, feel unprotected, even from police violence in their traditional

homeland.

A major step towards controlling the violence of the police in the Jaffna area would be vigorous investigation and prosecution of police and security officials responsible for the burning of Jaffna in June and allegedly responsible for several arbitrary killings. The government has stated that a Commission of Inquiry will be established to investigate the events occurring up to June 2, but not the irregularities which occurred during the election for the District Development Council. It is to be hoped that the government will respond to demands of civil rights groups and others to expand the scope of the inquiry and to name to the Commission respected persons acceptable to both the Sinhalese and Tamil communities.

The problem of political violence or terrorism has proved an intractable one for many governments. Easy solutions are obviously not available. The Jayewardene government has chosen to attempt to control the terrorist activities of the relatively small group of Tamil youths by the application of the Prevention of Terrorism (Temporary Provisions) Act adopted in 1979. The human rights issues raised by this Act as well as questions concerning its effectiveness are such that they warrant discussion in a separate section of this report.

PREVENTION OF TERRORISM ACT

Adoption and Provisions of the Act

In 1979, Parliament adopted the Prevention of Terrorism (Temporary Provisions) Act in response to growing political violence in the northern Tamil area. The Act contains a number of disturbing provisions from the human rights point of view. Section 6 of the Act provides that

"Any police officer not below the rank of Superintendent or any other police officer not below the rank of Sub-Inspector authorized in writing by him ... may, without warrant, ... notwithstanding anything in any other law to the contrary--

- (a) arrest any person
- (b) enter and search any premises
- (c) stop and search any individual or any vehicle, vessel, train or aircraft; and
- (d) seize any document or thing

connected with or concerned in any unlawful activity." (underlining added)

An "offence" or "unlawful activity", as defined under the Act, goes beyond murder, kidnapping and unlawful possession of arms to include words or signs which cause or are intended to cause "religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial or religious groups" (Sections 2(1)(h) and 31) and erasing, mutilating or defacing "any words, inscriptions, or lettering appearing on any board or other fixture on, upon or adjacent to any highway, street, road or any other public place." (Section 2(1)(i))

The Act provides that a person may be detained for periods up to 18 months (renewable by order every 3 months) if "the Minister has reason to believe or suspect that any person is

connected with or concerned in any unlawful activity" (Section 9). The same Section also provides that such a person may be detained "in such place and subject to such conditions as may be determined by the Minister." Under recent application of the Act, 27 persons have been detained in an army camp without access to attorneys or to relatives for prolonged periods.

The Act also provides that any confession made by a person orally or in writing at any time shall be admissible in evidence unless made to a police officer below the rank of an Assistant Superintendent (Section 16). Thus, confessions made to police, possibly under duress, are admissible. It provides that a statement recorded by a Magistrate or made at an identification parade shall be admissible in evidence even if the person is dead or cannot be found and thus cannot be cross-examined. (Section 18(1)(a)). Any document found in the custody of a person accused of an offence under the Act may be produced in court as evidence without the maker being called as a witness and the contents of the document will be evidence of the facts stated therein (Section 18(1)(b)).

The Act is also retroactive since it defines "unlawful activity" as including action taken or committed before the date of coming into operation of the Act which would, if committed after the date of passing of the Act, be an offence under the Act. (Section 31(1)).

The Act provides for prison terms for conviction of an offence, ranging from five to twenty years or life imprisonment depending upon the severity of the offense.

The government has stated that many democratic countries such as Canada, Australia, the United Kingdom and India faced with similar situations have adopted similar legislation.²⁶ The title given to the Sri Lankan Act, "Prevention of Terrorism (Temporary Provisions) Act" is the same as the title of a United Kingdom Act originally adopted in 1974 and repealed and re-enacted with some amendments in 1976. The Sri Lankan Act, however, differs substantially from the U.K. Act in the extent to which it infringes human rights. In the latter, terrorism is given a narrow definition, namely, "the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear." The U.K. Act makes membership in a proscribed organization (the IRA) an offence, with some exceptions. The much broader definition of offences or unlawful activity under the Sri Lankan Act has been referred to above. While the U.K. Act permits arrest without warrant on suspicion that an offence under the Act has been committed and permits exclusion of persons from mainland Britain in certain circumstances, it does not permit prolonged incommunicado detention without trial as does the Sri Lankan Act. Persons arrested under the U.K. Act may not be detained more than seven days without being charged with an offence. Under the Sri Lankan Act they may be detained incommunicado up to 18 months. The application of the U.K. Act, which is less repressive than the Sri Lankan Act, has been criticized within the U.K. The Guardian (London) reported on Jan. 13, 1980 that

"The Act's critics say that the police use it

to trawl indiscriminately for information about all left-wing groups, that it is an essentially racist law designed to intimidate the Irish into avoiding political activity, and that ordinary laws are sufficient to deal with terrorism."²⁷

A number of the objectionable features of the Sri Lankan Act are similar to provisions of the widely criticized 1967 Terrorism Act of South Africa.²⁸ The South African Act defines a "terrorist," inter alia, as a person who has committed or attempted to commit any act which could "cause, encourage or further feelings of hostility between the White and other inhabitants of the Republic." This provision has been criticized as unduly vague since speeches or writings which criticize the apartheid system, for example, could be considered terrorist activities under this definition.²⁹ The same criticism may be directed against a similar section of the Sri Lankan Act (Section 2(1)(h)) which states that

"Any person who ... by words either spoken or intended to be read ... causes or intends to cause ... religious, racial or communal disharmony or feelings of ill-will or hostility between different communities or racial and religious groups shall be guilty of an offence under this act."

Such a broad definition could be construed as encompassing the advocacy of a separate state by the Tamils or criticism of policies which appear to be discriminatory against minorities. While the present government has not interpreted the Act so broadly there is an evident potential danger in such a vague

provision remaining on the books.

The South African Act, like the Sri Lankan Act, is retroactive. Similarly to the Sri Lankan Act, it permits prolonged detention without access to legal counsel on suspicion of commission of an offence. In language similar to the Sri Lanka Act it provides that the Commissioner of Police may detain terrorists or persons with information concerning offences under the Act "at such place . . . and subject to such conditions" as the Commissioner may determine, subject to the directions of the Minister of Justice. The South African Act permits indefinite detention; the Sri Lankan Act limits detention to 18 months.

Section 11 of the Sri Lankan Act permits the Minister, if he has reason to believe or suspect that any person is connected with any "unlawful activity," to restrict the residence, employment, movement and activities of such person for periods up to 18 months. Any person who violates such restrictions shall be guilty of an offence and liable to imprisonment for a period of five years (Section 12). This provision, as yet not applied in Sri Lanka, is reminiscent of the notorious "banning orders" permitted under South African legislation.

The South African Terrorism Act has been called "a piece of legislation which must shock the conscience of a lawyer."³⁰ Many of the provisions of the Sri Lankan Act are equally contrary to accepted principles of the Rule of Law.

While a substantial number of the provisions of the Terrorism Act are clearly contrary to internationally accepted minimum standards for criminal procedure,³¹ they also appear to

be contrary to the provisions of the Sri Lankan Constitution which provide that every person held in custody or detained shall be brought before the judge of the nearest competent court and shall be held in custody or detained only on the order of the judge (Article 13(2)). The Constitution forbids retroactive criminal offenses and penalties (Article 13(6)). Article 15(7) of the Constitution, however, provides that the exercise and operation of the fundamental rights recognized in Article 13, inter alia, "shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society."³²

There is no provision for judicial review of the constitutionality of laws in Sri Lanka after they have been enacted by Parliament. The ordinary procedure for testing the constitutionality of laws occurs before an Act is adopted. Article 121 of the Constitution provides that the President or any citizen may ask the Supreme Court for its judgment as to the constitutionality of a Bill within one week of the Bill being placed before Parliament. The Supreme Court is to make its decision known to the President and the Speaker within three weeks. Bills which are determined to be unconstitutional by the Supreme Court may not be passed. In the case of a Bill which is considered by the Cabinet to be an "urgent" Bill, however, the Supreme Court is to make its determination within 24 hours and

He also argued that the Minister must have an objective basis for his "reason to believe or suspect that any person is connected with or concerned in any unlawful activity" as required for detention under the Act. He argued that when two constructions may be placed on a statute, such as the Terrorism Act, the construction most in harmony with fundamental freedoms should be accepted. Hence, the Act should not be interpreted in such a way as to infringe on rights guaranteed in the Constitution.

The Deputy Solicitor General, Tilak Marapane, arguing on behalf of the respondents, police and army officials, contended that the detainees were held under valid ministerial orders and that the Minister had an objective basis for his reason "to believe or suspect" that the detainees were connected with unlawful activities. The Deputy Solicitor General presented the information on which the Minister had relied to the Court. In the main, the evidence relied upon appeared to consist of allegations that the four detainees were close associates of persons known to have been connected with the bank robbery or allegations that they were members of an organization attempting to bring about the separate State of Eelam through violence.

The petitioners were ably represented at the hearing and the trial was conducted with judicial propriety by Mr. Justice Colin-Thome, President of the Court of Appeal. The hearings were reported extensively in the press.

The judgment of the Court was rendered on September 10 when the undersigned was no longer in Sri Lanka.³⁴

The Court of Appeal unanimously refused the application for

writs of habeas corpus, but directed that lawyers should have access to the detainees at the Panagoda Army Camp and that the Judicial Medical officer or his Deputy should examine each of the detainees once a week. The Court stated that its refusal to remand the detainees to custody with other prisoners was in the detainees' own interest in view of "recent disturbances." The Court also found that the Minister had sufficient reasons for the making of the detention orders and that valid detention orders were ultimately made which remedied defective early orders. Hence, the detainees were validly held under the Terrorism Act.

Concerning the allegations of torture and mistreatment, the Court found that violence had been used against C. Kulasegarajasingam at Elephant Pass Camp prior to his transfer to Panagoda. The judgment stated that the detainee had been examined by a doctor after the filing of the application for writs of habeas corpus and "The doctor ended his report with the euphemism--'There is no evidence of any unreasonable harsh force being used to amount to torture.' There is no doubt, however, that violence had been used on him at the Elephant Pass Camp and we reject the denials of his custodians that he was not assaulted." With regard to allegations that S. Arunagirinathan had been assaulted during detention the Court found that, on medical examination, he had "two non-grievous contusions on his buttocks and there is no doubt that these indicated that he had been beaten by a blunt weapon."

