



IN
PLACE
OF THE
SPIRAL
OF
VIOLENCE

THE COMMITTEE FOR
DEMOCRACY & JUSTICE
IN SRI LANKA

IN PLACE OF THE SPIRAL OF VIOLENCE

Documents of the conference on Human and
Democratic Rights convened by the Committee
for Democracy and Justice in Sri Lanka.
Held on 20 and 21 November 1994

Edited by

Upali Cooray

Printed by C.R.C. Press, Rattanapitiya, Boralessgamuwa, Sri Lanka.

Inquiries : R.C.C.G.

No. 1, De Silva Road,
Kalubowila,
Dehiwala, Sri Lanka.

CONTENTS

| | | |
|----|---|------------|
| | <i>Introduction</i> | <i>vii</i> |
| 1. | The Rights of the Child <i>- Ainsley Samarajeeva</i> | 1 |
| 2. | The Right to Decent Working and Living Conditions <i>- Kamala Peiris</i> | 10 |
| 3. | Less Than Equals: Challenging Discrimination in Sri Lanka <i>- Savitri Hensman</i> | 17 |
| 4. | Guaranteeing the Right to Life and Freedom of Expression and Assembly <i>- Lucien Rajakarunanayake</i> | 32 |
| 5. | The Rule of Law in Sri Lanka <i>- Prins Goonesekera</i> | 45 |
| 6. | On the Elements of a Political Solution to the Ethnic Conflict in Sri Lanka - Democratisation, Devolution and Demilitarisation <i>- L. Ketheeswaran</i> | 57 |
| 7. | A Political Solution to the Ethnic Conflict <i>- Javed Yusuf</i> | 91 |
| 8 | An Initiative for Peace <i>- Joe Williams</i> | 99 |

Cont ...

CONTRIBUTORS

9. Educating for Peace: A Tamil Perspective
- Charles R.A Hoole 111
10. Ensuring the accountability of the Security Forces and upholding the Rule of Law
- Upali Cooray 121

APPENDIX

The General Election and the struggle for human and democratic rights.

CDJ Statement

1. *Ainsley Samarajeeva* is an Attorney at law and a well known community activist in Sri Lanka.
2. *Kamala Peiris a* was a worker in the Free Trade Zone who has been victimised for fighting for better working conditions. She works with a number of community groups in the FTZ helping other workers dismissed or victimised by the employers.
3. *Savitri Hensman* is an active feminist and a human rights activist in London
4. *Lucien Rajakarunaneyeke* is a renowned journalist and a leading activist in the Free Media Movement
5. *Prins Goonesekera* is Attorney at Law and a Barrister. Prins is also a well known human rights activist
6. *L.Ketheeswaran* is a social scientist and a leading member of the Eelam Peoples Revolutionary Liberation Front
7. *Javed Yusuf* is and Attorney at Law. Javed is also the principal of Zahira College and a peace activist.

Cont ...

8. *Joe William* is a businessman and works with SEDEC
9. *Charles R.A.Hoole* is a professor at the McMaster University
10. *Upali Cooray* is a Senior Lecturer in Law at London Guildhall University

INTRODUCTION

IN PLACE OF THE SPIRAL OF VIOLENCE

In the summer of 1993, the London based *Committee for Democracy and Justice in Sri Lanka*[CDJ] decided to convene a conference under the title - "*in place of the spiral of violence*" - to discuss all issues relating to human rights and democratic liberties in Sri Lanka. The CDJ noted that very often, ethnic or political differences and divisions amongst the Sri Lankans affected most discussions on human and democratic rights in Sri Lanka. Whilst Tamil groups tended to concentrate on the ethnic conflict, most Sinhala groups were mainly concerned about the repressive regime in the south. The CDJ felt that it was necessary to initiate a discussion which examined all aspects of human and democratic rights in Sri Lanka - including the rights of children, women's rights, the rights of workers, national rights etc because we felt that often the denial of human rights, to one section of the population, sooner or later, affected the human rights of other sections and that it was not possible to protect the human and democratic rights of one section of the people while denying the same rights to others.

The aim of this conference was not to draft a constitution or a blueprint for an ideal state in Sri Lanka, but to set in motion a process of discussion and debate on these issues; a process which must ultimately involve ordinary people and particularly community activists at the grassroots level. We considered it only as an initial step in a long process.

The conference organising committee invited a number of individuals chosen on the basis of their expertise, knowledge or their active involvement, to

prepare and submit conference papers in advance, so that they could be circulated to the participants of the conference. Most speakers submitted their papers on time while others sent their contributions just before the conference. A couple of speakers, while making oral presentations at the conference, never managed to submit their papers even after the conference. Since they never materialised, the CDJ decided that we could no longer delay the publication of these papers.

The conference which was held on 20 and 21 November 1993, was addressed by a number of speakers from Sri Lanka - namely L. Ketishwaran, Kamala Perera, Lucien Rajakarunanayake, Ainsley Samarajeeva and Javed Yusuf as well as by speakers who live or work in Europe. There were very lively discussions on almost all the topics. Participants from Sri Lanka, France, Germany, Holland and Britain attended the conference. A number of British NGO's also sent delegates to the conference. Amongst those who sent their apologies and messages of support for the conferee was the present president of Sri Lanka, Ms. Chandrika Kumaratunga, who was, of course, one of the founder members of the CDJ and a very enthusiastic activist during her brief stay in the United Kingdom.

Tribute to Sabaratnam Sabalingam

One of the participants of the conference was the well known human rights activist S. Sabalingam who lived in France. He was an untiring community worker who opened his doors to anyone who needed help. Sabalingam was also a man of great courage and integrity. He did not hesitate to criticise anyone who violated democratic rights and in doing so he paid little attention to his own safety. Despite his extremely onerous commitments he took time off from his work to attend and participate in the deliberations of our conference. At that time he was

preparing to publish a detailed account of human rights violations - including barbaric acts of torture and summary executions - in Northern Sri Lanka by people who claim to be the "liberators" of the Tamil people.

On first of May 1994 two assassins entered his home under the pretext of seeking advice and shot him in the presence of his wife and children. Like many selfless men and women such as Sam Tambimuttu, Rajini Thiraganama, Selvi etc, who dedicated their lives to serve their community, Sabalingam was killed by mindless assassins, controlled and directed by cowards who did not even have the courage to admit or defend their actions; the tin pot dictators who want to silence every man and woman that resists the tyrannical acts of these self appointed "liberators". However, these mindless killers would never understand that their guns and bullets could never suppress the ideas and aspirations of the men like Sabalingam. Sabalingam personified the irrepressible quest for freedom every decent human being has. That indomitable spirit can never be suppressed by the guns of assassins. The CDJ wants to take this opportunity to pay tribute to Sabalingam.

Victory of the Peoples' Alliance

In August 1994, in the run up to the parliamentary elections, the CDJ published and disseminated in Sri Lanka, a statement on human and democratic rights, in which we stated in no uncertain terms that the first step in the struggle for democracy is the defeat of the UNP. While the CDJ is not affiliated to any political party, we nevertheless welcome the defeat of the UNP and the victory of the Peoples' Alliance in both parliamentary elections and the presidential elections because we hope that it may give the people an opportunity to strive towards a society in which both the state and individual citizen regulate their

behaviour in accordance with norms based on democracy and justice. We do not think the road to a just society is an easy one. The People have managed to overcome one hurdle by defeating the UNP, but the struggle for a just society is a long and arduous one.

We are acutely aware of the problems facing the new government. We have no doubt that people who benefited from the corrupt and unjust system that reigned for 17 long years, would do everything in their power to destabilise the new government. Some of them may now appear as the friends and saviours of the people. They would seek to exploit every mistake, shortcoming, and indiscretion of ministers and public servants to undermine the PA government. Moreover the new government cannot be expected to solve immediately the problems that have accumulated over the last 17 years. Furthermore, some of the problems have even deeper roots than merely the policies that were pursued by the UNP between 1977 and 1994.

On the other hand we cannot ignore the fact that people have undergone indescribable repression, privation and suffering under the previous regime. For them the election of the PA government was not an end in itself but only a means to an end. They voted against the UNP because they thought that the new government would solve their problems - bring peace, prevent malnutrition, punish the mass murderers and torturers, make the police and the army accountable, permit media freedom etc. People do not expect all the problems to be solved in a day, but they do expect the new government to take concrete measures to resolve their problems. There is no doubt that every government has to give priority to the most important problems they face and take into account the demands of different interest groups inside and outside the country. But every government should also know that the goodwill of their electors is

not a boundless reservoir. With the passing of each day, more and more people who supported the new government will become disillusioned with it, if they feel that no meaningful actions have been taken to resolve their problems.

The government, of course, cannot perform miracles. It may well be impossible to resolve certain problems. However, the people will support the government if they feel that; (a) those in power have taken all possible steps to resolve their problems but due to some reason or reasons beyond their control it has not been possible to achieve the desired goals; (b) they have explained to the people the steps they have taken or intend to take, in order to resolve their problems; (c) the decision-making process is a transparent one - that is to say that there is open government, without important decisions affecting the lives of people being taken in back rooms and behind closed doors; and (d) the government makes every effort to involve the people in the decision-making process. This is true whether we are dealing with the ethnic conflict, trade union unrest or abuse of power by the security forces.

Trade Union Rights

Almost immediately after the election of the PA government, workers in a number of establishments have taken industrial action in support of their demands. Concerned with the impact this would have on foreign investors and others some members of the government have criticised the strikers and labelled them as saboteurs. Some pro-government newspapers such as "Ravaya" have offered gratuitous advice to the Minister of Labour and asked him not to encourage workers to form trade unions in the Free

Trade Zone [FTZ]¹. For instance, "Viswamitra" of the Ravaya says that the Minister should know that we are not living in a socialist economy and that the economy is dependent on such factors as the stock exchange and foreign investment. The only threat of sanctions made in President Chandrika Kumaranatunge's recent speech to the Parliament is against the workers .

Such an approach is not prudent either from a political or an economic standpoint. Any one with the slightest understanding of the conditions under which FTZ workers have toiled in the last 17 years would know that they had to work under intolerable conditions. Normally workers resort to industrial action only when they feel that there is no other means of obtaining solutions to their grievances. The speech Kamala Peiris delivered at our conference in November 1993 [See page 10] indicated some of the problems FTZ workers have to confront. Women like Kamala are not saboteurs. On the contrary she and many thousands of other FTZ workers are staunch supporters of the SLFP and Chandrika Kumranatunge. The problems that Kamala has raised cannot be solved by preventing or discouraging workers from forming or joining trade unions. Contrary to the myth peddled by sycophants like Viswamithra, the absence of trade unions does not necessarily ensure industrial peace and stability or increase productivity. Often trade unions by regulating the relations between the workers and their employers promote better understanding and co-operation. It is childish to argue that we must first achieve socialism before the workers could exercise trade union rights. In some capitalist countries, employers and workers' representatives jointly regulate the internal management of the workplace. Such innovations

have reduced industrial unrest and increased productivity. No one will deny that Sri Lankan trade unions also have to put their house in order. This, however, cannot be done by denying workers their basic democratic right to join or form *an independent trade union*.

Furthermore the PA government is committed to the establishment of a democratic and pluralist society. Trade unions not only protect the interests of workers but are also an important pillar of a democratic society. It is no accident that every tyrant that has set foot on earth has tried to ban or restrict trade unions. If the PA government follows the advice of Viswamithra it will not be long before thousands of PA supporters in the FTZ and elsewhere will become alienated and desert the PA government.

The vast majority of workers do not want to destabilise the government. Instead of calling them saboteurs or advising them to abstain from exercising their rights the PA government should take them into their confidence. In the FTZ the workers councils should be turned into genuine elected bodies with specific powers and responsibilities. The internal regulation of the workplace, health and safety issues and working conditions could be discussed and decided jointly by workers councils and the employer's representatives. In other words, just as in the case of the ethnic conflict, what is required is devolution of power at the level of the work place. The government must recognise that workers are as much interested in promoting stability as the employers. Furthermore, such a devolution of power would also enable the government to obtain the help of workers in order to prevent various tax frauds, evasion of customs duties, and ETF and EPF fiddles.

The government must also take account of the fact that often industrial action is a result of the rise in

¹ See Ravaya of 4 December 1994

the cost of living. Whilst the government has taken certain measures to reduce the cost of living, these have by no means been effective. It is unfair for any government or media representative to criticise the workers on the bread line, because they complain about the ever rising cost of living and demand that they be paid a living wage.

Democracy and the Cost of Living.

The issue of the cost of living is not unrelated to the issue of democracy. When people are faced with a high cost of living they often express their dissatisfaction by taking direct action - strikes, demonstrations, occupations etc. Rulers often seek to defuse such protest by using the police against them. Baton charges, arrests etc follow. Until 1977 we had a system whereby food and other essential items were distributed through the co-operatives. Whilst the system was not perfect, it ensured the provision of basic necessities to each and every person.

The long queues that symbolised the final years of the 1970-77 coalition government were used by the UNP to attack this system. They abolished the system of rations and introduced the free market. The result was a massive rise in the cost of living and the unprecedented rise in malnutrition. The price we have paid, in terms of poverty, malnutrition, the cost of health care etc, for abolishing the system of distribution through the co-operatives has been unacceptably high.

Clearly, the PA government may be reluctant to reintroduce the rationing system because the UNP would immediately accuse the government of reintroducing the long queues reminiscent of 1976-77. On the other hand the advantages to the government and the country of having such a system are many and varied. Principally, it would ensure low

wage costs and thus make Sri Lankan products more competitive. It would also remove one of the causes of frequent social unrest. Above all it would substantially reduce malnutrition. In the medium and long term, the advantages of such a system far outweigh the disadvantages.

Again the only way the government could introduce such a measure without their opponents making political capital out of it is by allowing the ordinary people to make the choice. In other words devolving the decision making power to the people. Thus the whole issue of whether the government should reintroduce rationing could be decided by means of a referendum. That would clip the sails of any party which seeks to make capital out of such a decision.

The accountability of the police

Although the police are no longer able to carry out summary executions in the manner they did in 1989-90, very little has changed in the way the police treat people and the way they carry out their functions. It is obvious that the whole system of policing must be overhauled. The police must be trained to understand that they are the servants rather than the masters of the people. This would involve a complete overhaul not only of police procedures but also the manner in which they are controlled. The document on the accountability of the security forces [page 121] discusses certain proposals about new police procedures that could minimise the abuse of power by police officers.

However, in addition to such procedural safeguards, it is important to bring the police under community control. Even in a country such as Britain police forces are controlled by police committees made up of elected representatives of the people. We too should ensure that the police are subject to community

control. The first step would be to transfer the task of policing to the provincial councils or any other unit of devolution that would take the place of those councils. Secondly, such units could be sub-divided into police committee areas where senior police officers, local magistrates and elected representatives could jointly oversee the policing in their respective areas. Finally it is important to remove the artificial barrier that has been placed between police officers and ordinary people by granting the police the right to form their own trade unions. This not a novel idea because even in France police are allowed to form or join a trade union.