The judgment also said that the allegation that V. Sivaselvam was severely assaulted "appears to us to be

exaggerated. However, the use of violence of whatever degree on a prisoner is illegal and is not only an offence under the Penal Code, it contravenes Article 11 of the Constitution. 'No person shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment.'

Physical assaults against detainees in order to elicit confessions are common occurrences in many countries during prolonged detention incommunicado under executive order. The Court has now confirmed that violence has been used against detainees held under the Terrorism Act in Sri Lanka. The Court's finding that assault occurred against three of the four detainees was presumably based on affidavits of Judicial Medical Officers who examined the detainees in May on orders of the Court and on the detainees' own statements. The medical examinations had been requested by attorneys for the petitioners.

The Court held that the arrests without warrant were in accordance with the provisions of the Terrorism Act. As regards the allegations that the detainees were not informed of the reasons for their arrest, the Court held that it was unable to verify whether this had been done or not. Referring to Article 13(1) of the Constitution which states that a person arrested shall be informed of the reason for the arrest, the Judges said "these provisions are mandatory and any infraction of them is illegal and must be strongly condemned as a serious encroachment on the liberty of the subject guaranteed under the Constitution." They pointed out that failure to inform the arrested person will make a police officer liable to be convicted under the Penal Code

for assault and wrongful confinement.

The Judges stated "what is the mischief aimed at by this Act? Everybody knows that this Act is intended to rid this country of terrorism in all its recent sophisticated manifestations. To achieve this end, the legislature has invested extreme powers in the courts, the executive and the police which they do not have in normal times, in the interest of national security and public safety. Conscious that these powers are of an extreme nature the legislature has laid down that this Act certified on July 20, 1979, shall be in operation for a period of three years from the date of its commencement."

By its frequent invocation of constitutional safeguards, its findings of violence during detention, and its references to the expiration date of the Act, the Court's judgment makes abundantly clear the exceptional danger to human rights implicit in the Terrorism Act. The petitioners for writs of habeas corpus in the case have appealed to the Supreme Court against the decision of the Court of Appeals denying the petitions.

Effectiveness of the Terrorism Act

The provisions of the Sri Lankan Terrorism Act are not only objectionable from a human rights point of view but it is doubtful that the Act is effective in controlling terrorism. The limitations on human rights, therefore, do not seem acceptable as a necessary means of maintaining public security. Since 1979, when the Act was adopted, terrorism has not declined but rather

increased in the northern Tamil area. Increased police and army surveillance of the population have not curtailed the violence but seemingly stimulated it. This experience is similar to that of some other countries which have attempted to control terrorism by armed force rather than dealing with the fundamental factors contributing to the recourse to violence.

The experience of the United Kingdom in dealing with terrorism in Northern Ireland is instructive. It demonstrates that provisions for prolonged incommunicado detention of suspected terrorists may be counterproductive. According to the judgment of the European Court of Human Rights in the case of Ireland against the United Kingdom extra-judicial powers were adopted to control violence in Northern Ireland in the 1970s because

- 1) normal procedures of investigation and criminal procedure had become inadequate to deal with IRA terrorists, and
- 2) widespread intimidation of the population often made it impossible to obtain sufficient evidence to convict a terrorist in the absence of ³⁵a confession or police or army testimony.

These reasons are strikingly similar to those mentioned by the Sri Lankan government for adopting the Prevention of Terrorism Act. In a brochure entitled "Investigations into Acts of Terrorism" prepared by the Ministry of Foreign Affairs, June 25, 1981,³⁶ it is stated that,

"These arrests and detentions (of 27 persons in April) had to be made under the new (Terrorism) Act and not under the provisions

of the Criminal Procedure Code for very good reasons:

- (a) If the Police are to conduct and complete their investigations successfully, it is important that these detainees should not have access to their lawyers and relations for a certain minimum period, during which time it is expected that the Police will be able to complete their investigations and obtain the necessary information to the cases in Court. If the detainees are able to reach their lawyers and relations during this period, they could interfere with the witnesses and evidence and thus prejudice the investigations.
- (b) Unless these persons are detained for a certain minimum period, informants and witnesses will not come forward to give evidence or assist in the investigations, for fear that they would suffer violence at their hands. In fact, a number of vital witnesses have been killed in the past, while investigations were being conducted."

The extra-judicial methods adopted in Northern Ireland to combat terrorism included prolonged detention of suspected IRA members. Widespread detention of suspects was terminated in 1975 in Northern Ireland following recommendations of the Gardiner Committee, appointed by the United Kingdom government, whose terms of reference were "to consider what provisions and powers, consistent to the maximum extent practicable in the circumstances with the preservation of civil liberties and human rights, were required to deal with terrorism in Northern Ireland, including provisions for administration of justice."³⁷ The report of the Gardiner Committee concluded,

"After long and anxious consideration, we are of the opinion that detention cannot remain as a long-term policy. In the short term, it may be an effective means of containing violence,

but the prolonged effects of the use of detention are ultimately inimical to community life, fan a widespread sense of grievance and injustice, and obstruct those elements in Northern Ireland society which could lead to reconciliation. Detention can only be tolerated in a democratic society in the most extreme circumstances; it must be used with the utmost restraint and retained only as long as strictly necessary."³⁸

Persuaded by these arguments, the United Kingdom government abandoned further use of administrative detention orders in December 1974 and released all existing detainees by 1976.

The undersigned interviewed families of two detainees in Jaffna in August. The families detailed the frightening manner in which large groups of security officials, some in civilian clothing, came in early morning hours to arrest detainees without warrants and without identifying themselves. The families stated that they were not told where the detainees were being taken and were informed of their whereabouts only after more than a month. They have not been allowed to visit detainees. Now, they have learned that their family members who were detained have been assaulted. It is not difficult to imagine that such tactics may, in the long range, be counterproductive.

The Northern Ireland case before the European Court of Human Rights may have further relevance to the application of the Sri Lankan Act. During the habeas corpus hearings before the Court of Appeal in Colombo in July 1981 it was alleged by attorneys for the petitioners that during periods of interrogation detainees had been required to stand for long periods against a wall in a stress position with their hands high above their head against

the wall. In the Northern Ireland case the use of this technique by security forces against detainees, together with other techniques such as hooding, subjection to noise, deprivation of sleep and deprivation of food and drink, was determined by the European Court of Human Rights to constitute inhuman and degrading treatment and thus a violation of Article 3 of the European Convention on Human Rights. During the hearing before the court the United Kingdom agreed to discontinue the use of such techniques. The European Commission on Human Rights had earlier considered that such techniques constituted torture. The Court of Appeal decision in the habeas corpus proceeding in Colombo did not specifically find whether such techniques had been employed against detainees in Sri Lanka.

The great concern of the Sri Lankan government over the growing violence in the Tamil areas is understandable. Nevertheless, it is to be hoped that the limitations on human rights present in the Terrorism Act and the possible counter-productiveness of the Act will lead the government to urge Parliament to permit the Act to expire in 1982 or to amend it to better protect the rights of detainees.

INTERNATIONAL NORMS

The Sri Lankan government has evidenced its commitment to human rights by its ratification in 1980 of the two International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. This commitment, subjecting the status of

human rights in Sri Lanka to evaluation in accordance with international norms, is a positive step for which the present government should be commended. This section will briefly consider certain international standards which are relevant to some of the current human rights problems in Sri Lanka today.

Detention

The rights of arrested and detained persons are referred to in Articles 7, 9, 10, 14 and 15 of the International Covenant on Civil and Political Rights. Provisions of the Prevention of Terrorism Act are contrary to the following articles of the Covenant:

"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or release." (Article 9(3)).

The Terrorism Act permits detention on administrative order for a period up to eighteen months.

"No one shall be guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law, at the time when it was committed." (Article 15(1)).

The Terrorism Act contains provisions for retroactive application.

In addition, it appears that in the application of the

Terrorism Act, the following provisions have not been conformed with:

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." (Article 7)

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." (Article 10(1))

"Anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." (Article 9(2))

In September 1981 the Court of Appeal found that three of the four detainees then before the Court in habeas corpus proceedings had been assaulted during detention. The Court said that it could not determine whether the detainees had been informed at the time of their arrest of the reasons for the arrest.

At the present writing, a Draft Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment is being considered by the U.N. General Assembly. Although the Principles have not yet been formally adopted by the General Assembly, they have been approved by the Human Rights Commission and Sub-Commission and thus represent an appropriate standard against which to measure the Terrorism Act.

The Draft Body develops in more detail the general provisions contained in the Civil and Political Rights Covenant.

It provides that "A detained person shall be entitled to communicate with a lawyer of his own choice within the shortest possible period after arrest" (Principle 15(2)) Not only does the Terrorism Act make no provision for access to a lawyer soon after arrest but the government has stated that withholding access from lawyers and family members is one of the important and necessary aspects of the Act. A government pamphlet concerning the Terrorism Act states, "If the Police are to conduct and complete their investigations successfully, it is important that these detainees should not have access to their lawyers and relations for a certain minimum period."³⁹

Principle 14 of the Draft Body of Principles states, "Immediately after arrest and after each transfer from one place of detention to another, a detained or imprisoned person shall be entitled to notify members of his family of his arrest or detention or of the transfer and of the place where he is kept in custody." The families of prisoners detained under the Terrorism Act have stated that they were uninformed of the whereabouts of their detained family members for more than a month after their arrest.

Principle 23 of the Draft Body of Principles provides that "Any evidence obtained in contravention of these Principles shall not be admissible in any proceedings against a detained or imprisoned person." Thus, confessions obtained during prolonged detention without access to lawyers or obtained when there has been evidence of torture or inhuman or degrading treatment (Principle 5) should not be admissible in evidence. The

Terrorism Act does not prohibit the admission of evidence obtained under such circumstances. (Section 16 et seq.)

It has frequently been pointed out that incommunicado detention, such as permitted by the Terrorism Act, opens the door to abuse. The Inter-American Commission on Human Rights stated in a report on Chile:

"Unlawful detention incommunicado is, moreover, an encouragement to other crimes, particularly that of torture. For if the officials in charge of detention facilities need not produce the detainee in a short time, they may with impunity employ brutal means, whether for purposes of interrogation or intimidation."⁴⁰

The International Commission of Jurists has pointed out that "[s]everal decisions by the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Rights finding violations of the Covenant by Uruguay also demonstrate the relationship between torture and detention incommunicado, and in particular denial of access to a lawyer."⁴¹

The Bennett Report in the United Kingdom on Police Interrogation Practices in Northern Ireland reported that "the security forces regularly denied detainees access to a lawyer in order to create an atmosphere more favourable to extorting a confession."⁴²

The Court of Appeal in Sri Lanka has wisely attempted to temper the application of the Terrorism Act by requiring access to lawyers, and regular medical examinations for the four detainees for whom habeas corpus writs were requested. The

existence of the writ of habeas corpus is therefore an important procedural protection in Sri Lanka. Nevertheless, 23 persons remained in custody of the Army for whom relatives had not filed petitions for writs of habeas corpus. For these persons there has been no judicial control.

Derogation From Human Rights During States of Emergency

The government has pointed out that the Terrorism Act is needed to control the outbreak of terrorism, a situation which might be considered as an emergency situation, thus justifying certain derogations from human rights. Article 4 of the Covenant on Civil and Political Rights permits derogation from Articles 9, 10 and 14 which concern criminal procedure "in times of public emergency which threatens the life of the nation and the existence of which is officially proclaimed . . . to the extent strictly required by the exigencies of the situation." The Terrorism Act has been in effect since 1979 and the government has officially proclaimed a state of emergency only for short periods during that time. In addition, although this is a matter of appreciation, its draconian provisions do not seem "strictly required by the exigencies of the situation," particularly in view of the fact they may be counterproductive in dealing with terrorism. Furthermore, Article 4 does not permit any derogations in emergency from the prohibition of torture or inhumane treatment and the prohibition of retroactive criminal legislation.

There is no doubt that terrorist acts have been and are occurring

in Sri Lanka and that they create a serious law enforcement problem. It is doubtful, however, that the Sri Lankan government itself would consider these terrorist acts as a "public emergency which threatens the life of the nation," a requirement for derogation under the Covenant. The Human Rights Committee set up under the Covenant has not yet interpreted this language but the European Court on Human Rights, in interpreting similar language in the European Convention on Human Rights, has held it to mean "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organized life of the community of which the state is composed."⁴³

Attention has been focused recently on the problem of derogations from human rights during periods of emergency. It has been pointed out that the major violations of human rights occurring in the world today take place during periods of "emergency" which has been defined as "the suspension of or departure from legal normality in response to a political, economic or social crisis."⁴⁴ The International Commission of Jurists is presently studying the effects of states of emergency on Human Rights and Madame Nicole Questiaux has been appointed special Rapporteur of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities for a similar study. In a preliminary progress report to the Sub-Commission the Special Rapporteur has referred to a series of principles which must be maintained even in periods of emergency. One of these is the Principle of Proportionality. This means that the emergency measures taken must be in proportion to the actual requirements,

in other words derogations from human rights should be only "to the extent strictly required by the exigencies of the situation." The potential for human rights abuses implicit in the provisions of the Sri Lankan Terrorism Act are such that it is doubtful that they are required by the situation in that country.

In referring to derogations from human rights under Article 4 of the Covenant the Human Rights Committee has stated,

"The Committee holds the view that measures taken under Article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened and, that in times of emergency, the protection of human rights becomes all the more important, particularly those rights from which no derogations can be made. The Committee also considers that it is equally important for States parties, in times of public emergency, to inform the other States parties of the nature and extent of derogations they have made and of the reasons therefor and, further, to fulfill their reporting obligations under Article 40 of the Covenant by indicating the nature and extent of each right derogated from together with relevant documentation."⁴⁵

It appears that the situation created by terrorist acts in Sri Lanka is not one threatening the life of the nation and that the provisions of the Act exceed the measures strictly necessary in the circumstances. The violations of human rights resulting from the Act are thus not permissible under the Civil and Political Rights Covenant.

In August 1981 the President of Sri Lanka declared a state of emergency after authorization by Parliament. This emergency was declared as a result of communal violence--looting, arson and

murders against the Tamil population--and not as a result of acts of the small terrorist group. The August declaration of the state of emergency was widely regarded as a necessary step and an effective method of halting the communal violence. This appears to be an appropriate and even necessary use of a state of emergency in contrast to the continuing emergency type legislation embodied in the Terrorism Act. The state of emergency will presumably be terminated as soon as the immediate danger of communal violence has passed.

Racial Discrimination: Affirmative Action

Both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights provide that the States Parties will guarantee that the rights enunciated in the Covenant will be exercised without discrimination on the basis of race or language. (Articles 2 in both covenants.) The Economic Covenant provides that "Higher education shall be made equally accessible to all, on the basis of capacity." (Article 13(2)(c). It appears that legislation in Sri Lanka concerning admission to universities is contrary to Article 13.

The Convention for the Elimination of All Forms of Racial Discrimination (although not ratified by Sri Lanka) can be considered as developing the more general discrimination provisions of the Covenants. It permits affirmative action under certain circumstances in Article 2(2):

"States Parties shall when circumstances so

warrant take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been claimed."

Affirmative action programs are usually adopted by a majority group to help a backward minority group. It is unusual for a majority group to adopt affirmative action programs to help their own group as is the case of the Sinhalese in Sri Lanka. Nevertheless, it could possibly be justified in unusual circumstances if the extreme backwardness of the majority population was the result of prior political domination by the minority group. The majority Sinhalese community has been in political power in Sri Lanka since independence in 1948 and the difference between the two groups economically and educationally does not seem sufficient to justify the affirmative action measures relating to higher education. The fifteen percent of admission to universities awarded to backward areas may be justified. It seems, however, that in order to conform with international standards, the Government should reconsider its policy as to the 55% of places which are awarded to revenue districts on the implicit basis of race.

The government's commitment to racial justice would be further demonstrated by ratification of the Convention on the Elimination of All Forms of Racial Discrimination. This

Convention has been ratified by over 100 countries, including the majority of developing countries. An explicit international commitment to eradicate racial discrimination should have a positive effect on the current situation in Sri Lanka. The policies adopted by the government with relation to education could then be appraised on the basis of international human rights norms and the problem resolved more satisfactorily.

Self-Determination

Articles 1 of both the Civil and Political Covenant and the Economic, Social and Cultural Covenant provide that "All peoples have the right to self-determination. By virtue of the right they freely determine their political status and freely pursue their economic, social and cultural development." The Tamil United Liberation Front contends that the Tamil population of Sri Lanka has a right to self-determination under international law contained in the U.N. Charter, the Covenants and general international law.

The Tamils could be considered to be a "people." They have a distinct language, culture, a separate religious identity from the majority population, and to an extent, a defined territory. Claims to self-determination under international law, however, must also be balanced against the international law principle of the territorial integrity of states. Moreover, minorities have not generally been considered as a "people" in U.N. application of the principle of self-determination.⁴⁶ The Principles of

there is no provision for reference to the Supreme Court by citizens. The Prevention of Terrorism Act was declared an urgent Bill and rushed through Parliament without the opportunity for public discussion or debate or for any challenge to its constitutional validity.

Application of the Terrorism Act; Habeas Corpus Hearings

Twenty-seven Tamils were detained as of the end of August 1981 under the Prevention of Terrorism Act. They had been held since April in Panagoda Army Camp as suspects in a bank robbery in Neerveli in March 1981. Nine persons were detained in previous years under the Act but were eventually released. No convictions have ever been made under the Act.

Soon after the arrest of the Tamils currently in detention, petitions for writs of habeas corpus for four of the detainees were filed in the Court of Appeal by their relatives under Article 141 of the Constitution.³³ This Article provides that the Court may issue writs of habeas corpus to bring before the Court . . .

"(b) the body of any person illegally or improperly detained in public or private custody and to discharge or remand any person so brought up or otherwise deal with such person according to law."

The hearing on the petitions for habeas corpus opened on July 27, three months after the arrests. The hearings concerned the legality of the arrests of the detainees, allegations that

they were severely tortured and the validity of detention orders made by the Minister of Internal Security. The undersigned ICJ observer was present in court for part of the hearings. On the first day of the hearings, the three member Court consisting of the President, Justice Percy Colin-Thome, Justice Parinda Ranasinghe and Justice D. Athukorale, ordered the Army to bring the detainees into court and to permit them to consult lawyers. This was the first opportunity provided to the detainees to consult lawyers in the three months since their arrest. It was also the first opportunity for family members to see the detainees since the arrest. The detainees were brought to the Court by army officers who were ordered to withdraw from the courtroom after objections by one of the attorneys for petitioners. Numerous members of the armed forces remained in the courtyard during the trial.

The petitioners were represented at the hearing by a team of respected lawyers led by a distinguished advocate, Dr. Colvin R. de Silva. The lawyers did not argue for the release of the detainees but asked that they be removed from the custody of the Army and placed in the custody of the Court, relying on the section of Article 141 of the Constitution which permits the Court to "otherwise deal with such person (detainee) according to law." Dr. de Silva contended that a detainee could be considered to have been "improperly detained" when he had been subjected to assaults and torture while in custody, had been arrested without a warrant and without being informed of the reasons for his arrest, or had been held without a valid order from the Minister.

International Law concerning Friendly Relations and Cooperation Among States, approved by the U.N. General Assembly in 1970,⁴⁷ state in relation to self-determination,

"Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or color."

The Principle also states that "The establishment of an independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people."

Although the practice of the United Nations has been to limit the application of the Principle of Self-Determination to colonial situations there is a substantial body of academic opinion which contends that the principle should have wider application, and thus could apply to a situation such as that of Tamils in Sri Lanka.

It is understood that the right of self-determination may be claimed only once by a "people." It could be argued that by participating in the Sri Lankan government since independence, the Tamils no longer have a right to self-determination. The TULF contend, however, that the Tamils did not participate in the

adoption of the 1952, 1972 or 1978 Constitutions and thus have never given up sovereignty which reverted to them when the legal ties with Britain were broken in 1972.