The Ethnic Conflict

The fact that the PA government and particularly President Chandrika Kumaranatunge has given priority to the resolution of the ethnic conflict is a welcome development not only for the people in the North and East but for the country as a whole. The repression and the abuse of power in the South was a direct consequence of the repressive policies that were initiated and carried out by the UNP in the North and East. In 1994 the Sinhala people have, on three separate occasions - the southern province elections, parliamentary elections and the presidential elections - decisively rejected the parties who propagated a chauvinist and militarist solution to the ethnic conflict. This is due in no small measure to the tenacity and courage of Chandrika Kumaranatunge. During the course of numerous discussions I have had with her in the past, she has always affirmed her commitment to devolution of power and ethnic harmony. For the first time in decades we now have a government that is committed to the resolution of this problem by political rather than military means.

However, the task of translating goodwill and good intentions into a political solution is a formidable one. The division and distrust between the Sinhala and the Tamil communities brought about by the policies of J.R.Jayawardene should not be underestimated. This political Frankenstein raised deceit, dishonesty and perfidy into a statecraft. No other ruler in the annals of Sri Lankan history has done so much damage to inter-ethnic relations. The deep wounds of distrust that have been caused by him and his followers may take years or even decades to heal.

In our view the *most important task* of the new government today is to formulate clearly its proposals for the resolution of the ethnic problem and publish them for discussion. In the past, every government has tried to use others as cats paws to resolve the problem they created. They have used other's to test the waters but lacked the courage to put forward their own proposals. When they did negotiate they did so in secret and made every effort to keep the people in the dark. No lasting solution could be reached by such methods. Firstly, this government must break with the murky past of J.R.Jayawardene and his followers and clearly indicate where it stands on the key aspects of this problem - such as devolution, colonisation, standardisation etc. *Secondly*, the government should enact legislation to outlaw all forms of discrimination based on race, caste and sex. *Thirdly*, the government must ensure that in carrying out their tasks the security forces do not misuse their power to harass Tamil people and extort money.

Such steps would enable the government to win solid support in both communities and further erode support for the ultra-nationalists who live in the dream world of imaginary yesteryears.

We, the ordinary people of all communities also have an important role to play in the quest for peace. It is a sad fact that whilst the government has taken important measures to reduce tension and reassure Tamils and Muslims in the south, the situation is not the same in the North. The ethnic cleansing of the Muslims by the LTTE has left many people homeless. Even more bizarre is the fact that today many Tamils feel more secure and comfortable in the south than in the north. While conditions are still not perfect in the south, they can at least speak freely and criticise any political leader, vote for any one of their choice, do not have to find someone to stand surety in order to leave their homes, or carry family identity cards in addition to their personal identity cards. Nor would they face kangaroo courts or be held in custody in underground dungeons. They can openly read differing accounts of news and views and political opinions. The LTTE rule in the north is a grotesque mirror image of the Jayawardene-Premadasa regime of the south. In organising effective resistance to the militarist policies of the UNP they themselves have created a monstrously repressive regime.

Therefore the LTTE is today caught in a bind. There is a danger that they would be rejected if the people were allowed to express their views freely. In August 1994 LTTE called upon voters to boycott the parliamentary elections. But the people defied this call and voted overwhelmingly for candidates of parties whose leaders have been slain by the LTTE. Obviously the LTTE can only be brought into the democratic process screaming and kicking. Their demand on the government is not designed to promote peace but preserve the monopoly of power they have exercised without the consent of the people they claim to represent. For instance they call for a ceasefire and the withdrawal of the army. However, what they mean by a ceasefire is a cessation of fighting between the army and the LTTE rather than

a complete cessation of violence. It was during a cease fire that they shot Amirthalingam and Yogeswaran. They want to retain the right to eliminate other tamil leaders even when there is a ceasefire. During their "ceasefire" there would be no political freedom for other Tamil parties, nor would the Muslims be able to go back to their homes in Jaffna.

People must demand that the LTTE agree to a complete cessation of violence including violence against members of other tamil parties, release all political prisoners, permit free expression of political opinions, stop holding people in underground dungeons, abolish family identity cards and the requirement of sureties to move out of the northern province, and permit the muslims to return to their homes in the north. We must also demand that the LTTE openly indicate their proposals for dealing with ethnic problems so that these like the government proposals, could be discussed openly and publicly by the people.

Grassroots organisations

For all these reasons the CDJ believe that we must build a mass democratic movement based on strong and active democratic bodies at the grassroots. Only a powerful grassroots movement can establish real checks and balances on those who wield power. For this reason the CDJ advocates the establishment of democratic rights committees in every village and locality. Such committees could not only be an important forum for people to meet and discuss human rights issues but also perform other important functions such as monitoring the activities of the police and prison services. Above all they could also become the nuclei of a mass democratic movement which would ceaselessly campaign for human and democratic rights both in the north and in the south, a movement that would lead to a society

that could end once and for all the spiral of violence that has plagued our country.

Our Thanks

I want to take this opportunity to thank all those helped to publish this book. Many members of the CDJ checked the articles and undertook proof reading. In particular it necessary to mention the invaluable work done by Edwina Grant, who did the typesetting and correcting of the manuscript.

*Upali Cooray
London
December 1994*

THE RIGHTS OF THE CHILD

Ainsley Samarajiwa

My approach to this subject is based on my experience as a practitioner in courts, a community development co-ordinator in a human rights organization and as a former educationist. Apart from my professional qualification as a lawyer, I do not make any pretensions to any academic knowledge or research in this field, having been an educationist for the greater part of my working life with graduate and post graduate qualifications in education.

We have the draft of a Children's Charter which is a policy document approved by the cabinet but has to be presented as a bill in parliament and enacted as a law. I am informed that the new law will embody all the existing laws pertaining to the rights of the child besides all the highlights of the UN Convention on the Rights of the Child which has been ratified by our government so that we are bound to provide for laws and policies that recognise these rights. The text of our Children's Charter and the highlights of the UN Convention form annexes to this paper.

Definition of 'child'

Whereas in existing legislation and in administrative usage based thereon there have been divergent definitions of the term, the Charter states that 'A child means any human being below the age of 18'. For the purpose of this paper I accept this definition but in dealing with the subject I shall have to refer to other age classifications which have been used by administrators and researchers.

I propose to deal with the following aspects of the rights of the child:

1. Child labour
2. Street children and other children in marginalised urban communities (in slums and shanties)
3. Children in refugee camps.
4. Child adoption particularly by foreigners.
5. Children out of school.
6. Child abuse including child prostitution.

There is bound to be some overlapping of these categories and there are other aspects of this subject which cannot be dealt with in a brief paper.

Child Labour

It is estimated that, of the five million children under 16, two million form the child labour force in the country. In my work with the people in the 'shanty garden' as they are euphemistically called, I have a fairly intimate knowledge of the problem of child labour in Colombo. Some of the boys of school-going age are self-employed in minor trades such as the sale of lottery tickets and in the bookies, besides other areas of work which are illegal such as sale of illicit brews and drugs. In all these enterprises, these children are exploited by their elders including their parents and relatives. This tendency to start 'jobs' leads to many children dropping out of school early i.e. state schools which accommodate some of them and their own community school which we help to run. The vocational training programmes in these deprived communities also suffer from this tendency of boys more than the girls to begin gainful employment however meagre the gains may be. In the case of girls there is a tendency for them to seek domestic employment and even factory jobs before

they are legally entitled to enter the labour market. Apart from children from the so-called low income groups in the city (a term in vogue in municipal jargon) children from the plantations who are now precluded from being on the pay roll in plantations owing to under-age find their way to homes where they are exploited by unscrupulous masters and mistresses. In recent weeks there has been a spate of publicity in the newspapers about flagrant child abuse by employers. A retired police officer charged in a magistrate's court for alleged rape of an eleven year old domestic aide was discharged by the magistrate in a non-summary inquiry on orders from the Attorney General but there has been a public outcry and an agitation campaign against this action of the principal law officer of the state so that the case is likely to be resumed. In such a case it would be improper for us to discuss this particular subject as it is subjudice. The existing legislation (Employment of Women, Young Persons and Children Act of 1956) prohibits the employment of children in industries setting down the minimum age as 14. One could expect future legislation on this subject to conform to the policy guidelines embodied in the aforesaid Charter (Article 32). "The State shall protect the child from economic exploitation and performing any work that is likely to be hazardous or to interfere with the child's education"

While this may be the law, there is a wide gap between the law and the reality for various reasons that we may discuss here.

Street Children and Children in Marginalised Communities

As in other developing or under-developed countries we have an abundance of street children in the age group 10-14. The Vagrants' Ordinance dating back to 1841 with its later amendments regulate begging and from time to time when there is a high level conference in Colombo attended by heads of state etc., cursory efforts are made to re-locate beggars including children in a remote village where a beggar colony has been established. However the problem remains as any visitor from a developed country would observe. In my legal aid clinic there are cases of young adults who spent their childhood on the streets and still have no fixed place of abode, but are unable to obtain employment and even worse, run the risk of arrest and detention because they have no identity cards. They have not had their births registered, and even if that had been done in the state hospitals, they have no records to enable them to obtain copies of birth certificates which are needed to establish their credentials as citizens. Even when they swear affidavits for the purpose of obtaining these documents (a long and laborious process) they have no postal address to declare. In fact in most shanties other than those where the community has organized itself, no mail is delivered or even retained in a post office for collection as the household has no postal address. Apart from street children, children in 'shanty gardens' with their parents and in many cases with their single parents are in the same deprived situation as the street children. Single parents we find in plenty in our country, not so much because the fathers have left them or are unknown but more because either the father or the mother is working in West Asia. Sometimes both parents and children are left with grandparents or relatives. The conditions under which the live are deplorable by any standard. Except

for a few shanty gardens that have been upgraded largely as a result of the pressure from the organized community development associations which we help to form, the habitat consists of shacks totally unfit for human habitation, and invariably situated in marshes which are subject to periodic flooding. Self-employment and vocational skills training projects run by these people's organizations with some financial and resource person inputs by us are also not easy to run precisely because of the disabilities afore-mentioned. The community school organized and maintained by the people, again with help and some degree of sponsorship from us, also suffers from such disabilities.

Children in Refugee camps

Of the 1.9 million children in the age group 10-14, over 100,000 live in refugee camps. One which I visited last week with a member of the European Parliament in Strasburg was typical of the deprivation suffered by children as a result of a continuing civil war in our country. Some of the children we saw were born in the camp and many of them have grown up there. It was patently clear that these children do not have even a modicum of the rights mentioned in our Charter not to speak of the parents who occupy small allotments in an open hall with 4 toilets to serve nearly 500 people. Article 23 of the Charter spells out policy on this subject. The way the military conflict is going, and in the absence of any real attempt to work out a political solution to the ethnic problem (the existence of which is even denied by our new executive president), the present makeshift arrangements that constitute refugee camps will have to be made permanent like those in other war-torn lands.

Child adoption

The problem of child adoption in our country has become somewhat complicated over the past 15 or more years as a result of the demand for adoption by European parents. While we respect the arrangements in developed countries to ensure that the prospective foster parents are fit persons to receive our children, and we concede that most children who are thus adopted by affluent persons in Europe will have a new life or, as we are wont to say in our language, have a change in planetary influences, the proliferation of 'baby farms' from about 1977 to cater to the demand led to much abuse and exploitation of poor parents while the real benefit was gained by the agents, entrepreneurs in this new industry and lawyers who did these cases in our courts. The State has now stepped in to amend the existing laws dating back to colonial times and amended in more recent times to make adoption easier. The current law prohibits the adoption of children 'not in the care, custody and control of a person in charge of a state-run children's home or in a NGO that has been duly registered for at least five years' on Article 22 of the Charter spells out government policy in this matter.

Children out of school

It is significant that when we began our community development work in slums and shanties in Colombo, the response to our inquiry from the people in regard to their priorities was invariably education. Though the people lived in sub-human conditions and had little or no amenities such as toilets and safe drinking water, parents picked out the need for schooling as paramount. This was because our country has had over 46 years of free education not only in primary and secondary schools but even in universities. We have well over 10,000 schools, several technical

schools, nine universities and now even affiliated University Colleges up and down the country. There is a widespread interest in education. Parents in marginalised communities are not exempt from this. However they cannot ensure that their children gain admission to the schools available, and what is more, that they will remain in school, until they finish even their primary education. There is more than one reason for this condition. For one thing, the slums and shanties are considered undesirable places, and carry a derogatory appellation 'Korea' (derived from the awful conditions caused to that country by the Korean War in 1951). There is some reluctance on the part of school heads to admit children from 'Korea' and even if that is done, children thus admitted are generally ostracized or looked down upon. They are alien to that environment. The other reason is that even though education is free (at least tuition is), and essential text books and even one uniform are issued free (whether these things will continue is uncertain), shanty children are unable to afford the extras and maintain the standards, set by children from better homes. Thus it is that high priority was given by parents to education at the fact-finding meeting we had with them when we started our project. We have now been engaged in sponsoring the community school in the shanty garden for nearly ten years, a school that serves as a means of entry to the community, and the meeting place for the people who organize themselves to take responsibility for the simple vocational training programme, self employment project and the school itself with its pre-school and primary and post primary sections. The last two are intended to serve children who have dropped out of the system, or need supplementary instruction (called tuition which is a craze in our country even in the case of children who attend the international schools). The people are assisted to get their children into the State system wherever possible but almost 50 per cent of the

children in the community school do not attend any other school. The parents pay no fees but through their organization finance enrichment activities such as sports meets, variety shows, exhibitions as well as religious ceremonies and rituals that they decide on (mainly Buddhist and Hindu).

I do not claim that what we are able to do is anything more than cosmetic, and the real problem of the rights of children to educational and cultural activities and to leisure, recreational and cultural activities under Article 31 of the Charter cannot be guaranteed except through more educational reforms and a just society. Our politicians often claim that we have the highest literacy rate in Asia next only to Japan and that we have been pioneers in free education etc. However we fall far short of the standards that used to prevail in the former socialist countries with which I am somewhat familiar, and Cuba and the Nicaragua that toppled Somoza can still be our models for the improvement of measures to guarantee the rights of the child in this field.

Child Abuse and Child Prostitution

In recent times we have become notorious for child abuse and child prostitution. Many NGOs both local and foreign have highlighted the dangerous trends that go with the increased tourist traffic. Estimates vary from 20,000 (NGOs, mainly women's organizations) to 50,000 child prostitutes (police figures). Whatever the quantification the problem remains and is part of our society in disarray. Laws do exist but they are of colonial vintage - the Brothels Ordinance dates back to 1889. In any case the subject is said to be delicate and the authorities are committed to safeguard tourism and the interests of the economy as they claim, so that whatever the NGO lobby does or says is written off as 'overreaction and sensational media publicity'. The danger of AIDS in ever present

and we need to take stock of the situation and adopt corrective measures to safeguard the rights of the child in this field.

In conclusion, I may state that the rights of the child are part of the whole field of human rights and violation of them is part of the disordered society in Sri Lanka today. Of course, the child by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection..., (Preamble to the Charter).

Acknowledgment

I am indebted to many researchers in this field including Prof. Savitri Gunasekara and to the invaluable assistance given to me by the librarians of the Nadesan Centre and the Centre for Society & Religion.

THE RIGHT TO DECENT WORKING AND LIVING CONDITIONS

Kamala Peiris

Introduction

Human and democratic rights are all too often defined narrowly to encompass only the right to life, liberty and the right to chose a government's of one's choice. The fundamental rights of working people to have decent working and living conditions are, with a few exceptions, rarely, recognised in Third World countries. However, the experience I have gained as an ordinary worker in the Free Trade Zone [FTZ] in Sri Lanka, has convinced me that the right to life and liberty are closely intertwined with the right of working people to establish their own organisations, right to collectively demand better working conditions and the right to take industrial action in pursuance of such demands. The history of every dictatorial regime is the history of the suppression of working people and the denial of their right to join and partake in social, political and trade union organisations of their choice. It is no accident that every dictatorial regime has sought to crush and destroy independent trade unions or to make them pliant agencies of the state. Trade unions not only fight for better wages and working conditions of their members but also constitute one of the most effective safeguards against tyranny. They are a cornerstone of a pluralist society.

Therefore it was not accidental that from the time it assumed power in 1977 the United National Party government has sought to subvert, weaken, divide and destroy trade unions or to prevent them from functioning in key sectors of the economy. This is no where more apparent than in the Free Trade Zone.

Conditions in the FTZ

Fifteen years have elapsed since the establishment of the Free Trade Zone at Katunayeke. At present there are about 80 factories with a labour force exceeding 50,000. Although in theory there is nothing to prevent FTZ workers from joining a trade union, in practice this is well nigh impossible. The UNP government as well as the Greater Colombo Economic Commission has ensured that any worker who joins a trade union would not be able to enter the Free Trade Zone.

Furthermore, the practice of recruiting FTZ workers through "introductions" from UNP members of Parliament, has meant that at the very initial stages, there is a screening of the recruits. Needless to say no known trade union activist could obtain a job in the FTZ.

Any worker who indicated his or her intention of joining or forming a trade union is prevented from entering the FTZ.

In these circumstances it is not surprising that a majority of workers rarely wanted to jeopardise their jobs by joining a trade union despite the extremely repressive conditions under which most workers in the FTZ are compelled work. Moreover Trade Unions that function outside the FTZ has made little effort to organise FTZ workers.

In the last few years there has been a phenomenal increase in dismissals of workers. Thus in 1988-89, about 5.1% of the complaints received by the Katunayeke Legal Advice Centre, were concerned with dismissals of FTZ workers. By 1991-92, over 94% of complaints received by the Legal Advice Centre related to dismissals.

The repressive measures initiated by the Premadasa government enabled the management of FTZ firms to claw back facilities workers had previously enjoyed and to treat workers in an even more arbitrary and authoritarian manner than before. Furthermore the employers have often failed even to pay the minimum wage rates fixed by the government or to pay their Employees Provident Fund and Employees Trust contributions. There are many instances where the management has compelled us to work long hours without paying any overtime and compel workers to work at night, at week ends and on public holidays. Workers who refuse to accede to such demands or speak against such commands are often dismissed, their pay is docked or subjected to other forms of arbitrary punishment. Managers often assault workers and subject them to mental and sexual harassment. For instance in order to put pressure on workers to attain their target levels of production, supervisors, on a daily basis, use terms such as "donkey", "buffalo", "cow", etc. to belittle the workers and use pencils and pens to assault them. They restrict the use of toilet facilities through the issue of tokens. In order to use the toilet a worker must obtain a token. There are only three tokens for every 100 workers. For this reason many women workers refrain from drinking water in order to avoid the necessity of going to the toilet.

One consequence of the absence of trade unions in the FTZ was that in 1988-1989 period, workers who were influenced by the general political situation in the country, spontaneously took industrial action against the arbitrary and repressive management practices. Such spontaneous actions were immediately exploited by the bosses to intensify the repression. They invited the police into the factories and the workers were subjected to police assaults, abductions, arrests and mass dismissals. The

management has aided, abetted, and in some cases, procured the abduction and murder of FTZ workers.

Disappearance of Lionel, Ranjith and others

On 27 October 1989 Ranjith, who was an employee of Floral Greens Ltd and Lionel, who was an advice worker at the Legal Advice Centre, Katunayeke, were abducted while returning home after attending a domestic inquiry at Floral Greens Ltd. On the following morning there were two half burnt bodies near the Raddoluwa junction. All the evidence indicates that certain police officers and the management of Floral Greens Ltd organised the disappearances of these two comrades. In order to prevent further investigation into these disappearances, the police officers, including senior police officers have threatened and harassed members of their families as well as their friends. For instance when Mr P. K. Somapala and A. D. Ranjith, who had known Lionel for well over 10 years, visited his home to express their condolence to Lionel's wife, they were arrested by Raddoluwa police. It was only after the intervention of, amongst others, the British High Commissioner that they were released.

Amongst others who were either killed or "disappeared" in this period were:

- [1] Piyaratna who was militant worker at the Korea Ceylon Ltd;
- [2] Shantha of Korea Ceylon Ltd;
- [3] M. M. Goonethileke of Blue Diamond Ltd;
- [4] M. Hethumuni of T. K. Ltd;
- [5] M.A.D. Rohan Lalith Kithsiri of Blue Diamond Ltd;
- [6] J. M. Antony Fernando of Blue Diamond Ltd;
- [7] B. Harold Sirantha of Blue Diamond Ltd;
- [8] Douglas Rosairo of Lanka Metal Ltd.

Emergency Regulations

The Emergency Regulations No 1 of 1989, makes it illegal for workers to take strike or industrial action in export industries. Accordingly this regulation enables the government to ban any strike and to treat all workers who take industrial action as having vacated their posts. Furthermore any person or organisation that aids or abets workers who take industrial action could be charged and the penal sanctions that could be imposed on such person include imprisonment and sequestration of all assets.

Health and Safety

The government in general and the Greater Colombo Economic Commission in particular, have little regard to the safety of workers in the Free Trade Zone. Provision of a safe work environment is a basic human right of all workers. However, FTZ workers are often required to operate obsolete and dangerous machines and as a result many workers have suffered serious injury to their limbs. Similarly FTZ workers often work in premises which are not properly ventilated or are full of dust, dirt or noxious fumes. When they complain about these conditions, workers are often assaulted or dismissed by the management. In May 1993 while operating an obsolete machine at the Korea Ceylon shoe factory, a worker - Premalal Jayasinghe - had his head severed from his neck. It was because Ranjith complained about dangerous machinery that he was first assaulted by the foreman of Floral Greens Ltd and subsequently suspended. He disappeared on his way back from the domestic inquiry held in relation to this incident. Floral Green is notorious for frequent industrial accidents.

Abduction of women workers and sexual harassment

Women workers in the FTZ are constantly subjected to sexual harassment both inside and outside their work place. If they complain against supervisor and managers who demand sexual favours they are often dismissed from their jobs. Women workers have been abducted and raped on their way to or back from work or in their hostels. Kidnapping of women workers by "gentleman who come in luxury cars" has become a new feature in the recent period. Unfortunately despite several complaints to the police they have not made any attempt to bring to book the culprits and this is probably because the kidnappers have friends in high places.

Institutional measures to protect workers rights in the FTZ

This brief description of the conditions in the FTZ should demonstrate the extremely repressive conditions in which these workers are required to live and work. In my view the following minimum steps must be taken to ensure basic human and democratic rights of the FTZ workers:

- (a) guarantee all FTZ, workers the right to join or establish a trade union of their choice;
- guarantee the right to strike or engage in other forms of industrial action;
- (b) ensure that all FTZ workers are permitted to exercise their trade union rights without any interference from the employers, GCEC or the police or any other state authority;
- (c) enact of legislation that would ensure health and safety of workers and the imposition of heavy penal sanctions against employers who fail to ensure a safe environment at work.

(d) Establish a National Health Safety Board which should lay down codes of practices and the appoint Health & Safety Committees in every factory in which at least 50% of the representatives are elected by workers through a secret ballot.

(e) Enact legislation against sexual harassment and set up independent tribunals to hear allegations of work related sexual harassment;

(f) Provide adequate police protection from assaults, rape and kidnapping of FTZ workers; provide government grants to voluntary organisations which monitor and provide support to victims of sexual attacks in the FTZ.

(g) set up genuine works councils to which workers representatives are elected by secret ballot and empower such councils to resolve disputes relating to working conditions within the factory.

(h) Prevent the involvement of the police in industrial disputes, by the employers, and guarantee the right of peaceful picketing.

LESS THAN EQUAL: CHALLENGING DISCRIMINATION IN SRI LANKA

Savitri Hensman

A serious problem

Discrimination not only harms and humiliates those on the receiving end but also distorts social relationships, often with far-reaching consequences. Ethnic discrimination in Sri Lanka has resulted in great suffering and deep divisions, in one way or another affecting almost everyone on the island. Inequality on grounds of gender, caste and religion has existed for long (though in changing forms) and is so common that it usually passes unnoticed. It is simply assumed that few women will be found in certain jobs, and that people from particular backgrounds will seldom take up certain services which are supposed to be open to everyone. Vast damage is done: material hardship is inflicted, people's sense of worth is eroded, skills and enthusiasm are squandered, cooperation and mutual support are undermined.

The disadvantages that women face often include discrimination against people caring for children or other dependents, most though not all of whom are women. This can be direct (for instance refusal to employ a woman with a baby) or indirect (for instance expecting someone in constant attendance on a sick relative to wait around for hours in the hope of talking to an official). Again, such injustices are often regarded as routine. But in the aftermath of violence which has left many people to bring up children or care for other relatives on their own, and economic policies which have forced many to work overseas while a partner or family member cares for

dependents, such treatment further punishes many who have already suffered greatly.

Discrimination against people with disabilities is also not new. However, challenging it has taken on a fresh urgency. Years of conflict have left numerous fighters in various armies (many very young) and civilians physically disabled, traumatised or both. The decline in public health in areas where malnutrition is rife in the North and South has left many people vulnerable to what could otherwise have been prevented or treated. So people with physical and mental disabilities, some obvious and some not, now make up a sizable proportion of the population. They could either play an important part in rebuilding or be left isolated and in many cases embittered.

Some kinds of discrimination common in other countries require attention today in Sri Lanka. At one time the opinions of young people tended to be undervalued while old people were treated with respect. Types of economic growth have been favoured which use people then discard them when they are no longer as quick, energetic or youthful-looking as they used to be. Increasing numbers of elderly people may be pushed to the margins of society.

Traditionally, although bound adults have been encouraged to get married, there has been little public concern about romance and physical intimacy between two men or between two women. Now, however, with changing patterns of family life and a backlash against so-called immorality (largely promoted by powerful people trying to deflect attention from their own venality, and sometimes confusing homosexuality between adults with sexual exploitation of children), discrimination against gay men and lesbians may become a more widespread problem.

Other forms of discrimination also exist in Sri Lankan society. Is it possible, indeed desirable, to challenge these?

Preserving tradition, waiting for development?

It is sometimes assumed that discrimination is inevitable, since someone has to dominate. At most, in the interests of fairness, people of different ethnic communities might be allowed to dominate different areas. But overall, some people believe, Sri Lanka is a Sinhala-Buddhist country, and this has to be reflected in the way that power and privilege are distributed. There are a number of weaknesses in this position. To begin with, people who are not Sinhalese and Buddhist have played an important part in Sri Lanka's history, and its social and economic development and maintenance have relied largely on the joint efforts of people of different ethnicities and religions. Moreover, if a set of people are not favoured it does not necessarily follow that they will be disadvantaged. Though it is difficult for any organisation to avoid discrimination on every occasion, many throughout the world have made considerable progress towards greater equality. These include local councils, non-governmental organisations (usually known in Britain as voluntary organisations) and private businesses; some draw their workforce from, and offer services to, women and men, able-bodied and disabled, from dozens of ethnic and religious communities, and make an effort to do this fairly. In Sri Lanka, practice varies from one body to another: sometimes those who seek to recruit and promote on the basis of merit and provide services on the basis of need win trust and respect among those who come in contact with them but little publicity, while those who uphold inequality get more attention. Indeed, it may be argued that

discrimination works to the long-term disadvantage of those who immediately benefit. In this world, the well-being and sheer survival of people who are neither rich nor famous, especially if they live in Third World countries, counts for little. Discrimination boosts people's sense of superiority, or deflects their frustration, to those around them, so that they are less aware of and opposed to major injustices they themselves face. It also undermines human relationships, making mutual support and unity in struggle across racial, religious, gender and other barriers more difficult. Again, cultural and religious practices and beliefs may be distorted to fit in with the values of those with most power in society. In Sri Lanka, for instance, the ideology of Sinhala-Buddhism cloaked the growth of militarism which later claimed the lives of tens of thousands of Sinhalese Buddhists and obscured the teachings of the Buddha more effectively than persecution would have done.

Some people who do not seek to justify inequality believe that challenging it, with a few exceptions, is of low priority compared to economic development; indeed it may be assumed that this will automatically lead to greater equality. Certainly development is extremely important, otherwise non-discriminatory practices will simply involve fairness in recruitment for a handful of jobs, in the working conditions of a small number of employees and a few more volunteers and in the organisation of scant services. This is better than inflicting extreme hardship on already disadvantaged sections of the population, but it is inadequate except as a short-term measure. However harsh experience throughout the world has shown that certain kinds of development, while breaking down some barriers, strengthen others, leaving many people impoverished, deskilled, undervalued. Women have gained greater independence from the men in their families but

found themselves in jobs where they dare not complain of sexual harassment by male supervisors or customers or even pushed by destitution into the sex industry; members of some castes have been offered new prospects but victimised by militarism; the cost of progress of a certain kind for some ethnic communities has been the destruction of their traditional way of life, often accompanied by massive ecological damage. In choosing among different patterns of development, it is important to ask who benefits and in what ways, and to what extent sections of the population are harmed or disempowered.

Methods of increasing equality

If the leadership of any organisation (for instance a municipal council, board of directors, principal or self-employed stall-holder) decides to work towards greater equality, how can this be put into practice? Genuine willingness is important - there is no point in adopting a policy on paper which is then not put into practice. This is linked with consistency: those in authority in a particular area who order Muslims from their homes with a minimum of possessions cannot expect to gain the confidence of this community merely by pleading goodwill or by citing the occasional example of good practice. But sincerity and consistency are not enough, since much discrimination is unintentional and, if there is more than one paid worker or volunteer, it cannot be assumed that all will agree on what is just.

A quota system is sometimes used. For instance, if people of a certain caste or ethnic community make up 35% of the local population, 35% of the jobs in a workplace may be allocated to them. On the positive side, this counters the bias on the part of selectors or of society at large which keeps people out of

occupations simply because of their backgrounds. But there are several negative features. To begin with, a quota system is difficult to operate for more than one category of discrimination: it would be difficult to ensure that a factory took on the right number of disabled Tamil women caring for children, but it is often people who are discriminated against on multiple grounds who suffer the most! Also, sensitive informed would have to be entrusted to the selectors; even if they were trustworthy themselves, could they ensure that personal details did not get into the possession of bigots? (This is different from job applicants filling in forms with their gender, ethnic background and so on which are then detached and used to compile statistics, though even then there may be understandable fear.) What is more, a quota system may appear - and be - unfair, as people who are less skilled, experienced or qualified may be allocated jobs, university places or other much-sought positions or services. In rectifying one injustices another may be done, as Sri Lanka's experience in the field of education showed. And people appointed in this way may be treated as inferior by colleagues or end up struggling with tasks for which they are not adequately prepared.