The application of the principle of self-determination in concrete cases is difficult. It seems, nevertheless, that a credible argument can be made that the Tamil community in Sri Lanka is entitled to self-determination. But, ultimately, it will not be the legal principle of self-determination which will solve the problem of Sinhalese-Tamil relations in Sri Lanka but rather a willingness on the part of both groups to work out a political settlement. Self-determination does not necessarily mean "separation," as pointed out in the Principles of Friendly Relations. It may be exercised while remaining in association or integration with an existing state. A substantial measure of autonomy accorded to the Tamil community through the District Development Councils would seem to satisfy the principle of self-determination. What is essential is that the political status of the "people" should be freely determined by the "people" themselves.

In the absence of substantial measures of autonomy being accorded to the Tamils by the majority community, the argument that self-determination permits separation becomes more persuasive. Whether separation is feasible or advisable is not within the purview of this study and the undersigned expresses no opinion on this subject.

SUMMARY

"1. Recent events, particularly relating to ethnic conflict between the majority Sinhalese population and the minority Tamil population have created concern about the status of human rights in Sri Lanka. This is unfortunate since Sri Lanka has had one of the better records in Asia in the field of human rights. Democratic elections have been held and democratic parliamentary institutions maintained since independence in 1948. The country recently celebrated 50 years of universal adult suffrage, has had a proud tradition of adherence to the Rule of Law and a distinguished judiciary. The present government has made explicit commitments to human rights. It has adopted a Constitution which includes articles on fundamental rights and has ratified International Human Rights Covenants. Although the government has made efforts to meet certain demands of the minority Tamil community, the basic inter-ethnic conflict remains unresolved, violence is escalating and the government has taken measures with regard to terrorism which are in violation of international human rights norms.

2. Violence resulting from racial conflict between the majority Sinhalese and minority Tamil communities has reached alarming proportions recently. The violence includes communal violence directed against Tamils and violence by security forces primarily against the Tamil community as well as political terrorism by a small group of Tamil youths directed primarily

against the police. In June 1981 the police engaged in widespread arson in the Tamil area of Jaffna in the North of Sri Lanka and in August 1981 there was a major outbreak of communal violence again directed against Tamils. The communal violence in August had international repercussions since Indian Tamil passport holders were killed, their residences burned and many were forced to seek refuge. President Jayewardene has admitted that some members of his political party have stimulated racial intolerance and violence and has promised to purge these elements from the party and government.

3. The sources of racial conflict in Sri Lanka are historical, economic, cultural and religious. Separate Sinhalese and Tamil communities existed on the Island from the precolonial era until the administrative unification of the Island by the British in 1833. The early history of Sri Lanka is replete with stories of conflicts between Sinhalese and Tamil kings. During the colonial period the Tamils had a disproportionately high percentage of high governmental posts and admission to prestigious faculties in higher education.

4. Upon independence, the majority Sinhalese population imposed certain policies relating to language, religion, education and government service which were perceived by Tamils as discriminatory but by the Sinhalese as compensating for the prior inferior status of Buddhism and the Sinhalese language as well as the proportionately low percentage of Sinhalese in higher education and government service. The Tamils consider these policies as intended to maintain them in an inferior status in

the country.

They point to the fact that Indian Tamils were disenfranchised and rendered stateless at the time of independence, cutting down the Tamil vote to less than one-third in Parliament. The Tamils are thus unable to exercise any effective Parliamentary control over policies that discriminate against them. The 1964 agreement between India and Sri Lanka to repatriate a certain number of Indian Tamils and grant citizenship to the rest has not been fully carried out and Indian Tamils continue to live and work on plantations in conditions of poverty and misery. Sinhala is the official language required for government service; civil service employees are not required to learn Tamil. Buddhism is the official religion; equal status is not given to Hinduism, the religion of the majority of the Tamils. Repression by the police and army in the Tamil areas has been a constant cause of concern and appears to be growing. Tamils are unable to compete for admission to university faculties on the basis of merit alone; an implicit racial quota limits the Tamils to a certain percentage of places.

5. The 1958, 1977 and 1981 communal violence against Tamils by the Sinhalese population coupled with the measures relating to language, religion, education, and government service resulted in a pervasive sense of insecurity among Tamils, a demand for greater autonomy in Tamil areas and eventually the adoption by the Tamil United Liberation Front, the main Tamil political party, of a policy of separation of the Tamil area from Sri Lanka and the creation of a separate state of Tamil Eelam.

6. The Sinhalese regard the Tamil demand for a separate state as unrealistic since they believe that such a state would not be viable economically and politically. They cite the unhappy record of divided countries in support of their point of view. They also consider the demand for a separate state as dangerous since it creates antagonism against Tamils among Sinhalese and polarizes the ethnic dispute. It has been claimed that the Sinhalese have a minority complex since, although a majority within Sri Lanka, they are a minority within Asia. There are more than 50 million Tamils in India and other parts of Asia.

7. A small terrorist group known as the Liberation Tigers has developed among Tamil youth in the north of Jaffna. This group has allegedly been responsible for a bank robbery, an attack on a police station, and a number of killings within the last six months. The development of terrorism among Tamil youth has been linked to frustration concerning opportunities for higher education and government service and assaults against Tamils by police. To cope with the terrorist threat the government has adopted the Terrorism Act. This Act violates norms of the International Covenant on Civil and Political Rights ratified by Sri Lanka, as well as other generally accepted international standards of criminal procedure by permitting prolonged detention on administrative order without access to lawyers and the use of evidence possibly obtained under duress. The Court of Appeal has found in three of four cases brought before it concerning detainees under the Act that violence was

used against the detainees during detention. The definition of an offence under the Act is unduly vague.

8. The tension between the ethnic communities creates an extremely dangerous situation in Sri Lanka which may escalate into major violence in the Island and negate all efforts to develop the Island economically. Despite long-standing tension, grievances and insecurities, the leader of both communities should be prepared to undertake major efforts to resolve the ethnic conflict.

9. The long-term solution to the ethnic conflict in Sri Lanka in the interests of the entire population can only be achieved on the basis of respect for the rule of law and relevant human rights standards. It is regrettable that certain government and United National Party actions such as the actions and remarks of certain government and party members, the actions of security forces, the stripping of the civic rights of Mrs. Bandaranaike, the Parliamentary vote of no confidence in the Leader of the Tamil United Liberation Front as well as the adoption of the Terrorism Act have undermined respect for the rule of law in Sri Lanka."

RECOMMENDATIONS

The following recommendations are respectfully submitted to the government in view of its international commitment to human rights and its expressed desire to resolve the ethnic conflict and promote economic development in Sri Lanka:

Immediate Government and Political Party Action

1. A primary concern of the government should be the physical security of the minority Tamil population and the avoidance of future communal violence so frequently directed against Tamils in the past. The army and police should be strictly controlled and used to ensure the safety of all Sri Lankans. In this regard the government should pursue a vigorous policy of investigation and prosecution of police officers responsible for the burning of many areas in Jaffna in May-June 1981. This serious violation of the duties of security forces deserves severe government condemnation and the enforcement of disciplinary and criminal sanctions. A thorough investigation should also be carried out of the role of organized groups in the communal violence against Tamils in August 1981 and individuals and groups found responsible should be prosecuted.

2. The government and the United National Party should make major efforts to ensure that, in the future, no member of the government or the Party is responsible for stimulating racial intolerance or violence by words or actions. Special attention should be given to limiting the role of government and party members perceived as encouraging anti-Tamil sentiments. The government represents all Sri Lankans and must maintain great care to ensure it is not representative of only one ethnic group. Members of the opposition party, the Tamil United Liberation Front, should also discourage members of the Party from actions

or language which exacerbate racial tension and contribute to violence. It should be noted, however, that citing discriminatory government policies and adopting the policy of a separate state of Eelam are legitimate exercises of the right to free speech.

3. The government should lead a major national and international effort to rebuild and develop the Jaffna Public Library destroyed by arson by police in June 1981. Such an effort would evidence the respect of the government for the cultural rights of the Tamils, help to remedy a serious injustice done to the Tamil community and contribute to restoring Tamil confidence in the government.

4. The government should seriously consider the ratification of the Convention for the Elimination of All Forms of Racial Discrimination. This Convention has been ratified by more than 100 countries, including the majority of developing nations. An international commitment to eradicate racial injustice in Sri Lanka should contribute to the improvement of the racial climate in that country.

Control of Terrorism

5. In view of the draconian provisions of the 1979 Terrorism Act which violate accepted standards of criminal procedure, the government should urge its parliamentary majority not to re-enact the Act on its expiration in 1982 or to amend it so that its provisions on arrest, detention and evidence conform

with the international commitments made by Sri Lanka in ratifying the Covenant on Civil and Political Rights.

6. In conformity with its commitment to the rule of law, the government should rely on the usual methods of criminal procedure in combatting terrorism as well as on eliminating the underlying causes which have led to terrorism among Tamil youth. The most effective method of combatting terrorism among Tamil youth would appear to be (1) to provide Tamil youth equal access to education and employment on the basis of merit (2) to prevent violence by security forces against Tamils and (3) to provide substantial autonomy to the Tamil population in the north of Sri Lanka. Eliminating the objectionable features of the Terrorism Act should not result in an increase in terrorism since the application of the Act in Sri Lanka and similar acts elsewhere has not appeared to decrease terrorist activity. On the contrary, there is evidence that the use of tactics permitted by the Act may lead to greater antagonism among the minority groups in which terrorism develops and thus be counter-productive.

7. It is to be hoped that the judiciary will continue to play an important role in tempering the objectionable features of the Terrorism Act, emphasizing the importance of procedural safeguards even for persons accused of serious crimes and upholding the rule of law in accordance with the Sri Lankan Constitution.

Underlying Causes of Ethnic Tension

(a) Educational Policies

8. The government should re-examine its policies on university admissions with a view to basing admission on merit rather than on racial grounds. Tamil and Sinhalese young people alike will then have equal rights to university education on the basis of capacity rather than on race. One of the major points of tension among Tamil youth has been the implicit racial quota imposed under present university admission policies which has barred many competent youths from pursuing higher education.

(b) Employment in Government Service

9. Policies concerning the use of Sinhala, inter alia, have seriously lessened the opportunities of Tamils for government employment. The government should adopt a system for recruitment for government service which provides equal opportunities for all persons regardless of ethnic origin.

(c) Colonization

10. The government should give renewed attention to Tamil concern over government sponsored colonization schemes which bring large numbers of Sinhalese into Tamil areas and thus change the ethnic composition in such areas. This is particularly important in view of the insecurity of Tamils due to communal violence against them in areas where they are a minority.

Autonomy in Tamil Areas; District Development Councils

11. The government should continue and expand its policy of decentralization. It appears essential that Tamils be given greater roles in government administration in the areas in which they constitute an overwhelming majority. This can best be accomplished through substantial roles being given to the District Development Councils. Decentralization appears to be the only hope of avoiding more widespread agitation for a separate State of Eelam.

Role of Police and Army

12. Consideration should be given to providing Tamils with a larger role in security forces in the areas in which Tamils predominate. The presence of primarily Sinhalese police and army officers in these areas, the actions of some of the security forces and the perception that these forces represent an army of occupation has been unnecessarily provocative and a source of insecurity among Tamils.

13. Clear directives should be given to police and army officers that assault and torture of detainees is an unacceptable practice. The Court of Appeal recently found that assault occurred on three of four detainees before the Court on petitions for writs of habeas corpus. The government should ensure that such assaults are not part of a consistent administrative pattern by disciplining and prosecuting officers responsible for such

practices.

Education for Racial Understanding and Tolerance

14. A major effort towards education in racial understanding and tolerance should be made at all levels of education and among the adult population. Such an effort might be coordinated through the government sponsored Human Rights Centre. The increasing antagonism and lack of understanding between the two ethnic groups must be combatted by vigorous efforts.

EPILOGUE

On August 31, 1981, President Jayewardene, R. Premadasa, the Prime Minister, and eight Cabinet ministers agreed with leaders of the Tamil United Liberation Front to set up a high level joint committee to discuss questions in dispute between them. The London Times reported on September 1 that "The agreement which came after two earlier rounds of discussions is the biggest breakthrough towards creating peace between Tamils and Sinhalese since President Jayewardene's Government took office in July, 1977."

The settlement agreed to between the two groups, however, was not made public. According to the Times of India (Sept. 2, 1981), "The reluctance of the government to divulge the details of the settlement at this stage was viewed by observers as being motivated by the fear that it would arouse the ire of Sinhalese nationalists, who all along have opposed any major concession to Tamils, such as giving them a degree of internal autonomy." The settlement apparently provided for much wider powers than previously accorded to be given to the District Development Councils elected in June, thus permitting Tamils substantial management of their internal affairs in the northern area. If such is the case, it would indeed be a major step in the solution of

the Tamil problem.

The United National Party took certain steps in September to purge itself of elements which appeared to be contributing to anti-Tamil sentiments and encouragement of violence. One member of the Party who was expelled had earlier urged Parliament to act as a Judicial Committee and to take action against the Leader of the Opposition Tamil party. Under pressure from the UNP, three MP members of the Party agreed to withdraw remarks made in Parliament in July during the debate on the vote of no-confidence in the Opposition Leader. The Deputy Minister for Regional Development, who represented Ratnapura in Parliament, was removed from his office in September. Ratnapura was one of the areas most hard hit by racial violence in August.

Despite reports of these positive steps, the ICJ has also received reports of numerous acts of violence by the army against individual Tamils during the month of October. The government action in negotiating with the TULF and in ridding the Party and government of anti-Tamil elements is commendable. It is to be hoped that the government, however, will also be particularly vigilant in protecting the physical security of Tamils. A basic responsibility of the government is clearly the safety and security of the entire population. The fate of the Tamils in Sri Lanka remains a matter of international concern.

October 30, 1981

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Notes

1. The terms "racial" and "ethnic" are both used in Sri Lanka to describe the problems arising between the Sinhalese and Tamil communities. Although the term "ethnic" is preferable, the two terms are used interchangeably in this report in view of their common usage in Sri Lanka.
2. The Ceylon Daily News, on July 29, 1981, however, carried an item that customs at the Sri Lankan International Airport that day had detained 200 copies of a New York newspaper, Worker's Vanguard, which carried an interview with the Leader of the Opposition, Mr. A. Amirthalingam. The copies were addressed to a person in Sri Lanka.
3. For information about the proposed bill see "An Assault on the Right to Read," Civil Rights Movement (CRM) of Sri Lanka, Colombo. For general information about the press in Sri Lanka see Gunewardena, V., "Man, Media and Development: The Press in Sri Lanka," 3 Human Rights Quarterly, No. 3, p. 89, Summer 1981.
4. For an excellent account of the history of racial conflict in Sri Lanka see Coomaraswamy, R., "Ethnic Conflict in Sri Lanka", 1981, Marga Institute, Colombo (forthcoming publication). See also Schwarz, W., The Tamils of Sri Lanka, 1975, Minority Rights Group, London, and "Race Relations in Sri Lanka," Logos, vol. 16, 1977.
5. Coomaraswamy, op. cit.
6. Government colonization schemes providing for relocation of depressed populations to more fertile areas has been a continuing problem between the two ethnic communities. Such schemes have frequently involved moving Sinhalese into Tamil areas.
7. For a succinct survey of the constitutional history of Sri Lanka see de Silva, K.M., "A Tale of Three Constitutions," The Ceylon Journal of Historical and Social Studies, New Series, vol. VII, No. 2, p. 1 (1977).
8. In 1970-71 Tamils constituted 40.7% of admissions into engineering faculties in Sri Lanka and 40.8% of admissions into medical faculties. In 1975, the Tamil percentage of admissions in these same two faculties was 14.1% and 17.4%. Jayawickrama, N., Human Rights in Sri Lanka, Office of the Secretary, Ministry of Justice, Colombo, Sri Lanka, August 4, 1976.
9. See footnote 6.
10. Coomaraswamy, op. cit.
11. Report of Presidential Commission of Inquiry (Sansoni Commission), Sessional Paper No. VII of 1980.
12. On Sept. 16, 1981, Dr. Fernando was expelled from the United National Party for violating the code of conduct and the party constitution. According to press reports he was expelled for criticizing the government, the party and the party leader in public.
13. Concern has frequently been expressed about violations of human rights which occur during states of emergency. Delay in declaring a state of emergency may, however, also result in human rights violations. In August, 1981, in Sri Lanka the murder, looting and arson were finally brought under control only after the state of emergency was declared. The declaration of the emergency was perhaps even too long delayed. It remains true, however, that special precautions must be taken during periods of emergency to avoid unnecessary abuse of rights. Widespread brutal attacks by police and armed forces were alleged to have occurred in Jaffna during a state of emergency declared by the Sri Lankan government in 1979.
14. Interview of the author with the Permanent Secretary of the Ministry of Justice, August 21, 1981.
15. Investigation Into Acts of Terrorism, Ministry of Foreign Affairs, June 25, 1981.
16. Hansard, June 9, 1981.
17. Insecurity of Tamils in Sri Lanka, CBFTRR/TRG Publications, 10th June 1981, London.
18. "The sporadic acts of violence that have marred the traditionally tranquil atmosphere of Jaffna did not crop up spontaneously. They can be related directly to gross political discrimination meted out to the Tamils and the reign of police and army terror unleashed on them in the post-1970 period," Emergency 1979, p. 5, Movement for Inter-Racial Justice and Equality (MIRJE), 1980. MIRJE is a Sri Lankan movement which includes both Sinhalese and Tamil members.
19. The June incidents in Jaffna were discussed in Parliament on June 9, 1981. Mr. Gamini Disanayake, Minister of Lands and Land Development, presented the government viewpoint and Mr. A. Amirthalingam, leader of the TULF in Parliament, spoke for the Tamil Party. Hansard, June 9, 1981.
20. The letter has been published by the Civil Rights Movement, Colombo.

21. Report of MIRJE Delegation to Jaffna, 6 June-9 June, 1981, reprinted in Violence in Jaffna 1981, p. 19, Centre for Society and Religion, Colombo.
22. Schwarz, The Tamils of Sri Lanka, 1975, p. 15, Minority Rights Group, London.
23. Wilson, A. J. "Focus on the New Constitution," Sunday Observer, Sept. 10, 1978, reproduced in Towards Concord, Facts About the Tamil Problem in Sri Lanka, Department of Information, Sri Lanka, 1979.
24. Coomaraswamy, op. cit.
25. Ibid.
26. Investigation into Acts of Terrorism, Sri Lankan Ministry of Foreign Affairs, June 25, 1981.
27. "Cost to Civil Rights of Fighting Terrorism," by Stephen Cook, The Guardian, January 13, 1980.
28. For criticism of this Act No. 28 of 1967 see "The Terrorism Act of South Africa," Bulletin of the International Commission of Jurists, No. 34, June 1968, p. 28, and Suzman, "South Africa and the Rule of Law," The South African Law Journal, Vol. LXXXV (Part III), August 1968, p. 261, 269.
29. Bulletin of the International Commission of Jurists, op. cit., p. 31. Article 20(2) of the International Covenant on Civil and Political Rights provides that "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law." This provision of the Covenant might be considered as constituting international approval of the relevant portions of the South African and Sri Lankan Terrorism Acts. Democratic countries have recognized the potential danger to human rights from such provisions. The United Kingdom and the United States inter alia, on signing the Covenant have made reservations to this Article in the interests of the protection of freedom of speech.
30. Ibid., p. 34.
31. See later section of this report on International Norms.
32. Other paragraphs of Article 15 permit restrictions on a number of other fundamental rights.
33. The detainees on whose behalf petitions for writs of habeas corpus were filed are S. Arunagirinathan, C. Kulasegarajasingam, S. Murugaiah and V. Sivaselvam.
34. Court of Appeal--Habeas Corpus Application Nos: 10/81, 11/81 and 13/81. In the Matter of an Application for an Order in the Nature of a Writ of Habeas Corpus under Article 41 of the Constitution of the Democratic Socialist Republic of Sri Lanka, decided on 10th September, 1981.
35. European Court of Human Rights, Judgment, Case of Ireland against the United Kingdom, para. 36, p. 12, Strasbourg, 18 January, 1978.
36. The introduction to the brochure prepared by the Ministry of Foreign Affairs refers to the reasons for its publication: "Some of the visitors to Sri Lanka may have received pamphlets distributed by interested parties trying to make out that the detention of a number of persons in connection with the recent incidents of violence in Jaffna, is unjustified and harsh. This note sets out the circumstances in which 27 persons are now under detention under the provisions of the Terrorism Act."
37. European Court of Human Rights, Judgment, Case of Ireland against the United Kingdom, para. 74, p. 23, Strasbourg, 18 January, 1978.
38. Ibid., para. 74, p. 24.
39. Investigation into Acts of Terrorism, Ministry of Foreign Affairs, June 25, 1981.
40. Inter-American Commission on Human Rights, Third Report on the Situation of Human Rights in Chile, 1977, p. 44.
41. O'Donnell, D., States of Siege or Emergency and Their Effects on Human Rights, Observations and Recommendations of the International Commission of Jurists, 1980, n. 32.
42. Ibid., n. 33, Report of the Committee of Inquiry into Police Interrogation Practices in Northern Ireland, The Bennett Report, HMO Stationary Office, London, 1979, pp. 30 and 92.
43. The Lawless Case, 4, Yearbook of European Convention on Human Rights (1961), pp. 472-3; cited in O'Donnell, ICJ Observations, op. cit., p. 18.
44. O'Donnell, ICJ Observations, op. cit., p. 1.
45. CCPR/C/XII/CRP.1/Add.16, p. 6.
46. See The Right to Self-Determination, Study prepared by Aureliu Cristescu, E/CN.4/Sub.2/404/Rev.1 (1981); The Right to Self-Determination, Study prepared by Hector Gros Espiell, E/CN.4/Sub.2/405/Rev.1 (1980).
47. UNGA, Res. 2625 (XXV), 24 Oct. 1970.