The setting of quotas and other forms of positive discrimination - the favouring of members of disadvantaged sections of the population - may seek to redress inequality without rooting out its causes. This does not apply when a training course is laid on for those who were severely underrepresented in a particular field in the past, for instance women in vehicle repairs; though even then it is important to make sure that the training is reinforced by fair treatment in the workplace. It is also acceptable that those who face widespread discrimination by major employers and service providers should be the focus of attention for, say, non-governmental organisations and that schemes should be set up

specific to their needs. Since numerous employers refuse to consider blind and partially-sighted job applicants (or even to keep on employees whose sight has worsened because of their working conditions), projects set up to offer them employment may be useful; since numerous state-run schools and colleges discriminate against Upcountry Tamils, others concerned with education may give them priority.

A more widely applicable, and long-term, strategy is that of equal opportunities. An equal opportunities policy may be made up of a statement of intent, detailed guidelines on recruitment, working conditions and service provision and a complaints procedure, with details of how this will be monitored. Such a policy seeks to ensure that nobody faces discrimination; it is easier to campaign for than a quota system since it is more obviously fair.

What an equal opportunities policy contains

An organisation's commitment to equal opportunities may shine through various documents such as job contracts and its overall practice. It is useful also to have a publicly available written policy. Many begin with a declaration that the organisation will seek not to discriminate (or will oppose discrimination) on various grounds. These may include ethnicity, gender, caste, religion, being a survivor of violence (including sexual assault), age, marital status, being lesbian or gay, disability, having HIV, being a carer for children or other dependents and unrelated criminal conviction. (If the organisation is an old people's home, for instance, it should adapt this to allow it to select only old people as residents!)

Recruitment should be on the basis of merit, not patronage or prejudice. If job vacancies are simply advertised by word of mouth, people of the same ethnicity, religion and caste are more likely than

others to learn of the post. So the policy may state that vacancies should be properly publicised: this may range from paid advertising for larger companies to getting a few notices up in key places. The selector or selection panel (preferably not all of the same sex and background) may be required to draw up, on the basis of the job description - which would list the tasks to be performed - a list of the experience, skills and knowledge needed to carry out those tasks. These selection criteria (sometimes known as a person specification) should be made clear to candidates, and should be the sole basis on which they are assessed. Applicants for a secretarial post which involves working with computers may be asked on a form or at interview about their computing skills but not about their knowledge of Buddhist scriptures unless the post is religious. All candidates should be asked the same questions (it is bad practice for interviewers to question women or disabled candidates at greater length than others); these may include their willingness to abide by the equal opportunities policy if selected. Promotion should also be on the basis of fixed criteria.

The workplace should be organised in such a way that no set of workers is victimised or excluded. There will be limits to what a small organisation can afford, but much can be done even with limited resources. Arranging an office to minimise background noise may benefit staff who are hard of hearing, and many employers could easily afford specialist equipment if it is needed; flexible hours may be helpful to workers who are caring for sick relatives or who are subject to incapacitating bouts of anxiety; if someone wishes to pray briefly at certain times in the working day this should be easy to arrange. Racist or other discriminatory remarks, jokes and actions, however trivial they may seem, can be distressing and demeaning and should be challenged whenever they occur. Here and in other cases, it should be clear who

is responsible. Staff should be given the information and training they need to do their tasks, not expected to pick these up casually: this may cause workers already facing discrimination in society to appear ignorant and incompetent, through no fault of their own. Paid maternity leave should be offered (with a shorter period of leave for other parents of newborn or newly-adopted children), and if possible a creche or childcare costs should be provided. Sometimes outside factors make things harder for staff with certain backgrounds and identities: the organisation should do the best it can. For instance if the security forces are randomly picking up young Tamil men, shift patterns may be altered so that those who are vulnerable are not going to or from work at the most dangerous times, transport may be arranged and managers may make themselves available to vouch for employees who are picked up.

Much that applies to paid staff will also be relevant to volunteers. If younger members of a community organisation or those from certain castes are usually assigned only to menial tasks, or the annual general meeting coincides with a major religious festival, discrimination will occur even if it is not intended.

Commercial organisations will usually be unable to apply the principle of equal opportunities to their dealings with customers and clients, since making a profit will take priority. However some - to win more business, meet a social need or both - will seek to ensure that a wide cross-section of the public can make use of their services. Public services such as hospitals, colleges, civic centres and welfare agencies have a clear responsibility to ensure that all sections of the public are treated fairly. This may include providing interpreters for patients who are not fluent in the language spoken by doctors and nurses and translating written information (as well as taping it or reading it aloud for those who have

eyesight or literacy problems); avoiding racist educational materials and preventing bullying; allocating land and water rights on the basis of consistent and reasonable criteria; and taking seriously the views and feelings of women trying to escape from domestic violence.

Complaints by employees, volunteers and service users should be investigated without long delays, but not so hurriedly that both parties cannot properly present their opinions and evidence. Penalties should be moderate: someone who makes an insulting remark about another person's caste background should be reprimanded not dismissed (or, if a service user, banned from the premises), unless he or she persists in being offensive. Whether or not a complaint is upheld, the complainant should not be penalised: this would deter others from making use of the complaints procedure. If the policy is widely publicised and carefully explained, and staff are trained on how to put it into practice, there should be few occasions for complaint.

Monitoring is useful to establish that standards are observed and goals met. For instance, if it has been decided that at least one-third of the meat products on a supermarket's shelves shall be halal, this may be checked whenever stocktaking takes place; and if a municipal authority has agreed to fill in all the potholes on a particular street by March so that blind people and wheelchair-users can get by, the person in charge of road works in the area may be asked to report at that time on whether this has been completed. If information is to be gathered from applicants, workers or service users, this should be done sensitively. It is not advisable to ask candidates for promotion about their religious beliefs if the personnel manager has a reputation for prejudice against those of a different faith from his own, or for male security guards to be sent to question all the

women in a waiting room on whether they are satisfied with their treatment! The results of monitoring should be evaluated, not in order to find a scapegoat for any shortcomings but rather to find out what problems have arisen (perhaps a supplier failed to deliver furniture or equipment on time, or the goal set was unrealistic) and decide what should be done.

Bringing about greater equality

Some firms adopt non-discriminatory employment policies so that they can choose the most suitable candidates for each post and maximise their efficiency by treating them fairly. Many, though, do not want to increase their costs or go to any great lengths to select or retain staff on the basis of equality, especially if there is a large pool of unemployed labour from which to draw. Indeed it may be convenient to select those of higher social status as supervisors to enhance their authority, and to play on some workers' sense of gender and racial superiority and other prejudices to distract their attention from generally unsatisfactory pay and conditions. Within the public services, there are dedicated individuals and groups who seek to act impartially. But as a whole, in Sri Lanka and elsewhere, such organisations are often bureaucratic and resistant to change, reluctant to offend bigoted politicians or under pressure to cut costs, which may mean that those who are most vulnerable lose out.

By their own example and by advocacy of the rights of those who are unjustly treated, trade unions and community organisations can play a crucial part in persuading the statutory sector, and to some extent the private sector, to take equal opportunities on board. Some organisations may simply decide to adopt an already-existing policy. However this may result in a written policy which does not fully address the difficulties which those concerned are most likely to

face, or draw on the possibilities. Also many inside the organisation, or using its services, may not understand or even be aware of the policy let alone feel a commitment to it. I believe that it is far better to examine what the aims are, and how exactly these are put into practice, examining in detail the structure, working practices, which services are delivered and in what way, where discrimination may occur and how this may most effectively be prevented. This involves listening attentively to volunteers and employees at all levels (what head office decrees may be rather different from the experience of those on the front line) and to service users, consulting a range of individuals and groups (taking to a single 'community leader' is not enough, since no one person however wise can represent women, Muslims or any other section of the population in all its diversity) and learning from others' experiences.

At this stage, and later if the policy is adopted, strong opposition may emerge. Some people may argue that, while they themselves are not prejudiced, 'ordinary people' will not accept moves towards greater equality. Certainly most people globally, Sri Lankans included, are brought up from infancy in a hierarchical setting where one is expected to defer to one's superiors but treat one's inferiors with less respect. Also it is tempting - by exercising one's power to hurt or humiliate relatives and neighbours and by allying oneself with those who possess prestige, wealth or military might - to set aside feelings of powerlessness in a world where people's quality of life, indeed sheer survival, is largely determined by the decisions of international bodies such as the World Bank over which they do not have the slightest influence. However many 'ordinary' Sri Lankans have a deeper sense of justice, greater generosity of spirit and a clearer understanding of the real reasons behind their problems than they are

given credit for: the leaders of community and workers' organisations sometimes underestimate those they serve. If the reasons behind anti-discrimination measures, and how these will work, are clearly explained and questions answered, if those finalising draft policies and reviewing existing ones are humble enough to admit and correct weaknesses and principled enough to uphold the right of everyone to equal treatment, these can win widespread (though probably not universal) support. When such measures seem likely to be, or have been, adopted by larger bodies such as regional authorities, there may be a major public fuss. Those who feel threatened may use religious and other forums and the mass media to suggest that challenges to discrimination are absurd, outrageous or a threat to the nation's prosperity or moral values. This offers a valuable opportunity to argue the case for equality, pointing out the suffering caused by gender, racial, caste and other discrimination and citing examples of good practice in Sri Lanka and elsewhere.

Larger organisations which give grants to smaller groups, or which sub-contract part of their work or order supplies or services from others, may only fund, or give preference in contracts to, bodies with non-discriminatory policies. This may be a powerful measure for positive social change provided it is properly explained and those who fall short are not summarily cut off but instead encouraged to change.

Some nations have anti-discrimination legislation. Its nature varies depending on the constitution (or lack of one) and the particular situation. In Britain, discrimination on grounds of sex and race is generally illegal unless it is necessary to the function served (for instance a post to counsel women who have survived sexual violence may be advertised for women only). Through the European Community, employers are coming under increasing

pressure to provide maternity benefit consistently and to pay women on a equal basis to men (for instance if the staff in one workshop are women and perform work as complex as that of the men in another workshop they should be paid the same, a principle which could be extended to other situations where, say, people of different ethnic backgrounds are found in different divisions of the same company). In practice the law is often broken (a club may not advertise that it is only for white people but black people turning up will be told that the building is full; a firm may claim not to discriminate but promote a man to a managerial post instead of a more skilled and experienced woman). However the law has some effect, and helps to create a public climate where open bias is disapproved of. There are calls to improve the effectiveness of the bodies which investigate and prosecute complaints. Also some campaigners argue for legislation to protect people with disabilities (an existing law requiring larger bodies to employ a handful of disabled people is not enforced by the government and is usually ignored) and lesbians and gay men, as already happens in some parts of the world.

In Sri Lanka, a law prohibiting discrimination on various grounds including gender, ethnicity, caste and religion might be valuable, though it would only have credibility if effective action was taken to prevent blatant and extreme acts of injustice by government forces, official or unofficial. There would be little point in having such a law on paper if the most that the authorities did in a case where soldiers kidnapped a Tamil youth or a ruling party dignitary's 'bodyguards' sexually assaulted a local woman was to issue denials. If such a law were passed, though, in conditions in which it might be respected, it should be worded carefully so that it is not used against the very people it is meant to protect, especially if they express their views in a highly

emotional manner and without the legal advice that large corporations, for instance, routinely receive. Also, rather than making martyrs of prejudiced individuals and small groups, the law should focus on major employers and service providers; those taking up complaints should have adequate investigatory powers and resources and penalties should be neither excessive nor derisory: there would be little point in prosecuting a village grocer for racial discrimination if a nearby state-subsidised textile factory were getting away with the same thing, or fining a multinational corporation a couple of hundred rupees.

For anti-discrimination policies to be most effective, a climate is required - within an organisation and preferably more widely - in which experiences can be openly shared and views freely voiced, in which employees or volunteers and service users are treated with consideration and respect whatever their social status and in which justice prevails over nepotism, corruption and bigotry. Those who seek to bring this about will have to be willing to deal with difficult and sometimes painful issues, confront their own prejudice and that of others and challenge powerful forces. In return, those who have been hurt, humiliated and marginalised will be better able to unite with their neighbours to build a more just and humane Sri Lanka.

**THE RIGHT TO LIFE AND GUARANTEEING
LIBERTY, FREEDOM OF EXPRESSION AND
ASSEMBLY**

Lucien Rajakarunanayake

All of us here who are concerned about the condition in Sri Lanka have heard of the recent debacle suffered by the Security Forces at Nagathivanthurai and Pooneryn. It was the biggest loss to the military in terms of men and material. At the lowest count, at least 600 troops were killed in an attack by the Tamil Tigers, which in its main thrust had but lasted only a few hours. This excludes the Tamil Tiger admission of over a hundred of their own cadres being killed or the official figure of over 400 Tiger cadres killed.

In all the toll at Pooneryn would be at least 1000 Sri Lankans killed. However, it is the reality of our times that this figure would not be reported by the Sri Lankan media in this manner. All it would be concerned with is the number of troops killed - as stated by the Government. The Tiger cadres killed would not be included in the total number of Sri Lankans killed.

Attempts are already under way to make heroes of the troops who were killed at Pooneryn, as a measure of hiding the extent of the debacle suffered and offset the negative impact on future recruitment to the forces. But there is little heard of a proper accounting of what took place and why. Not the least by the Media in Sri Lanka.

The war and the media

It is significant that the military debacle and national tragedy at Pooneryn took place within less

than three weeks after the Free Media Movement had to issue a statement condemning a death threat made on the Defence Correspondent of a Sunday English newspaper for commenting on Operation Yal Devi, in a manner which did not paint the military high command in shades of pink.

It was by coincidence that the latest seminar to be held by the Free Media Movement on - the War and the Media - took place on the same day as that of the Pooneryn tragedy. The purpose of the seminar was to discuss the ethics of our profession in reporting the current war in Sri Lanka and by implication and extension, the entire ethnic crisis itself.

The Media in Sri Lanka is today in the clutches of a major crisis. It is a crisis to which it has been led by the continuing erosion of democratic values for which the Sri Lankan Press is itself responsible in large measure. I attach this responsibility to the Press for its continuing attitude of suppliance before governments, as well as, the identification of its role as that of the spokes centre for the Sinhalese majority and not the Sri Lankan nation, or whatever we have left of that concept.

Repression by Government

It is relevant here to give a brief description of the situation in which the media exists in Sri Lanka. We have come through the worst period of repression by government. The magnitude of the problem we faced is best understood when it is realised that in the 52 weeks ending in March 1993, journalists had been assaulted and roughed-up on 52 occasions by the police and pro-government thugs. We also had to face many threats from politicians of the government, as well as, from a few of the opposition too.

The latter part of this gloomy period saw the president of the country make public statements accusing journalists who were critical of the government, and its largely corrupt policies, of being "terrorists" and the "acid throwers" or hired assassins of newspaper proprietors. The association that some of these critical journalists had with the JVP of 1979 was frequently mentioned by the President, ignoring the fact that their freedom came after a pardon given by a government in which he was the Prime Minister.

The motive was clear. The green light was being given to the police and security personnel to move in against these reborn terrorists. The threats of the President found sympathetic echo in the government owned Press. There were scribes who even called for the elimination of the so-called fascist forces who were responsible for "tabloid terror".

Free media movement

That was the background in which the Free Media Movement was born. We carried on a campaign against the severest of odds to fight this threat on the Media and the individual journalist. We did what appeared to be the impossible. While the opposition parties were in a stupor, trapped in the family squabbles of the Sri Lanka Freedom Party and mired in the general inability to offer solutions to the larger threat to democracy, a group of journalists took the issue of the Right to Free Expression to the country. The people did respond favourably. We realised the need to place the issue of a Free media, the Right to Free Expression and the Right to Information, high on the political agenda of Sri Lanka.

The immediate threat to the journalists and the critical Press appears to have been pushed into the

background after the assassination of Ranasinghe Premadasa. The Wijetunge administration is now shedding some of the embarrassments of the Premadasa era. Yet there is little room to be happy about the trend of events with regard to the Media. It is significant that in the first interview given to the Press after his swearing in, President Wijetunge said that the freedom of the Press would be assured but not the freedom to topple governments. The President has not explained as to what he has meant by toppling governments. However, the current trend of thinking appears to be that even the democratic change of government could amount to that of toppling a government. A phrase which has deeper meaning when stated in Sinhala - "Aandawe Peraleema"- which has more than a light shade of overthrowing a government.

The second JVP uprising

The situation of the media today is certainly made worse by the fact that it functions in the immediate aftermath of the second JVP uprising. It was a time when the Government used the most ruthless means to suppress a revolt by discontented youth, who had been led to embrace the policies of terror in the pursuit of their campaign to overthrow the system. It was a terror which frightened the ordinary people. A terror which was directed not just against media owners and organisations which the JVP opposed, but against newspapers dealers, vendors and even newspaper readers. It was a terror targeted against journalists as well.

The government's reaction to this terror is too well known today to need recounting. It was the calculated response of State terror against that of the JVP and all democratic opposition to the Government. The affidavits of Udugampola, which he later denied although not very convincingly, give some

indication of how the fight against the JVP was used by the government to eliminate its other opponents as well.

In is in this situation of post-JVP, coupled with the continuing war being waged by the LTTE, with its own undisguised use of terror, that both democracy and the media are being subverted to serve the ends of the government and the manipulators of power in Sri Lanka.

The ethics of communication

For many years Sri Lankans have lived in the acquired belief that we have had a very strong and independent Press; that the Freedom of the Press is quite safe in our community and that we have a journalistic profession and media owners who pay great allegiance to the ethics of the profession. We are now in the latter stage of the discovery that this is furthest from the truth. The ethics of communication as we have known it in Sri Lanka is what has been built during a period of a near monopoly of Press ownership, by sections that were in the main, happy to use the Press to support the governing establishment and the social forces that lay ranged behind it.

This situation became even worse with the early entry of the State into the electronic media, and the subsequent acquisition by government of the largest newspaper organisation in the country. The complete ownership that governments have had over the decades of radio broadcasting and in the initial decade of television, has virtually shorn these sections of the media of any ethical standards and a sense of national direction, apart from the blind following of government political directives.

It was no accident, therefore, that in the televising of the funeral of the late President Premadasa, the state owned TV station thought it fit to replay a recording of the assassinated president's last political speech, as the background accompaniment to the lighting of the funeral pyre. The speech was wholly accusatory of the late president's political rivals. It was more the ghoulish than the ethical at play in a society which still largely believes that funerals are places where enmities are forgotten or should be.

Propaganda tools

The electronic media is today functioning under a set of guidelines which makes no secret that it is the primary function of radio and TV to tell the people of the government's development policies and activities. There is in this more than a ring of the Third World media proposals of the recent past. Proposals which saw the emergence of government-owned News Agencies which deteriorated very fast, and not unexpectedly, to the propaganda tools of government and not the sources of information they were touted to be.

The guidelines for the electronic media make no mention whatever of the ethical need to give the other side of such development strategies. The ethic, stated quite brazenly, is that only one side need be known. There is also a more dangerous ethic which is being propagated, that even an attempt to give the other side could amount to subversion or, in simpler terms, be anti-government.

The reason I deal with the electronic media at the outset, instead of the older medium of the Press, is because of the much wider reach this media has today. The magnitude of this reach alone underlines the urgent need for the formulation of some ethical guidelines for a section of the media, in which there

is increasing capital investment and the rapid acquisition of great technical skill, in the absence of wholesome ethical values which can be translated to national interest in place of the prevailing sectarian interests.

Ethical values

The need for such ethical values is, however, more easily said than done. How are they to be formulated? Who is to formulate them? How much trust can we have in the professionals themselves to undertake this task? Even with such trust, will they be free to do so? The influence of government from the inception of radio in the country initially it was a section of the departments of posts and telecommunication - has in no way helped the rooting of ethical or national values in broadcasting. This is not to absolve others of a their own share of responsibility in this matter. It is also due to the general acceptance by the intelligentsia, that the Government has some right to conduct its own political propaganda at public expense.

Until the overall dominance of government in the media was seen in the post-1977 period - extending to this day - there has been little concerned discussion about the ethics that should govern the electronic media in Sri Lanka. Even today, the discussion is more in the nature of giving some space to the political Opposition, as opposed to the broader ethical need to give some space to a wider array of opinion. This is of special importance because the opposition parties are, in the main, pressure groups and not necessarily representative of independent opinion.

There is also the confusion of what is ethical with what is traditional. A confusion which leads to the trap that what is traditional must necessarily be ethical. This is best seen in the dilemma that the

electronic media faces with regard to the response to the threat of AIDS. Medical opinion is convinced that the threat is very serious. Social workers also share this view. Yet the State-owned electronic media which has the widest reach, does not know how it is to give this message to the public, without treading on the corns of tradition. The confusion over helping the prevention of AIDs through the encouragement of SEX of the safe variety, prevents the electronic media from carrying out the necessary educational role it is best equipped to fulfil.

Information ethic

The basic shortcoming appears to be in the lack of appreciation that the electronic media, specially that which is owned by the State, has the over-arching function of keeping the people informed. This does not absolve the private stations of this responsibility. But the peculiar structure of the electronic media in Sri Lanka, its overall reach and the language of transmission places this responsibility more heavily on the State. A State which has demonstrated that it does not trust the Information Ethic. This is an attitude which has been common to all parties that have held power in Sri Lanka, be it of the right, left or middle.

The ethic that is dominant is one of secrecy. A secrecy that seems to be justified either on the basis of the need for official secrecy in administrative terms, national security with its broadest possible misinterpretation and worst, in the view that the public need not know. Or, in the idea which is often encouraged that there are others who know best what the public should know.

If this is the situation in the electronic media, what do we see in the Press? The Sri Lankan Press has a good history in terms of chronology. We boast of some of the oldest newspapers in Asia. Our levels of

education did produce journalists of great capability. We often take pride in the fact that many newspapers, particularly in East Asia, were dependent on journalistic talent from Sri Lanka for their launch and continued success. With such a background it would be not unusual to expect a strong commitment to Communication Ethics in the world of Sri Lankan newspapers. Yet, the more we search, the more we discover the absence of such ethical standards. Especially in the context of the current national crisis over the future of democracy, the rights of the Tamil minority and the response to the Tamil Tigers.

In fact it is in the context of the ethnic crisis and the LTTE's demand for a separate Tamil-speaking State that we find the Media, and particularly the Press, placed in the worst predicament of its own making. A predicament not in terms of the newspaper proprietors and their search for profit. The predicament is in the role of the newspaper to inform the public and as far as is possible place contending points of view before the public.

Majoritarian viewpoint

The wider circulation newspapers in Sri Lanka, those which attach to themselves the adjective of being "national", have by and large been consumed by a majoritarian viewpoint to the near total exclusion of reasonable access to minority viewpoints. The presentation of minority news and viewpoints, when permitted, is often with the assurance of a heavy load of biased rebuttal and the certainty of the closure of the debate being imposed by the Editor when it is most advantageous to the majority view.

Very often one sees a confusion in the approach of these newspapers to the current war. Those that preach the need for a negotiated settlement do not

hesitate carry on campaigns which would undermine any moves aimed at such negotiation. They demand military solutions but are unable to face up to the reality of repeated military setbacks and the apparent unwillingness of the larger numbers of unemployed Sinhala youth to enlist for the fighting.

One leading newspaper has now called for national service, to draw in youth with proper motivation into the fighting forces. It avoids the obvious question as to how this is to be done. How can one conscript to fight in the Sri Lankan Army, when in the streets of Colombo routine searches by the military begin with the question "Are you a Sinhalese or a Tamil?" One of the biggest arguments presented against the demand for greater autonomy for the North and East is that more Tamils today live in harmony with the Sinhalese outside the North. This is a favourite of the newspapers too. But, the same newspapers never question why time and again Tamils from all walks of life are rounded in large numbers for suspicion of being Tiger agents or informers. Although most of venom against the Tamils emanate from the larger Sinhala newspapers, their English counterparts are in no way free of blame in this regard.

The divisions in the country caused by the continuing war in the North and East have contributed to the distorting of whatever little values we may have had in terms of journalistic ethics, if not on the building up of a national consensus on unity. I would make a point here of how newspapers, whether English or Sinhala, describe those who have been arrested for smuggling of contraband, generally gold or narcotics. If the person apprehended or arrested is a Sinhalese, then he is just a person, a businessman, a passenger from Singapore or some such place. The community is never mentioned. However, if the person arrested or apprehended is a Tamil, you can be sure the

community will have prominence, even in the headline. There will most probably be a comment by an unknown Customs or Police officer about connections with narco-terrorism or the financing of the Tiger war effort.

It was recently that we saw a report in one newspaper about suspicious stores of urea based fertiliser in the premises of the Tamil Union Sports Club. Quite a big raiser of suspicious eyebrows. Urea is much in demand by the Tamil Tigers. Some Tamil businessmen have been implicated in its transport to the North. Now, you have the Tamil Union Sports Club, storing it. Ever so suspicious. It finally ends up as very legitimate cargo, stored by a government-owned business. The correction is published, but the newspaper makes no apology for not checking the veracity of its source in the first instance, or not obtaining the views of the Tamil Union at the outset.

The reporting of the war

The reporting of the war in the North has exposed in great measure the absence of a proper ethic of communication among the Press in Sri Lanka. There is general satisfaction to go by the regular situation reports issued by the Defence Ministry. What often passes off as on the spot reporting of the war is a report which has been obtained on an official conducted tour of a light battle-zone. Very little or no effort is made to give the all important viewpoint of the people of the affected areas, particularly in the North. The agonies of the citizens of the North are hardly ever mentioned. Newspapers that make genuine complaints and strong criticism of waste in government expenditure, for some reason have decided it is more ethical to remain silent over what may be much bigger waste in the matter of arms procurement and the disbursement of funds for the war.

Accidents by the Security Services, defeats in battle at considerable loss of life - both of the official troops and the Tamil Tigers, questionable promotions, continued extensions granted to senior personnel are all glossed over with little regard for the accountability to the public who fund the fighting with steadily increasing contributions from the national budget.

Veneer of freedom

The situation in Sri Lanka, although overtly one which could give one a great deal of satisfaction with our apparent commitment to the values of freedom and democracy, is in the main one of great crisis and in fact of major tragedy. What we see today is a thin veneer of freedom and democracy which seeks to hide the harsh realities communal strife, the denial of liberties, a heavily controlled media, a manipulated system of justice and a largely complacent intelligentsia which watches helplessly the galloping advance of corruption in the State and the private sector.

If the JVP uprising with its commitment to terror bred in our people a new fear of official terror and more determined and militant political opposition, the continuing war in the North and East is making it all the more easier for the government to trample on the freedoms of the people.

The war in the north and east

This war is not only sapping our people of their economic strength, it is the biggest threat we have to our individual rights. It eats into the core of our traditional values of truth and decency; it helps the government to push the country into the questionable values of the marketplace; it breeds

corruption particularly in the developing of vested interests in war and military procurement; at every turn it strikes hard against truth and the Right of Free Expression and the Right to Information.

It is unfortunate that in the midst of this crisis the political opposition seems helpless, largely because it also shares considerable responsibility for the crisis we have reached. The need in Sri Lanka seems to be a new politics. If one is to ask almost for the impossible it is the politics of honesty. A movement for reform of the entire political establishment.

It is a movement which will of necessity have to address the reality of the war. One that will stop pretending it is a mere problem of terrorism. A movement that will seek to give redress to the genuine grievances of the Tamils, while assuring the Sinhalese and Muslims that their basic rights will also be guaranteed. This is no easy task, after the years of misinformation and bogeyism, as well as, the terror of the LTTE. But it is one which has to be carried out.

The principle of devolution has to be fully implemented, even extended. Where necessary we have to be ready to take a fresh look at the boundaries of our provinces which were carved out by the British for their revenue and administrative purposes. There is little doubt that most political parties are now in agreement that the governance of the North should be by the Tamils, within a devolved entity. The problem really is that of the East, where the situation is far more complex. But complexity is no reason to give up. The more detailed proposals placed before the Select Committee of Parliament should be studied with greater commitment to the search for peace.

The strenghtening of fundamental rights

The guarantees of life and liberty should not remain mere clauses in the Constitution. We need organisations that will challenge in the Courts every violation of these rights. A campaign is needed to enhance the punishments for violation of fundamental rights. For the termination of services of all State employees found guilty of the violation of fundamental rights.

We need an amendment in our Constitution with a clause which will guarantee the Right to Information, as a justifiable right. We need to remove the blanket restrictions that the Emergency Regulations can place on the Rights of Free Expression, Speech and Assembly. There is the need to rescind the present Parliamentary Privileges Act and bring it back to the situation before 1978, when parliament had no powers of adjudication.

There is no need to dwell at any length on the fact that the Media has a major task to perform in the strengthening of the fundamental rights which form the bedrock of democracy. However, the structure of the Press, as it is in Sri Lanka, does not give much hope that such support would be forthcoming. There is, therefore, the need for new centres of information, with sufficiently strong economic base and the commitment of journalists with good training, to change the direction of the media and make it more relevant to the need for peace.

THE RULE OF LAW IN SRI LANKA

Prins Goonesekera

Under the first Executive President 1983-1988

Paul Sieghart, Chairman, Executive Committee, Justice, the British Section of the International Commission of Jurists, headed a mission to Sri Lanka in January 1984. That was following the "BLACK JULY '83" riots when 53 prisoners in the maximum security prison -the Welikada jail- were massacred on two consecutive days of communal violence, when thousands of innocent Tamils were killed and their property destroyed.

In his report, in the Chapter on "The Independence of the Judiciary" in Sri Lanka the late jurist refers to two fundamental rights judgements of the Supreme Court- the Voice of the Clergy Case and the Vivienne Goonawardana Case- where two police officers were found guilty and fined by the Supreme Court for violating the fundamental rights provisions of the Constitution. The Executive President paid the fines and had the two police officers promoted. The judges who tried one case

"found their private houses surrounded by unruly mobs, shouting obscenities at them. It was a frightening experience and no policeman was in sight. They tried to telephone the police but found the line mysteriously out of order

"Such events are hardly calculated to encourage the judiciary to remain independent, or to enhance public respect for its members or the Rule of Law"

Paul Sieghart, therefore sought further information, about these incidents ... from the Executive President himself. He reports:

"The President freely conceded that he had personally ordered the promotion of the two police officers and the payment out of public funds of the damages and costs. This, he said had been necessary to maintain police morale. He strongly criticised the Supreme Court for not affording ... the opportunity of giving oral evidence and clearly regarded this as a case of the Court putting itself above the law.. He also volunteered the information that he had left Sri Lanka for a foreign visit some days before the "demonstrations" outside the Judges' houses but pointed out that the right to peaceful protest was always available to the people of Sri Lanka "

"Criminal offences"

The report, on this matter, concludes:

"The conclusion is inescapable that he was deliberately seeking to teach the Judges a lesson. In order to make them more pliable to the Executive's wishes. If that is so these were grossly improper acts; but for the immunity from all suit which the President enjoys under Article 35 (1) of the Constitution, they might well have been criminal offences under Article 116 (2). (Sri Lanka A Mounting Tragedy of Errors -report by Paul Sieghart March 1984.)