ETHNIC VIOLENCE IN SRI LANKA, 1981-1983

A report by the staff of the International
Commission of Jurists

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ETHNIC VIOLENCE IN SRI LANKA, 1981-1983

The outburst of ethnic violence in Sri Lanka at the end of July 1983, far the worst to have occurred since independence, did not come as a surprise to those who have been following events in the country.

On June 11 Gamini Navaratne, a Sinhalese journalist wrote in the Saturday Review, an English language weekly published in Jaffna,

"After six years of United National Party rule, Sri Lanka is once again near the incendiary situation of 1958. Let's hope to God that no one, from any side, will provide that little spark that is necessary to set the country aflame. The politicians of all parties, should be especially careful about their utterances in this grave situation".

Unfortunately the spark was provided on 23 July when 13 soldiers were killed in an ambush by members of the small Tamil terrorist organisation, styling themselves as the Tigers. According to a report published in the London Times on 27 July, the soldiers were killed in reaction to the abduction and rape of three Tamil girls by a group of soldiers. In addition, about 3 days before the attack by the Tigers two suspected terrorists were shot by army soldiers at Meesalai Chavakacheri, 15 miles from Jaffna. As the government had suspended Tamil language newspapers at the beginning of July, and as this explanation was not published in the Sinhalese language press, the public was not aware of these earlier incidents, and the killing of the soldiers became the signal for unleashing widespread racial violence.

Professor Virginia Leary's mission

In July and August 1981, Virginia Leary, Professor of International law at the State University of New York at Buffalo, undertook a mission on behalf of the International Commission of Jurists to study the human rights aspects of the Terrorism Act and events related to its adoption and application. Her report, entitled "Ethnic Conflict and Violence in Sri Lanka", to which this is a supplement, was published by the ICJ. The conclusions of her report will be found on pages 72 to 76.

Among her recommendations were that

- a primary concern of the government, the ruling United National Party and the opposition Tamil United Liberation Front (TULF) should be to ensure that no members of the government or of the two parties are responsible for stimulating racial intolerance or violence by words or actions;
- the army and police should be strictly controlled and used to ensure the safety of all Sri Lankans; thorough investigations of the communal violence against Tamils in August 1981 should be carried out and individuals and groups found responsible should be prosecuted;
- the Jaffna public library, destroyed by arson by the police in June 1981 should be rebuilt;
- the Terrorism Act, which violates accepted standards of criminal procedure and has proved to be counter-productive, should not be re-enacted on its expiration in 1982 and the government should rely on the usual methods of criminal procedure in combatting terrorism;
- in order effectively to combat terrorism among Tamil youth, they should be given equal access to education and employment on the basis of merit, violence by security forces against Tamils should be prevented, and substantial autonomy should be provided to the Tamil population in the north of Sri Lanka;
- the government should heed Tamil concern over the colonisation schemes bringing large numbers of Singhalese into Tamil areas, in view of the insecurity of Tamils due to communal violence in areas where they are a minority;
- the government should continue and expand its policy of decentralisation, giving greater autonomy in areas where the Tamils constitute an overwhelming majority;
- clear directives should be given to police and army officers that assault and torture of detainees is an unacceptable practice.

Unfortunately these recommendations were not followed, and the next two years saw an increasing escalation of ethnic violence and counterviolence and the introduction of further repressive legislation by the government, used almost exclusively against Tamils.

The Presidential election and referendum to extend the life of the Parliament

An anticipated Presidential election and a referendum to extend the life of the Parliament took place at the end of 1982.

Mr. Junius R. Jayewardene^{had} come to power in 1977 with a sweeping victory that gave his party a sufficient majority (143 out of 166 seats) to vote amendments to the Constitution at will. Some amendments affecting Article 3 of the Constitution enshrining the sovereignty of the people required approval in a referendum. Following the 1977 election major amendments were approved to the Constitution, replacing the former system based on the British model by an executive presidency, the president's term being fixed at 6 years.

On August 26, 1982 the Constitution was again amended to enable the President to seek reelection before the end of his term. Since the Supreme Court ruled that the amendment did not infringe Article 3 of the Constitution, no referendum was held. Critics suggested that the President was motivated to make this amendment and to seek reelection before the expiry of his original term by the waning popularity of his party.

In the Presidential election held on October 20, 1982, President Jayewardene received 52.9 percent of the total votes polled. His nearest rival Mr. Hector Kobbekaduwa of the Sri Lanka Freedom Party polled 39.1 percent.

One main criticism of the Presidential election was that President Jayewardene held the election after effectively silencing his rival leader and former Prime Minister Mrs Bandaranaike. This was done by Parliament imposing civic disabilities on her for seven years, with the result she was banned from participating in elections or even campaigning on behalf of other candidates for that period, under pain of fine or imprisonment, and any successful candidate for whom she campaigned could be unseated. This was done following investigations by a Special Presidential Commission whose procedures seriously violated basic principles of the rule of law (see ICJ Review No. 21, December 1978 at p. 11).

Another relevant feature of the Presidential election was the opposition by the Tamil minority. In the predominantly Tamil Jaffna district the voter turn out was only 46 percent as compared to the national average of 81 percent. President Jayewardene who headed the polls in 21 of the country's 22 districts was third in Jaffna.

President Jayewardene interpreted his re-election as an approval by the nation of his policies. Soon after this Presidential election President Jayewardene again used his Parliamentary majority to amend the Constitution, this time to extend the life of the Parliament till 1989, and he called for a referendum to approve the amendment. In a press statement on 25 November 1982, the Secretary-General of the ICJ, commented that the recent amendments and the proposed amendments savoured more of political manoeuvring than of a desire to maintain the stability of the Constitution, and expressed the hope that in the coming referendum the electors would reflect carefully before allowing the undoubted popularity of the President to undermine the tradition of constitutional rule.

The referendum, which took place on December 22, was conducted under emergency regulations imposed on the eve of the presidential election on 20 October. Of the 22 districts 15 voted in favour of extending the life of the Parliament and seven districts, including the districts with large Tamil populations, voted against. The voter turn out in the Tamil dominated Jaffna district was particularly heavy with 95 percent of the 265,000 voters opposing the continued dominance by the United National Party led by President Jayewardene.

In a statement made after the referendum one of the leaders of TULF, Mr. Sivasithamparam said ⁽¹⁾ "I appeal to the government to reverse its earlier decision and hold a general election in due time and thereby respect the views of a substantial minority".

The Civil Rights Movement of Sri Lanka published a critique of the referendum questioning whether it was in fact 'free and fair'.

(1) Far Eastern Economic Review, January 6, 1983

Prevention of Terrorism Act

So far from allowing the Prevention of Terrorism Act to expire in 1982, as recommended by Professor Leary, it was made permanent in March 1982, and a new Section 15A was added. This gives the Minister of Defence (not the Minister of Justice) the power to order that any person remanded in custody under the Act may be kept "in the custody of any authority, in such place and subject to such conditions as may be determined by him". This means that the suspect can be transferred, for example, from a civilian prison or police station to a military barracks or camp.

Experience in many countries shows that when persons are removed from the custody of trained prison officers and handed over to military custody, abuses are liable to result. In Sri Lanka itself such abuses had been reported by Prof. Leary, including some which had been the subject of findings by the Court of Appeal.

The fact that the Prevention of Terrorism Act was made permanent, and that its use has been exclusively or almost exclusively directed against Tamils, indicates that the government intended to use the weapon of preventive detention permanently and not merely as a temporary measure in dealing with the minority problem.

The Colombo based multiracial Movement for Inter-racial Justice and Equality (MIRJIE) sent a delegation on 21-22 March 1982, consisting of its President Rev. D.J. Kanagaratnam, the National organiser Mr. Shelton Perera and Mr. Wilfred Silva to Vavunia district to study the human rights abuses. In its report submitted to the President it said ⁽²⁾

"The Act (Prevention of Terrorism Act) is being used ostensibly to prevent terrorism and is being used with obvious selectivity against Tamils ... It is under cover of this Act that Tamil persons are taken into detention by unknown persons for unknown reasons to unknown places, and there as we now know many of them are subjected to cruel, inhuman and degrading treatment and torture. Even so, the Act is not successful in eradicating the alleged terrorism. But if the Act has failed to prevent whatever it is meant to prevent it has not failed to create

(2) Reproduced in Saturday Review, June 26, 1982

the conditions for acts of organised state terrorism".

Even after publication of such a report the government did not take any effective steps to prevent atrocities by the police and army personnel.

Disrespect for the rule of law

The government lack of respect for the rule of law can be illustrated by three cases in which a mantle of protection was thrown over officials who had exceeded or abused their powers.

In the first case the Supreme Court passed strictures against Mr. P. Udagampola, a class I Superintendent of Police, for preventing a Buddhist monk from distributing leaflets arguing against the referendum, and said that he should pay compensation to the monk. Instead of taking any action against the officer, the Cabinet of Mr. Jayewardene decided to promote him and the compensation was paid by the government.

In September 1982 two army personnel who had been arrested and remanded in connection with the shooting of a lame Tamil youth, Kandiah Navaratnam, were released by the magistrate on the instructions of the Attorney-General.