The Executive President at the time was Junius Richard Jayewardene who proscribed the party that challenged the validity of the Referendum 1982 - the JVP (Peoples Liberation Front) on the dubious pretext of engineering the BLACK JULY riots which in fact

and in truth was orchestrated by the Party in power - the UNP, with a Cabinet Minister directly involved in the violence. He was later expelled from the Cabinet.

The Police officer involved in the Voice of the Clergy case was Senior Superintendent of Police (SP) Premadasa Udugampola, soon promoted Deputy Inspector General (DIG) of Police.

Under the Second President 1988-1993

In 1988, JR Jayewardene was succeeded as President by R Premadasa the then Prime Minister. Violence increased on an unprecedented scale in the years that followed.

Many NGOs and religious missions visited the country and reported appalling human rights violations by security forces. Disposal of dead bodies without post mortem inquiries as authorised under Emergency Regulation 55 FF and the offer of indemnity were considered the main incentives to "Kill the Brutes".

State managed Death Squads known as Green Tigers, Black Cats, PRRAs, Hawks and Scorpions were the common form of instilling terror into the people. 'Disappearance' was a daily occurrence. Piles of unidentified dead bodies burnt under old tyres by the wayside.

Lawyers appearing in *habeas corpus* applications were threatened with death, abducted, tortured and killed.

"Amnesty International is a Terrorist Organisation"

On January 18th, 1990, at a press conference following a cabinet briefing National Security Minister Ranjan Wijeratna called Amnesty

International "a terrorist organisations". (Daily News 1901-1990)

On July 10th, 1990 President Premadasa launched the "operations combine" against the southern rebels. By 1990, Amnesty International recorded, in an advertisement published in the Independent (London 23-09-1990) carrying a picture of human limbs and dead bodies burning in a heap:

"If this picture disgusts, you are free to complain to the Sri Lankan Government.
40,000 Sri Lankans aren't."

"SRI LANKA EXTRA JUDICIAL EXECUTIONS 'DISAPPEARANCES AND TORTURE, 1987 TO 1990" was the special report published by Amnesty International in September 1990. Amnesty International was not permitted to visit the country since 1982 (later allowed in 1992.)

In March 1991, the National Security Minister Ranjan Wijeratna was assassinated in Colombo.

Two UN Mission Reports: January and December 1992

Two UN Missions - the Working Group on Enforced or Involuntary Disappearances visited Sri Lanka in January and December 1992. Their reports were submitted before the Forty eighth and Forty ninth sessions of the Commission on Human Rights in Geneva

They observed: "An important new feature in combating the JVP uprising was the proliferation of death squads whose main task was to kill suspected rebels and sympathisers" (para 31 January report)

"The remaining figure (of the disappeared) is still substantial and by far the highest number ever recorded by the working group for any single country..." (para 192)

"On the basis of the material available, the Working Group concludes that both in the north and the south, the army, and predominantly the police in the south, have been involved in the disappearances. Death squads which given the circumstances could only have operated with the acquiescence of the Government forces.. have been involved as well. Also implicated were civil defence units, armed and trained by the army..." (para 193)

"..In addition there is little doubt that Emergency regulation 55FF of July 1988 has been conducive to uncontrolled activity by the armed forces." (para 195)

"In addition over the last few years the Government has created an array of commissions and task forces to deal with various aspects of the problem. It is not certain however, whether all of these have the

necessary powers and resources and whether at present they draw maximum advantage from the terms of reference provided to them..." (para 201)

"Situation is Appalling"

In January 1992 The Canadian Human Rights Mission to Sri Lanka observed:

"Faced with this evidence of gross, flagrant and systematic abuse of human rights the members of the Canadian team could only react with a sense of indignation and frustration that so much violence has been perpetrated on the suffering people of Sri Lanka while the world has remained silent. The situation is appalling and demands urgent international attention (page 19).

Mass graves -reminiscent of the gas chamber executions by the Nazi regime have been discovered in certain parts of the country.

UNCHR December report offered to help:

"(c) The Government may wish to consider attracting forensic expertise from abroad, through the United Nations, for the purpose of identifying possible victims of disappearances, in particularly egregious cases such as in regard to the mass grave discovered in connection with the Embilipitiya case... (para 146)"

Rule of Law is defied- "Catch me if you can".

In the one and only Trial at Bar, under President Premadasa's regime, for abduction, torture and killing of a lawyer, a Deputy Inspector General of Police (Premadasa Udugampola of Voice of Clergy fame) gave evidence and his evidence was not considered worthy of credit. The Justices unanimously expressed their "fervent hope" that the Government and the Law enforcement authorities would appoint a Commission to investigate the DIG's role in the murder. Their hopes were duped. DIG was given a special assignment by the President, made Chief of Special Operations Bureau (SOB) with additional powers; was seen banqueting with the President on his inauguration day among the special Presidential guests in Kandy, the sacred capital of Sri Lanka.

The Government, under pressure from donor countries, was however, constrained to compulsorily retire the DIG. He hit back at the Government, accusing them of complicity in the death squad murders by "Black Cats" etc.; that he was a close confidante of the President during the two election campaigns where terror by "Black Cats" was the most notorious feature. He deposed to six affidavits disclosing these criminal activities, among others, by Government party MPs. He charged that the Police hierarchy was corrupt, inefficient, and still had active death squads under retired DIGs who were his rivals. The government filed criminal defamation action against the former DIG Udugampola.

Ex DIG went into hiding, defied the rule of law by challenging the courts to "catch him if they could" and held press conferences from his hideout, for nearly two years. He went into exile, in South India. An open warrant awaits his arrest and production before the High Court of Colombo.

In December 1992, the UNCHR report observed:

"147. There is no doubt that the situation regarding disappearances in Sri Lanka continues to be serious."

On April 23rd, 1993 a former National Security Minister, Lalith Athulathmudali was assassinated in the city of Colombo.

On May 1st 1993 President Premadasa was assassinated in the heart of Colombo, while marching in a May Day procession.

Under the Third Presidency: 1993

On the demise of President Premadasa, Prime Minister D B Wijetunga (DBW) was unanimously elected by Parliament as President for the remaining part of the slain President's six year tenure. The new President earned the exiting approval of the Press and the public by disbanding the most notorious death squad in the police, under another retired ex DIG.

Not for long! The hopes generated by the new President's anti-death squad drive soon evaporated.

Ex DIG/SOB chief Udugampola was invited back to Sri Lanka . The fugitive from justice received a VIP red carpet welcome, was invited for a 4 hour breakfast with the new President , and was bailed out the next day when he voluntarily appeared in court. A *nolle prosequi* was filed in Court, followed by an appointment as the deputy Head of the Sri Lanka Ports Authority.

Over 30 human rights lawyers who fled the country from death squads are still in exile, fearing persecution on return. The rehabilitation of 'the most

feared policeman' is viewed with apprehension and disbelief among the people.

No serious attempt has been so far been made to account for the, "killing and disappearances" of over 40,000 civilians, the killing of over 20 lawyers, the flight of human rights activists from the country.

In May 1992 Asia Watch reported:

"Many commissions have become bogged down in their own inefficient procedure, or lack adequate funds.... Pressure on the Sri Lankan Government to demand full accountability for these disappearances will continue to mount"

The eminent lawyers, jurists of the Asia-Pacific region and other visiting human rights activists for the LAW ASIA 93 Conference are not expected to come to terms with the consistent assault on the Rule of Law and the appalling human rights record under three Executive Presidents, since 1983. They certainly will not endorse the rehabilitation of an "Ivan the Terrible" as a hopeful signal for the restoration of the Rule of Law in Sri Lanka.

The least they could do is to "toll the bell" on behalf of their departed colleagues and pray for the return of peace and justice.

Parallel with the written constitution, which has a Chapter guaranteeing fundamental rights, there has come into existence an unwritten law of criminal jurisprudence and procedure which enables the security services to act with impunity. Emergency Regulations 55FF has made the criminal procedure Code which requires judicial medical inquests into sudden deaths, redundant. The Indemnity (Amendment) Act 1988 has been implicitly amended by the police. Any policemen accused of any crime

has only to telephone the lawyer appearing for the complainant and threaten him with death or the abduction of a child or family member. The Honourable Attorney General would make an appearance in court as amicus curiae and enter a no prosequ: the policeman is released forthwith and at times rewarded with an executive appointment, as happened in the Udugampola case. The rule of Law took a deep dive into the Colombo Harbour, when ex DIG Udugampola of Black Cat notoriety was rehabilitated by the new President as the Deputy Chairman of the Sri Lanka Ports Authority. An ex Superintendent of Police the other day was set free by the Hon Attorney General from a charge of raping an 11 year old servant girl, and the prosecution lawyer tamely withdrew from the case as he was threatened with life and abduction of his child. A popular newspaper published a full page article headlined "ALLEGED RAPE CASE: THE AG WAS RIGHT" defending the conduct of the AG who did not want a judicial inquiry into the misconduct of the ex-policeman. When Police states are crumbling elsewhere in the world, we unfortunately see the growing strength of a State run by policemen and ex policemen.

I have had the advantage of reading the paper presented at this seminar by a leading Sri Lankan Journalist on "GUARANTEEING THE RIGHT TO LIFE AND LIBERTY, FREEDOM OF EXPRESSION AND ASSEMBLY" In that presentation, he observes

"the Media of Sri Lanka today is in the clutches of a major crisis. It is a crisis to which it has been led by the continuing erosion of democratic values to which the Sri Lankan press itself is responsible in large measure."

It is reassuring to note that the journalists, and hopefully the intelligentsia in Sri Lanka, are alive to

the problem -the terror unleashed by the State. First on political dissidents and rebels, now almost enveloping the entire society. When in 1987, an incumbent Executive President decreed, "kill the brutes" and promised indemnifying legislation, I do not recall any newspaper or a member of the intelligentsia writing or speaking one word of protest against the most outrageous, criminal directive given by any politician in power, anywhere in the world. Instead, authors have referred to this disreputable order as "*the most celebrated phrase of the President*". The local guardians of journalistic ethics, to whom the Executive President doles out Cuban cigars, continue to adulate him as the most charming elder statesman in Asia. Is it any wonder that truth and moral values are the first casualty in the resulting wave of violence and are drowned in an ocean of brutality and militarism ?

This "Just and Righteous " (J&R) gentleman was succeeded by his lieutenant and compatriot in crime whose combined record of extra judicial executions in three years, 1987 to 1990 exceeded 40, 000 - a record unrivalled anywhere in the world. Projected in terms of the UK population, it is the equivalent of 120,000 unidentified dead bodies burning in the streets of Great Britain. The torture and disappearances during the period were "the highest recorded in any single country". 22 lawyers paid the price in their lives for the criminality of an administration which substituted the rule of law with the rule of the gun. In 25 years of the IRA conflict, only one lawyer had been gunned down. The British press and the international NGOs are demanding accountability for the dastardly killing of Belfast Solicitor Pat Finucane in 1987. In Sri Lanka the widows and orphans of the murdered lawyers are crying for justice and accountability for the state - sponsored crimes but the media, the Bar Association and the many human

rights organisations in Sri Lanka are deaf and blind, like the regime, to their plight.

The implications of the continuing threat to, and the killing of, human rights lawyers go beyond the killing of another human being. It is not merely a challenge to the right to life of another person. It is the attempted murder of the rule of law and renders the independence of the judiciary vulnerable and gasping for breath. It has strangulated the freedom of expression and assembly. It has spread a carpet of fear on which a spiral of violence thrives. It has sustained three successive tyrannical regimes in the seat of power for over 15 years. The overhanging cloud of fear has tended to coax and stifle the free and fair administration of justice in the country. It is continuing to suffocate the rule of law.

It is time to bring the perpetrators of these crimes to justice and accountability.

Thank you.

ON THE ELEMENTS OF A POLITICAL SOLUTION TO THE ETHNIC CONFLICT IN SRI LANKA - DEMOCRATISATION, DEVOLUTION AND DEMILITARISATION

L. Ketheeswaran

Introduction

The late President Premadasa, when referring to the ethnic conflict in Sri Lanka in his public speeches, was fond of repeating that he was prepared to concede "ellam" (meaning "everything" in Tamil), but Eelam (implying the "secessionist" demand). The present President D.B.Wijetunga, in his public speeches since assuming the highest office of the Nation, appears to have latched on to yet another idea - namely that there is no "ethnic problem" but only a "terrorist problem". The Sri Lanka Freedom Party (SLFP), after a deafening sound of silence on the Ethnic Question, in its recent Policy Statement refers to the need to set-up a "system of administration" that would enable the minority communities to "carry on their own administration".

The above approaches to the Ethnic Question, while differing in emphasis, in essence symbolise one and the same. They are a manifestation of the tendency on the part of the Sinhala political leadership, since Independence, to wish away the National Question in Sri Lanka - failing which to impose a "final solution" in the Hitlerite mode. The reality, however, is that the sectarian Sinhala polity, which has alternatively held and shared State Power, seem to be able to do neither. The end result, of course, has been the escalation of violence into an upward spiral with no end in sight to the ethnic conflict.

At the level of the Sinhala intelligentsia and the more progressive and secular sections of the Sinhala polity, it is also in vogue to present the case for restoration of Democracy as a precondition for the resolution of the ethnic conflict. It is argued that once democracy is restored, the resolution to the National Question would flow automatically. But it is conveniently forgotten that the smooth functioning of parliamentary democracy in the past did not deter the Sinhala polity from pursuing a policy of Sinhala-Buddhist exclusivism that denied the Tamil - Speaking People their identity, security and socio-economic advancement.

Tamil Response

The response from the Tamil polity as well as the Tamil intelligentsia, to the above formulations, have also been varied. At one extreme, it is posited that the creation of an Independent and a Sovereign Eelam is both necessary and viable. Here again, there are two variants.

One, the rabid, chauvinist formulation that "Tamil Eelam" is the birth right of all Tamils and precursor to a Nation-State for the Tamils of the World. I consider the above to be a case of irredentist adventurism, not worthy of any consideration. Another variant of the secessionist formulation, which in my opinion is rational, but overly-deterministic, stresses on secession as being inevitable under conditions where Sinhala-Buddhist exclusivism and the unitary constitution acts as a fetter against a just, rational and an equitable solution to the Tamil Question in Sri Lanka. Given these conditions, it is argued that the demand for secession would gain legitimacy as well as potency. But what is left unanswered are the aberrations that were introduced into the Tamil Polity and the Resistance resulting in the rise of fascist, nihilist and

hegemonist tendencies which in turn undermined the resolve and unity necessary to wage a national liberation struggle to its logical conclusion.