In another case in June 1983 a bench of three judges of the Supreme Court ruled that the arrest of a Mrs Vivienne Goonewardene by the police officer in charge of Kollupitiya police station was unlawful, and that the State should pay compensation of Rs. 2,500. Again the concerned officer was promoted. The reason given was that it would enable police officers to carry out their duties without fear of being punished.

In face of this attitude by the government it is not surprising that the police and army increasingly took the law into their hands, as will be seen when examining the activities of the police and army in the Tamil district of Jaffna.

Indeed, after judgment was delivered in Mrs Vivienne Goonewardene's case, the residences of the three judges who constituted the bench were

attacked on June 11, by a mob. Their attempts to obtain assistance from the police went of no avail. An editorial in The Island newspaper published in Colombo said (3)

"There is proof that the demonstrators had been brought in buses. The authorities must initiate an immediate inquiry to ascertain who was responsible for this demonstration and why the police failed to respond ... If the judges of the Supreme Court cannot receive immediate protection from vulgar mobs what chance will the ordinary citizen stand".

Escalating terrorist violence and counterviolence

Many observers have commented that the harassment and violence by the army and police have contributed to growing support for the Tigers. Though the actual number of Tigers is not known, it appears to consist of a small number, the estimates ranging from 25 to 1,200 (4).

The October 1982 presidential election and the referendum led to an increase in the activities of the 'Tigers', which included an attack on police and army personnel. On the eve of the presidential election a country wide emergency was imposed and 'Suthanthiram', a Tamil newspaper, was suspended.

With the growing failure to prevent the terrorists' activities, the government started using the Terrorism Act more widely. For example, on November 11, 30 people were arrested. These included 3 priests, 6 belonging to the Catholic church and two to the Anglican and Methodist churches. A university lecturer and his wife were also arrested on the same day. On November 17, two of the Catholic priests, Fr. Singarayer, Fr. Sinharasa and the university lecturer Mr. Nityanandam and his wife Mrs Nirmala Nityanandam were charged under the Prevention of Terrorism Act. They were accused of withholding information about terrorists and harbouring them. (The other six

(3) The Island, 13 June 1983

(4) Report of a mission to Sri Lanka, June 1983 by Tim Moore, M.P., Honorary Treasurer of the ICJ Australian Section

Catholic priests were released).

Fr. Singarayer in a letter addressed to the President of the Bishops Conference of Sri Lanka stated that he was tortured and made to sign statements (5).

In the predominantly Tamil districts protests were organised for the release of the priests and others. On 10 December a protest fast and a prayer meeting were organised at St. Anthony's church at Vavunia. After the prayer meeting, the gathering was attacked by the army, who even entered the church to assault some of the people. This led to further protest in the form of hartal (closing of shops and business establishments) in the town of Vavunia.

The beginning of 1983 saw a continuing escalation of the violence by both sides, the Tamil terrorists and the Sri Lankan army. In January a U.N.P. organiser was shot dead at Vavunia by the terrorists. In February a police Inspector and a driver were shot dead. In March an army vehicle was ambushed and five soldiers were injured.

The counterviolence by the army and police included an attack in March on a refugee settlement helped by a voluntary organisation called the Gandhian Society.

The Gandhian Society, which was formed in 1976 as a social service organisation, had been involved in rehabilitating the refugees of the 1977 and 1981 racial riots. These refugees had fled from the southern parts of Sri Lanka and had settled down in the existing Tamil villages in and around Trincomalee district. The Gandhian organisation with the help of church agencies from West European countries had been helping these refugees to build houses, dig wells, and use better methods of cultivation, and was conducting health and education programmes.

One such village settlement in Pannakulam in Trincomalee district was attacked on 14 March. Sixteen huts were burnt and the Gandhian volunteers

were intimidated. Though the affected families filed a complaint, no action was taken. In the beginning of April Dr. Rajasundaram, the Secretary and Mr. S.A. David, the President of the Gandhian Society were arrested. It was alleged that both were tortured and even after a court order access to their lawyers was delayed. Both were accused of helping the Tamil terrorists through the Gandhian organisation. Dr. Rajasundaram was one of the persons killed in the Colombo prisons between 25 and 29 July 1983.

On 1 June 1983, a farm and a children's home in Kovilkulam village near Vavunia and run by the Gandhian Society was burnt. Mr. Tim Moore, Honorary Treasurer of the Australian Section of the ICJ, who was able to visit the place in June 1983, says in his report that he "discussed the operations of the movement with a wide range of people in Sri Lanka and came to the conclusion that it is not involved in politics or with the Tigers, but is a genuine social service organisation. The Sinhalese suspicions with respect to its resettlement activities appear to arise more from increases in Tamil populations in areas close to Sinhalese settlements than from any legitimate grievances about its activities".

Events that took place in the months of May and June clearly indicate that the situation was deteriorating seriously.

On May 18, polling took place for 37 municipal and urban Councils and 18 Parliamentary seats. It was reported that between nominations and polling day, militant Tamil youths had launched a violent campaign for the boycott of the polls. Two U.N.P. candidates and the party secretary of the Jaffna district were shot and killed. Acts of violence to disrupt the elections in the Jaffna district were maintained right up to election day on 18 May, when several polling stations were attacked with home made bombs. The major confrontation came after the voting ended, when a gang of armed Tamil youth stormed a polling station two miles from Jaffna in a bid to seize the ballot boxes. An army corporal on guard duty was killed and four policemen and a soldier were wounded.

At 5 pm on the same evening, a state of emergency was declared. Later in the night, in what was clearly a retaliatory strike, soldiers burnt houses and vehicles and looted in the general vicinity of the polling booth in which

(5) Quoted in Tim Moore's Report on Mission to Sri Lanka, June 1983

the incident had taken place. Several million rupees worth of damage was done before the soldiers were pulled back to their barracks.

Mr. Tim Moore states in his report that on the same night, while attempting to burn down the Jaffna cooperative stores, located opposite the Jaffna medical hospital, the soldiers had shot at some of the hospital personnel who were watching from the hospital. A non-medical junior member of the staff was injured.

A report published on the incident in the Far Eastern Economic Review of 2 June 1983 quoted a senior police officer as saying, "what happened in Jaffna after the shooting is exactly what the terrorists want; they want the people to be resentful and embittered with the army".

The army continued to penalise the Tamil community at random for the actions of the militant Tamil youth. For example on 1 June, two members of the airforce were killed by the Tamil youth while they were making routine purchases in the local market in the town of Vavunia. One of the shops was alleged to have been used by the Tamil youth to attack the two airmen. In retaliation, soldiers set fire to the shop and the adjacent shops. Mr. Tim Moore, who inspected the site, says that the damage "extended to some 16 or 17 small shops and destroyed the means of livelihood and a considerable portion of the assets of the traders involved".

The innocent Tamils affected on both occasions had no possibility of claiming compensation for the losses incurred by the illegal acts of the soldiers. Such disciplinary action as was taken against the soldiers involved in the May 18 incident was withdrawn by the government when 40 soldiers of the same regiment deserted in protest.

The situation was aptly summarised by a correspondent of the Far Eastern Economic Review of June 23, 1983, reporting from Jaffna on the May 18 incident. He said, "At present the northern and eastern provinces are experiencing a vicious circle of violence: terrorism followed by reprisals by the army^{and} other security agencies, which have led to a drastic deterioration of law and order".

Secret burial of bodies

In the midst of this increasing violence by the army and police a Public Security Ordinance was promulgated authorising the police, with the approval of the Secretary to the Minister of Defence, to bury dead bodies in secret without any inquest or post mortem examination.

Government spokesmen sought to justify this measure by stating that "the morale of service and police personnel is low because under normal circumstances if they shoot down a terrorist they have to face an inquest, remands and other constraints", and, on another occasion, that "the government wishes to ensure that servicemen and policemen doing their duty under difficult circumstances are in no way harassed by the law".

This extraordinary ordinance applies to the burying of any dead body, including persons who have died in custody. Mr. Tim Moore, after examining the records in Jaffna in June 1983, stated that at least 23 members of the Tamil community have died since July 1979 in army or police custody. In addition four persons are reported to have disappeared after arrest.

On 10 April 1983 a young farmer from Trincomalee, K. Navaratnarajah, died in custody after having been held without charge for two weeks. Twenty five external wounds and 10 internal injuries were found on his body during the post mortem examination. At the end of an inquiry a verdict of homicide was given by a Jaffna magistrate. No action has been taken by the government against those responsible.

The rising tension

Tension between the Tamils and Sinhalese spread to other parts of the country. Tamil students were attacked in the universities, and passengers in trains to and from Jaffna were attacked.

The effect of this indiscriminate counterviolence was well summarised in the article already referred to in the Far Eastern Economic Review of 23 June 1983:

"The Tamil underground secessionist movement seems to have acquired more popular sympathy than it had a few months ago - but it is still too early to predict its chances of success in its quest for Eelam, the name for the sought-for sovereign state that the secessionists want carved out of Sri Lanka. However, what cannot be ignored is the current total alienation of the Tamil region from Colombo, plus an unusually high degree of antipathy between the Tamils and the majority Sinhalese communities of Sri Lanka".

The government's reaction to this situation was to intensify the repression. In an interview with Ian Ward, published in the London Daily Telegraph on 11 July 1983, President Jayewardene said:

"I have tried to be effective for some time but cannot. I am not worried about the opinion of the Jaffna people now". He said at one time his party had been anxious to apply policies in the northern region in such a way as to attract popular support there. "Now we cannot think of them. Not about their lives or of their opinion about us. Nothing will happen in our favour until the terrorists are wiped out. Just that. You cannot cure an appendix patient until you remove the appendix".

The sense of frustration of President Jayewardene is understandable, but his remedy is of doubtful validity. A doctor cannot remove a seat of infection without knowing where it is located. Experience in many countries shows that terrorist organisations cannot be run to earth where they have popular sympathy, and a general indiscriminate repression of the public will only serve to increase such sympathy.

Events between 24 July and 2 August

The violence that rocked Sri Lanka between 24 July and 2 August surpassed all earlier incidents.

As has already been stated, this outburst of communal violence is attributed to a reaction to the killing by the Tigers of 13 soldiers on 23 July. The opposition leader, Mr. Amirthalingam has stated that 51 people

had been killed in the Jaffna peninsula by troops in previously unreported incidents (Guardian, 8/7/1983). The period over which these killings are alleged to have occurred is not stated.