Peace and economic development

At the other extreme, some sections of the Tamil polity and the Tamil intelligentsia hold the opinion that what is needed right now is Peace and Economic Development. "Peace", in this context merely implies cessation of hostilities between the LTTE and the Sri Lankan security forces which in turn is expected to provide a "stable" environment for economic development. In the opinion of the proponents of this formulation, economic development would be the great "equaliser" between the majority Sinhalese and the national minorities. The notion of seeking just and a long-lasting solution to the Ethnic Question is seen to be purely academic - and irrelevant. The above formulation also appears to have candidates from sections of the Sinhala intelligentsia and the international community.

In my opinion, however, given the nature of Dependent Capitalism, which is uneven, and the nature of the Sri Lankan State and the LTTE, which epitomise everything that is degenerate, the above proposition can hardly be seen as a serious and a sustainable remedy to the ethnic conflict in Sri Lanka.

It is evident from the above rather broad spectrum of Tamil- Sinhala opinion, and the concomitant divide, that perceptions on the nature of the Ethnic Question in Sri Lanka is diverse - reflected in varied responses to the ethnic conflict. However, not all perceptions are grounded in reality and not everything that is real is perceivable.

Needless to say, such chasms between perceptions and realities will also inevitably manifest itself in this Paper. But, in the final instance, it is History that is the ultimate determinant of reality - as well as its manifestation. And it is with this faith in History that I propose to place before this forum what I consider to be the essential and inseparable components of a solution to the ethnic conflict in Sri Lanka ie Devolution, Democracy and Demilitarisation. It is my opinion that the search for a just, rational and a long-lasting solution to the National Question in Sri Lanka, is not possible without, at the first instance, traversing the path of Devolution, Democracy and Demilitarisation, none of which are presently in existence in Sri Lanka. It is only then can one safely posit that the conditions for advancing the process of Nation-building of a united Sri Lanka, on the basis of secularism, pluralism and egalitarianism, is irreversible.

Before I proceed to elaborate on the above, which is the main theme of this Paper, I must state at the outset that I have decided to avoid the rather painful and monotonous process of tracing the genesis of the Ethnic Question (or the National Question) in Sri Lanka, as well as attempts taken in the past (ie prior to Indo-Sri Lanka Accord) to resolve it. The reason being that it is well documented and any input that I might make in this regard is bound to be redundant. However, since the Political Party to which I am affiliated (ie EPRLF) identified the Indo-Sri Lanka Accord of July 1987 and the Provincial Council System as the basis for an "interim solution", it is incumbent on me to devote a substantial section of this Paper to that experience as well as experiment - deficiencies and all. Similarly, in view of the EPRLF's direct participation in Parliament-related attempts at seeking a political solution, viz the Parliamentary Select Committee (PSC), I am inclined to think that our experience with the above process is not only

relevant to the theme under discussion, but would also be of some concern and interest to the participants gathered here.

I must also mention here that I do not believe that this Conference would be content with mere academic exercises and abstract formulations. I am of the opinion that ideas are of little use, if they are not within the realm of the possible or lack the capacity to shape events. Whatever ideas that I wish to place before this forum will be constrained by the above self imposed criteria.

It is important to bear in mind that the conjuncture of forces, particularly during the post-July 1983 period, which were internal to Sri Lanka, also created the conditions for external interventions. On the one hand, overt and covert support was extended by the Washington-London-Tel Aviv-Islamabad axis to the Sri Lankan State in its pursuance of a military solution. On the other, New Delhi responding to its own geopolitical concerns in the region, as well as to the emotive nature of the linguistic and cultural affinities between the Tamils of Sri Lanka and the Tamils of Tamil Nadu, took upon itself the role of a mediator. While making it clear to the Sri Lankan Government that a military solution to the ethnic conflict would not be tolerated, New Delhi similarly impressed upon the Tamil Resistance, which had sought an external sanctuary in Tamil Nadu, that their secessionist demand would not be supported either.

Genesis of Indo-Sri Lanka Accord

An All Party Conference was convened in Colombo on the basis of a document, popularly known as the "G.Parthasarathy Proposal" or "Annexure C". The Conference dragged on throughout 1984 and was

abruptly brought to an ignominious end by President J.R.Jayawardena.

This was followed by the "Thimpu Talks", in June and August of 1985, between the Government of Sri Lanka and representatives of the Tamil politico-military organisations, with India extending its good offices as the mediator. The "Thimpu Talks" failed as the Government of Sri Lanka was not prepared to concede anything more than District Councils to the Tamil-speaking People.

The period following the collapse of the "Thimpu Talks" witnessed the intensification of the military option by Colombo, as well as a bloody internecine conflict within the Tamil Resistance, arising out of the megalomaniacal drive for hegemony by the LTTE. It is estimated that the total number of freedom fighters killed by the LTTE roughly approximates the total number killed by the Sri Lankan security forces during the period 1983 to 1987.

The Sri Lankan Government, sensing the weakening of the Tamil Resistance, launched a series of military assaults of genocidal proportions during the period December 1986 to May 1987. Through this action, Colombo also sought to sabotage the "proximity talks" that New Delhi had initiated in May 1986, culminating in what is known as the "December 19 Proposals".

India: From mediator to guarantor

It was under these conditions that India was compelled to change its role from that of a mediator to that of a guarantor and a direct participant in the conflict. The food air-drop, the signing of the Indo-Sri Lanka Accord of July 1987 and the induction of the IPKF, soon after, should be seen in the above context.

The Indo-Sri Lanka Agreement basically sought to ensure the following:

- (1) The unity and integrity of Sri Lanka;
- (2) Provincial Autonomy to the Tamil-speaking People;
- (3) Security concerns of India, articulated through the annexure to the Accord;
- (4) The physical security and safety of all communities inhabiting the North-Eastern Province.

The Government of India, in addition to being the co-signatory, was entrusted with the task of underwriting and guaranteeing the implementation of the Accord.

Diplomatic Breakthrough

The Indo-Sri Lanka Accord was hailed as a diplomatic breakthrough by leaders of most countries - although not all of them, particularly the Western countries, were overly pleased with India's role as the guarantor. However, in Sri Lanka, the then Prime Minister R.Premadasa and the Sinhala chauvinist coalition displayed open resentment. As for the left and social democratic alliance in the South, the Accord was welcomed.

Similarly, all Tamil politico-military organisations accepted the Accord, despite certain deficiencies such as the "referendum clause" which made the merger of the Northern and Eastern Provinces conditional, and agreed to lay down their arms. The enthusiastic support from the Tamil-speaking People was overwhelming.

The LTTE requested for and received "financial incentives" from the Government of India, including "pride of place" in the proposed Interim Administration. Yet in a matter of weeks, the LTTE reneged on its promise to support the Accord and decided to take on the Indian Peace-Keeping Force (IPKF) which had been inducted to supervise a peaceful transition. The action of the LTTE compelled the IPKF to commence operations to disarm the LTTE through the force of arms, leading to an abrupt end to the euphoria that the Accord generated amongst the Tamil-speaking people. Thus, started a new phase of deprivation, destruction and death.

History will expose the nature of the forces at work, external as well as internal to the LTTE, that prompted it to make a round-about turn and repudiate the agreement.

The 13th Amendment

Following the Indo-Sri Lanka Accord, the Sri Lankan Constitution of 1978 was amended to establish the Provincial Councils (ie the 13th Amendment). The Provincial Councils Bill gave special significance to the North-Eastern province by recognising the merger, subject to a referendum to follow within a year. While the Tamil People and Polity welcomed the recognition of the North-Eastern Province as the historical and traditional domicile of the Tamil-speaking People, the referendum clause was viewed with extreme apprehension and dissent.

The 13th Amendment to the Constitution, further, spelt out the devolution package to the temporarily merged North-Eastern Province. However, it must be noted that the Tamil polity was not consulted as regards the 13th Amendment, despite the stipulation in the Accord that all residual matters of a contentious nature; which were left unresolved in

the "proximity talks" mediated by the Government of India during the period May to December 1986, be resolved with the parties concerned. But the J.R.Jayawardena Government went to the extent of concealing the Draft amendment and the Bill till they were tabled in Parliament.

In addition, the 13th Amendment was found to have glaring inadequacies. Appendices to the Provincial List of powers took away from the Provinces what had been devolved under the main text. Similarly, entries in the Concurrent List was made to supersede powers devolved by the Provincial List. The Governor of the Province, who is a nominee of the President was bestowed with excessive powers. Many matters that should have been enshrined in the Constitution were deliberately relegated to the Provincial Council Act which was only a subordinate legislation.

This was the situation in which the EPRLF and its allies came forward to contest the elections to the North-East Provincial Council and form the Provincial Government - despite the deficiencies in the 13th Amendment to the Constitution. The objective was to at least attempt to create an environment of Peace and Democracy on the basis of which the potentials inherent in the Accord and the 13th amendment could be further consolidated and improved upon in practice. But this was not to be, as we shall see later.

Some Problems Pertaining To The 13th Amendment:

A. Structural

As mentioned earlier, one of the glaring features of the 13th Amendment to the Constitution, which also contains the seeds of its ineffectiveness, is the

overloading of the Concurrent List. This enabled the Centre to take away the powers devolved to the Provinces by interpreting the Concurrent List to its advantage. This was made possible by the arbitrariness built into the Concurrent List, as well as, inertia and resistance from the bureaucracy which had got used to functioning under conditions of centralisation and directives from the Centre.

What was even more pernicious were the various appendices to the 13th Amendment on crucial and contentious matters such as land and law and order. Under the guise of providing explanatory notes, the Appendices negated the Provincial List and arrogated to the Executive Presidency and the Central bureaucracy absolute control over the subjects in the Provincial List. For instance, on the question of land and land alienation, the Executive Presidency was explicitly stated as the sole power that would decide on the alienation or disposition of State lands.

The most extreme manifestation of the structural defects in the 13th Amendment is, the "blank cheque" given to the Centre and to the Executive Presidency under the heading "National Policy" which, theoretically and in practice, makes it possible for the Centre to make inroads into virtually every subject devolved to the Provinces. And needless to say, this lacunas has been abused to maximum advantage by the Executive Presidency.

B. Subversion:

In addition to the above instances of structural defects in the 13th Amendment, the duly elected North-East Provincial Government, which had to shoulder the burden of implementing the 13th Amendment, had to face outright subversion by the Centre.

Politically, this included the refusal, by the Central Government in Colombo, to recognise the fact that the North-East Provincial Council was only the Provincial Legislature and that its executive arm was the Chief Minister and his Cabinet of Ministers - which together comprised the Provincial Government. Despite efforts taken by the EPRLF-led Provincial Government to impress on the Centre the realities of devolution, the dice was heavily loaded against devolution to the Tamil Province right from the very inception.

The withdrawal of the EPRLF (to be discussed later in this paper) and the subsequent suspension of the North-East Provincial Council, however, did not lead to any improvement in the climate. On the contrary, the absence of a Provincial Government for the Tamil-speaking People in their historical place of domicile, removed all pressure points on the Centre, since the remaining Provincial Councils, in areas outside the North-East, were in effect appendages of the Centre and the ruling party.

Anti-devolution policy

Further, contrary to sanctimonious claims of the late President Premadasa that he was committed to the 3 Cs (ie Consultations, compromise and Consensus) and not mandated to unilaterally implement any proposal, the Premadasa regime had in fact formulated a policy that was anti-devolution aimed at totally dismantling the 13th Amendment to the Constitution. The most glaring of the anti-devolution policies of the UNP Government was to arrogate for itself matters pertaining to local government, which is a devolved subject. The haste with which the Divisional Secretariats were established by the Presidential Secretariat and open declarations of intent that the powers of the Provincial Councils shall be further devolved to the Pradeshiya Sabhas was, not only an

act of deceit, but made a mockery of the very process of devolution. As a matter of fact, the Government had ceased even thinking about devolution - the populist rhetoric being "taking the Government to the People".

Here I wish to emphasise that devolution as a solution to the Ethnic Question should not be confused with decentralisation. What our people (ie the Eelam Tamils) seek primarily is not proximity and accessibility to the Central Government through administrative decentralisation, but devolution along the lines of Regional Autonomy that would ensure to them their security, identity and socioeconomic advancement. Issues pertaining to decentralisation, local government, grass-roots institutions etc are matters that each Provincial Government will have to decide, depending on its needs and compulsions.

It must also be emphasised that the 13th Amendment, despite its structural defects, was an adequate basis on which to build-up a structure of devolution had it not been so crudely subverted by the Centre, as highlighted above.

Destabilisation of N-E Provincial Council

But the most dastardly form of subversion was the destabilisation of the North-East Provincial Government through extra-constitutional and military means, including the unleashing of LTTE-terror. The Premadasa regime's decision to form a nexus with the LTTE was aimed at destabilising and dismantling the EPRLF-led North-East Provincial Government, in addition to exerting pressure on the IPKF to withdraw. This policy was clearly a manifestation of an anti-Indian and an anti-Tamil bias of the Premadasa regime and the Sinhala chauvinist caucus. The LTTE which was being badly battered by the IPKF at that time, including the direct

challenge to its self-proclaimed status as the "sole representative" of the Eelam Tamils by the EPRLF-led Provincial Government, grabbed the opportunity.

At the same time, the newly installed V.P.Singh Government in New Delhi, carried away by its "good neighbourliness" project, as well as its closeness with the pro-LTTE Karunanidhi-led State Government in Tamil Nadu, was in no mood to take the Indo-Sri Lanka Accord seriously.

Constituent state assembly

On 1st March 1990, the Chief Minister of the EPRLF-led North-East Provincial Government moved a resolution which, in effect, intended to convert the Provincial Council into a Constituent State Assembly for the purpose of drafting a Constitution of the Eelam Democratic Republic. The actual Declaration of Independence was to take effect the following year, ie 1st March 1991, in the event of the Sri Lankan Government failing to implement the 19-Pt Charter. The 19-Pt Charter basically spelt out the necessary conditions that had to be satisfied to enable the Tamil-speaking People of Sri Lanka to exercise their right of self-determination within a united Sri Lanka. These included matters such as devolution of powers, colonisation and law and order.

The EPRLF proposals also spelt out the modalities for the formation of an interim provincial government, for a period of one year, to be followed by elections - subject to the implementation of the 19-Pt Charter. The EPRLF in this document offered to resign all its 38 seats in the 71 Member Provincial Council and make way for the LTTE. However, it insisted that fresh elections should be held in March 1991, after all devolved powers had been extracted from the Centre by the Interim Administration. These proposals were handed over to the Tamil Nadu Chief Minister,

Mr.Karunanidhi, by a delegation of EPRLF in Madras. Unfortunately, Mr.Karunanidhi was not prepared for any adjustment that did not give the LTTE the "sole" pride of place. The EPRLF was not prepared to oblige and as a result the negotiations collapsed.

Soon after, the EPRLF leadership dispersed to various parts of the island, as well as to external sanctuaries, in order to avoid any unnecessary bloodshed arising out of an internecine conflict with the LTTE and armed confrontation with the Sri Lankan security forces.

The fate of the first elected Provincial Government of the Tamil-speaking People was, thus, sealed due to extra-constitutional adventurism by Colombo, opportunism by LTTE and the reversal of its commitments by Delhi.

The Parliamentary Select Committee Fiasco:

Following the collapse of the All Party Conference(APC), which was initiated by the Sri Lankan Government to accommodate the LTTE during their "honeymoon" in 1989-90, the Government took the decision to initiate yet another process.