On 7 August President Jayewardene disclosed that the army had gone on the rampage in response to the killing of the 13 soldiers and had killed 20 civilians. He said this information had been withheld from him by the army until 7 August. This presents a terrifying picture of army discipline.

On 25 July a group of 130 naval personnel, similarly in Trincomalee went on a rampage burning 175 Tamil houses, killing one Tamil and wounding 10 others before they were able to be rounded up and returned to their barracks.

Press reports published on 27 July described the killing of 35 prisoners during a fight in Colombo's Welikada jail. The London Times called it the 'worst incident so far in the violence sweeping the country'.

On 29 July it was reported that 17 more Tamil prisoners had been killed in the same prison. This included Dr. Rajasundaram, Secretary of the Chandhiyam Society.

All the 52 prisoners killed in Welikada prison were arrested under the Prevention of Terrorism Act. It is not clear how it was possible for the killings to take place without the connivance of prison officials, and how the assassinations could have been repeated after an interval of two days, since Welikada prison is a high security prison and the Tamil prisoners were kept in separate cells.

On and after 29 July there were widespread reports of the destruction by burning in Colombo of Tamil-owned businesses, shops and factories, the seizure of Tamils from their homes, and the looting and burning of their homes. This violence then spread to other centres of population.

Nearly one-half of the 141,000 Tamils living in the Colombo area may have been left homeless. According to government sources 350 people died in nine days rioting, and many fear the toll to have been much

heavier. More than 100,000 people sought refuge in 27 temporary camps set up across the country. Some of the refugees were shipped to the Jaffna peninsula.

Reports from Colombo indicate that the attacks on Tamil business men and others were highly organised. Those making them went direct to the homes of the persons concerned and set them on fire.

The looting of their homes and shops took place

subsequently and was compared by one journalist to the arrival of vultures to take pickings from the prey.

The suspicion is strong that this organised attack on the Tamil population was planned and controlled by extremist elements in the government UNP party, and that the killing of the 13 soldiers by the Tigers served as the occasion for putting the plan into operation. Some reports go so far as to allege that a member of the Cabinet was actively involved in planning these attacks.

Some of the factories burnt down bore English names from pre-independence days, and the ordinary public would not know that the majority shareholding had been acquired by Tamils.

President Jayewardene's reaction

For three days of the violence there was no word from President Jayewardene. On 29 July he made a 4½ minute speech in which he announced that any organisation supporting the division of Sri Lanka would be proscribed, and that any person subscribing to such a policy would not be allowed to take a seat in Parliament, would lose the right to vote and other civil rights, could not hold office, could not practice a profession and could not join any movement or organisation.

Further the President said that the Sinhalese will never agree to the division of a country which has been a united nation for 2,500 years. On the separatist movement he said "this movement for separation was non violent, but since later in 1976 it became violent. Violence increased and innocent people were murdered. It has grown to such large proportions that not a few but hundreds had been killed during this movement".

Surprisingly there was no condemnation of the violence against the Tamils. Rather the President seems to have sought to placate the majority Sinhalese and by implication to justify the racial atrocities.

Further the statement that the country had been united for 2,500 years flies in the face of history. There was for some centuries an independent Tamil kingdom and the chronicles report frequent wars between Sinhalese and Tamil kings. Separate Sinhalese and Tamil communities existed on the island from the precolonial era until the administrative unification of the island by the British in 1833.

On 3 August Parliament approved an amendment to the Constitution providing for the banning of any political party advocating secession of any part of the country. This is clearly aimed at the main opposition party, the TULF, which at the time of its formation did pass a resolution advocating secession. However, as will be shown in the following section, the subsequent history of the party shows that its leaders have repeatedly shown readiness to compromise, have never advocated or had recourse to any unconstitutional action, and have clearly denounced and dissociated the party from the terrorist Tigers organisation.

The government also announced the banning of three left-wing parties for their alleged involvement in the communal violence. The three banned parties were the Janata Vimukti Peramuna or Peoples Liberation Front, the Nava Sama Samaj Party or New Equal Society Party and the Communist Party of Sri Lanka.

President Jayewardene has also sought to suggest that the communal violence was fomented by a foreign power, apparently meaning the USSR. Government representatives have referred to Tamil guerrillas being harboured in the South India state of Tamil Nadu. At the time of writing no evidence has been published connecting the banned parties or any foreign country with the communal violence.

Tamil United Liberation Front and Separatism

On May 17, 1976, the Federal Party and other Tamil organisations united to form the Tamil United Liberation Front (TULF). A resolution adopted by the TULF at their first national conference in 1976 stated, "The Convention resolves that the restoration and reconstitution of the Free, Sovereign, Secular, Socialist State of Tamil Eelam based on the right of self-determination inherent to every nation has become inevitable in order to safeguard the very existence of the Tamil nation in this country".

In May 1976, Mr. Amirthalingam, Joint Secretary-General of the Front, was arrested on a charge of inciting to defy the Constitution. In September in the same year, a special court of three High Court judges discharged him on the grounds that the emergency regulations under which he was charged were constitutionally invalid. The Supreme Court reversed the ruling and ordered the Special Court to proceed with the trial, but the case was withdrawn by the then government led by Mrs Bandaranaike. So no judicial decision was made whether the party was defying the Constitution, and numerous subsequent episodes indicated that, notwithstanding the 1976 resolution, leaders of the party were willing to compromise on the issue of separation.

In February 1977, Mrs Bandaranaike had discussions with 21 Tamil members of Parliament belonging to the TULF and other Tamil parties in which the Tamil representatives agreed that they would not raise the demand for a separate Tamil state if an interim settlement could be worked out.

After the general election in which Mr. Jayewardene came to power, the TULF became the main opposition party in the Parliament. In May 1979 the Parliament approved a Bill banning the 'Liberation Tigers' and empowering the President to proscribe any organisation which advocated the use of violence or was engaged in any unlawful activity. The TULF and the Sri Lanka Freedom Party (SLFP) opposed the Bill on the ground that it could be used for suppressing all political opposition. In reply the Prime Minister, Mr. Premadasa, gave assurances that the new law would not be used against democratic and law abiding organisations and that the government did not suspect the TULF of being behind the 'Liberation Tigers'.

In the same year the government appointed a Commission to report on devolution and decentralisation of the administration and the creation of elected district councils in an effort to seek a solution to the problems of the Tamil minority. The TULF participated in the Commission and when the Bill for setting up District Development Councils was passed on August 21, 1980, the TULF members voted with the government.

In 1981, the TULF participated in the elections to the new district councils and gained control of six predominantly Tamil districts. The Liberation Tigers had opposed the TULF's participation in the elections.

In August 1981, President Jayewardene and Mr. Amirthalingam, leader of TULF, agreed to set up a high level joint committee to discuss means of reducing communal tensions. Reporting on the progress of the discussions to his party's Parliamentary members, the President said that the TULF leaders had agreed to cooperate with the government in wiping out terrorism. He also said that he believed that there was no link between the TULF and the so-called separatist type of movement, and he warned party members not to be misled by what he described as certain elements intent on disturbing the peace. Mr. Amirthalingam said at a meeting of the Joint Committee on December 9 that the TULF had nothing to do with certain elements reportedly preparing a unilateral declaration of Tamil Eelam.

All this indicates that

- both the members of the TULF and the government considered the Tigers to be entirely different from the TULF party;
- though the TULF had passed a resolution supporting separation, it had continued to participate in the political life of the country;
- active participation in the Parliament and in elections show that the TULF party was not advocating or supporting extra-constitutional methods to solve its grievances.

The threatened banning of the TULF and the disqualification of its members of Parliament unless they openly renounce any claim to separatism places the TULF leaders in an impossible situation politically. In the present climate of opinion it would be impossible for them to retain the

confidence of the Tamil population if they made such a declaration. The likely result will be to leave the Tamils without any representation in the Parliament and, in fact, to disenfranchise the Tamil people.

De facto partition

Paradoxically, the government's action in threatening to ban the TULF and in sending Tamil refugees to the north is a significant step towards a de facto partition of the country. The implications are very grave for the future.

The increase in population in the north due to the influx of the refugees from ^{the} south will increase the pressure on resources, including land, water, and food, and employment opportunities. In such a situation it appears that the Tamils will be left without any representatives or any party to negotiate their demands.

Conclusions

The communal violence of July 1983, compounded by government ineffectiveness and illegal counterviolence by the armed forces, has resulted in the death of hundreds of Tamils, rendered thousands homeless, caused a major refugee movement to the north of the island and devastated the economy of the country.

It is imperative that the government, which is committed to a united country, should now take urgent steps to heal the national fabric

- by affording equal protection and security to all residents regardless of race. In particular, since innocent Tamils unconnected with violence or terrorism have been the prime victims, immediate measures should be taken to ensure the safety of Tamils in refugee camps, en route to Jaffna or elsewhere in the island, and to convince them that they will be adequately protected;
- by facilitating humanitarian assistance to the uprooted and displaced Tamils;

by establishing firm control over elements in the armed forces and elsewhere which are found to have contributed to the recent violence. The killing of and other attacks on innocent Tamils by the armed forces in retaliation for terrorist actions must cease;

- by establishing a dialogue with legitimate representatives of the Tamil population with a view to resolution of outstanding grievances. National unity can clearly be maintained only with the effective political participation of the Tamils who represent 20% of the population;

- by demonstrating its commitment to the Rule of Law through repeal of the Prevention of Terrorism Act which violates Sri Lanka's international obligations under the International Covenant on Civil and Political Rights to which it is a party;

- by the establishment of an independent judicial inquiry to investigate the causes of the recent violence, the events occurring during the violence, and to assess responsibility for the resulting loss of life and devastation. The killing of detainees in Welikada prison should be the subject of a special investigation. Those responsible for arson and killing should be prosecuted regardless of any official position.

It is clear that animosity between the Sinhalese and Tamil communities has now reached a level which makes the role of the government exceptionally difficult. The actions of the government during the recent violence appear to have been responsive to pressures from the armed forces and the majority Sinhalese community. Yet, the expressed desire of the government to maintain a united country can only be accomplished if the government represents the entire population and affords equal protection to all, not only to the Sinhalese majority.

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Geneva, August 1983

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