Accordingly, a motion was moved in Parliament by Mr.Mangala Moonesinghe of the opposition Sri Lanka Freedom Party(SLFP), clearly in consultation with the Government, to set-up a Parliamentary Select Committee(PSC) to seek ways and means of resolving the ethnic problem. This motion was unanimously adopted by Parliament on 9th August 1991 and the PSC commenced its sittings on 20.11.91. The choice of Mr.Mangala Moonesinghe as the Chairman of the PSC was inevitable given the support he enjoyed from the members of ruling United National Party(UNP) at the instance of the President himself.

It was clear from the inception that the terms of reference of the PSC, as well as its composition, was biased against the Tamil interests. For instance, the earlier formulation of the terms of reference which referred to the need for a political solution to the "National Question" was amended by Mr.Mangala Moonesinghe to read, "to arrive at a political solution to the question involving the devolution of power to the Northern and Eastern Provinces". By this, a bias in favour of de-linking the presently merged North-Eastern Province was made explicit.

Similarly, the composition of the PSC which had a total membership of 45, was weighted decisively in favour of the Sinhala Parties, with the ruling UNP having an absolute majority. As a result, the PSC, dominated by Sinhala Parties, lacked sensitivity towards the legitimate grievances and aspirations of the Tamil-speaking People. This was amply demonstrated by the low turn-out members at the sittings of the PSC, often, resulting in the Chairman having to send out the personnel in his Secretariat to round-up sufficient members to ensure the quorum of 14.

Despite the above limitations, the 5 Tamil Parliamentary Parties represented in the PSC (ie the EPRLF, TULF, ENDLF, TELO and EROS), as well as the 2 Tamil Parties not represented in Parliament (ie PLOTE and ACTC), decided to extend their full cooperation to the PSC, in what was seen as the last chance for a political solution to the ethnic question. Accordingly, the Tamil Parties proceeded to place their proposals individually before the PSC and also sent their respective delegates to the PSC in response to the invitation by the Chairman to make their oral submissions.

In addition to reiterating their expectations of the PSC, the 7 Tamil Political Parties, in a Joint

Memorandum of 22.4.1992, stressed on the need for a unified politico-administrative entity for the permanently merged North-Eastern Province as a basic prerequisite for a broadly acceptable solution.

It must be noted that while the Tamil Parties were engaged in this exercise, none of the major Sinhala Political Parties, including the ruling UNP and the opposition SLFP, had come out with their proposals before the PSC. Despite this, the 7 Tamil Parties further elaborated on their proposals and formulated what is now commonly termed the 4-PT Formula. This was given wide publicity in the media.

In addition, the Tamil Parties, following a meeting with the President and leading members of the ruling UNP, met the main Opposition Parties, the SLFP, DUNF, CPSL, LSSP and the NSSP, in an attempt at forging a Tamil-Sinhala consensus on the basis of the 4-PT Formula. Except for the NSSP, all the other Southern Political parties were either non-committal or non-supportive of the 4-PT Formula. The 4-PT Formula was also endorsed by the CWC and formally placed before the PSC on 17th June 1992.

Two distinct provincial councils

Coincidentally, on the very same day, the Chairman of the PSC, Mr.Mangala Moonesinghe, circulated what was termed a "Concept Paper" which provided for two distinct Provincial Councils for the Northern and Eastern Provinces, respectively. Further, it suggested an "Apex Assembly" whose powers and structure were left ambiguous and vague.

The 7 Tamil Political Parties and the CWC responded separately to the "Concept Paper" expressing dissatisfaction at the proposals contained in it. Following this, some of the Tamil political parties, including the EPRLF and TULF, held informal

discussions with the Chairman of the PSC and his advisory panel, on ways and means of narrowing the differences in relation to the unit of devolution. It appeared, at these discussions, that the Chairman was agreeable to substantial devolution to the merged North-Eastern region, while providing some institutional arrangements to safeguard the interests of the minority Sinhalese and Muslims in this region.

However, yet another surprise was sprung on the Tamil Parties, when at the PSC Meeting of 14.10.92, the Chairman circulated what was termed "An Option Paper". The "Option Paper" was just an elaboration of the earlier "Concept Paper" and failed to reflect the inputs that the EPRLF, TULF and some other Tamil parties had suggested in the earlier informal discussions with the Chairman and his advisory panel.

The 7 Tamil Parties and the CWC, finding the "Concept Paper" to be inadequate, responded by rejecting it as not constituting a basis for negotiations. The height of perfidy was when a proposal of Mr.K.Srinivasan, Member of Parliament of Jaffna District, who had earlier been expelled by the ENDLF, was floated as a proposal and circulated at the PSC Meeting of 14.11.92. The proposal sought to "compensate" the de-linking of the presently merged North-Eastern Province by replacing the present unitary constitution with a federal one. At this meeting, the Chairman, Mr.Mangala Moonesinghe, announced that Madame Bandaranaike had verbally extended her support for the "Srinivasan proposal". At which point, Mr.Hameed, a senior Cabinet Minister, intervened and assured that the ruling UNP would likewise back the proposal.

However, at the PSC Meeting of the 11th December, on the basis of a hand-vote called by the Chairman, the majority (including members of the UNP and SLFP)

voted for just Point 2 of the Srinivasan proposal, which refers to "de-linking", while rejecting the proposal to convert the existing unitary constitution into a federal one.

On 14th December, the Tamil political parties issued a press release giving an elaborate account of the manner in which the PSC had deviated from the tasks that was originally intended and how it had consistently failed to recognise the legitimate grievances and aspirations of the Tamil People.

Almost on cue, the Chairman of the PSC, in a note to the Speaker of Parliament on 16.12.92 indicated that a "majority decision" was reached to de-link the presently merged North-Eastern Province and to devolve powers to these two distinct units along the lines of the Indian Constitution. It was also announced that an Interim Report would be submitted in due course.

The CWC, in view of these developments, decided to dissociate itself from partaking in any future proceedings of the PSC. The EPRLF and TULF, despite these provocations and intransigent conduct of the Sinhala majority Parties, opted to wait for the Interim Report before deciding on the future course of action.

On 11.1.93, at the meeting of the PSC, the Chairman circulated what was called a "Draft" Interim Report. This was basically an elaboration of the earlier note that was handed over to the Speaker and reflected a purely Sinhala sectarian opinion, disregarding the Tamil consensus.

Accordingly, the EPRLF took the decision to dissociate itself from the PSC and convened a meeting of all Tamil Political Parties on the same day. At this Meeting, unanimity was reached that the Tamil Political Parties should reject the so-called "majority

agreement" and that a written response be forwarded. In addition, the Tamil Political Parties represented in the PSC took the decision to dissociate themselves from any future deliberations of the PSC.

Following this decision, the PSC has meandered on without any purpose - not to mention a quorum! The real agenda of the PSC was aptly exposed by the Tamil political Parties when in one of their joint submissions they pointed out that:

"...It is now abundantly clear that the entire process of the PSC had been designed to give effect to the promise, contained in the UNP manifesto for the Presidential Elections of 1988, to demerge the presently merged North-East Province. This design suited the SLFP as well. Federalism, hence, was only a bogey floated by these two parties to achieve these ends.

During the entire process of the PSC, there was no serious consultation, no sign of any compromise by the UNP or the SLFP and certainly no consensus with the Tamil Parties on any matter. History will, instead, record that consultations were purely diversionary and compromises blatantly farcical and dishonest. And, the resulting "consensus" was nothing but the unilateral imposition of the narrow, chauvinist outlook of the major Sinhala political parties on the long suffering Tamil People."

The Fiasco And The Tragedy Of Militarisation:

The pursuit of a military solution to the National Question in Sri Lanka, whether be it by the State or the LTTE, following the undermining of the Indo-Sri Lanka Accord, has been far from decisive for the two protagonists. From a strategic view-point, it has also failed to create the conditions for negotiations, on the basis that the "enemy has been softens sufficiently" - or from the propagandist viewpoint "negotiating

from a position of strength". What it has led to, instead, is a military stalemate characterised by spiralling violence against noncombatants, terrorism, brutalisation of human values, deprivation, destruction and death.

When viewed from the interest of the State, the amount allocated for defence for the year 1993 (ie US\$ 510million) cannot be sustained indefinitely. This is evident from the fact that the amount is roughly equivalent to 60% of the aid approved under the Paris Aid Consortium. Or when viewed from a social welfare perspective, the activation of the war machinery is directly reflected in a severe resource constraint as manifest in the fact that expenditure for general public services fell from 13.5% in 1990 to 7.4% in 1991; for social services from 11.3% to 9.1%; for Education from 3.9% to 3.6%; for health from 4.8% to 3.4%; for Housing from 1.9% to 1.6%.

The most recent debacle faced at Janakapura and in the naval battles off Point Pedro and the Killali lagoon is a clear indication that the State war machinery, despite the massive expenditures, is not delivering the goods. The high rate of desertions, compounded by the low turnout at the recruiting centres is also indicative of low morale at the level of the rank and file. This is hardly surprising given the high casualty rate and inadequate facilities. Further, it still remains to be seen whether the dismantling of the Joint Operations Command (JOC) and changes in the lines of command, as well as personalities, is purely cosmetic or not.

The response by the State war machinery to its inability to handle the LTTE dominance in the North has taken the classic form of punitive actions, mainly through aerial bombardments and artillery fire, resulting in civilian casualties and destruction of property. The rate of effective strikes against LTTE's

military installations does not appear to be commensurate with the fire-power that has been unleashed against them. Similarly, restrictions on the movement of certain essential commodities, aimed at preventing the LTTE from servicing its own war machinery, has only caused deprivations amongst the civilians with the LTTE siphoning away what remains or is allowed in.

On the other hand, the LTTE is not sitting pretty either - despite tall claims by its propaganda machinery. Although the claims of the State that 95% of the Eastern Province had been cleared of the LTTE lacks credibility and substance, it cannot be denied that the mobility of the LTTE cadres in the Eastern "theatre" is restricted. Again, despite the seizure of massive stocks of arms and ammunitions from the Sri Lankan security forces, the fact still remains that the LTTE faced a major debacle when their ships ferrying arms, purchased through their international dealers and patrons, were either seized or blown-up in recent times. The loss of a "rear base" (ie the land and coastal sea belt off Tamil Nadu), following the brutal assassination of Rajiv Gandhi, has undoubtedly imposed a severe strain on the smooth functioning of LTTE's own war machinery.

As in the case of the Sri Lankan war machinery externalising its impotence by turning against civilian targets, not to mention the arbitrary arrests in Colombo, the impotence of LTTE's own war machinery, barring a few sensational operations, is reflected in the intensification of LTTE's innate fascistic tendencies, mercenarization and mafiaism. Abductions, extortion, conscriptions, arrests and killings of dissidents have increased. Reports also indicate serious ruptures within the organisation.

What needs to be emphasised here is that "realpolitik" tends to be defined by self-appointed

"peacemakers" purely in militaristic terms and power equations - where power is determined by the capacity to terrorise and destabilise. this tendency has only served to exacerbate the on-going conflict, while detracting from the more substantive and contentious issues that characterise the Ethnic or the National Question in Sri Lanka. In this context, the following extract from Report No 9 of the University Teachers for Human Rights hits the nail squarely on the head:

"Legitimising unhealthy forces just because they have the destructive power, and do not have any inhibition in directing it against any one, is against the interest of humanity at large.....Is it imagined that for the Tamils their identity, liberation, happiness, and fullness of life can be realised in an extremely violent, xenophobic, fear-stricken and undemocratic regime provided that the dictatorship to which they must submit is exclusively Tamil? When such individuals and peace organisations claim that they can deliver the goods, they show very clearly their naivete, and the contempt they have for the people here. If they can consistently and courageously expose the unhealthy tendencies among the protagonists, namely the State, the LTTE, other armed groups and extreme forces in the south, as well as spend some time to understand the real issues and complexities, then they can do much more to achieve peace in this land".

The Need For A Clear Identification Of The Problem And Its Genesis:

It is clear from the earlier sections that there is nothing intrinsically superior or inferior when it comes to either externally-engineered or internalised processes of conflict resolution. What needs to be posed first is the question as to whether the nation-

building process in Sri Lanka will continue to be characterised by the preeminence of Sinhala-Buddhist exclusivism. Or whether conditions can be created where the nation-building process will traverse the path of Secularism, Pluralism and Egalitarianism. Unfortunately, History and contemporary realities appear heavily loaded in favour of the former scenario- ie Sinhala-Buddhist exclusiveness.

At the time of Independence from British colonial rule neither the Tamil nor the Sinhalese ruling classes and their political representatives in the colonial legislature, created on the basis of the Donoughmore Reforms of 1931, had a clear vision of the challenges and tasks associated with nation-building.

On the one hand, there were some Sinhala and Tamil representatives in the State Council who did agitate on "national" issues such as the demand for legislation to curb usurious money lending and protective tariffs for local industries. Although these demands articulated the class interests of the nascent national bourgeoisie, they cut across the ethnic divide - and displayed many progressive traits conducive to the process of nation-building. On the other hand, the Sinhalese and Tamil political representatives of their respective bourgeoisie in the State Council also displayed class solidarity which superseded "national interests", when faced with the rise of the organised working class movement.

However, in the absence of any serious threat to their class interests, the dominant tendency was towards "ethnic" mobilisation and the increased usage of ethnic parlance and idioms. In essence, then, there was lacking a national dialogue on visions of a post-colonial polity and civil society which addressed the

problem of nation-building based on secularism, pluralism and egalitarianism.

Sinhala Buddhist Exclucivism

When there did emerge a collective identity of sorts in the post-colonial era, it was exclusivist in form and content - namely a Sinhala-Buddhist identity that sought to exclude from the processes of nation-building other forms of identities. What needs to be emphasised here is that the search for a collective identity, which was at the same time parochial and non-secular, was perversely given legitimacy through political, administrative and constitutional changes. This tendency was explicitly manifest in the spheres of citizenship rights, language rights, religion, state-aided settlement schemes, education and employment. Some glaring instances were the disfranchisement of the "plantation" Tamils, the "Sinhala Only" Act of 1956, the 1970 "standardisation" that excluded a large section of Tamil students from higher education, and attempts at "decentralisation" which basically amounted to the parcelling-out of political patronage where the national minorities had little space to manoeuvre.

In addition, the 1972 "Republican" Constitution gave pride of place to Buddhism as a state religion and removed the minority safeguard clause from the preexisting Sousa Constitution. The Second "Republican" Constitution of 1978, in addition to reaffirming the above, enshrined into the Constitution the sanctity attached to the concept of a "unitary" state and an highly centralized and an all powerful Executive Presidency. The above developments further contributed towards undermining the scope for experimentation on forms of regional autonomy and federalism as a means of resolving the National Question.

In due course, non-violent forms of struggle for constitutional and political reforms by Tamil parliamentary parties gave way to extra-parliamentary and violent forms of struggle for secession. The demand for "Eelam" came to symbolise the collective identity of Tamil nationalism in Sri Lanka vis a vis Sinhala-buddhist exclusivism. It needed the Indo-Sri Lanka Accord and the 13th Amendment to the 1978 Constitution, which amongst other things addressed the question of security and "devolution" of powers to the Tamil-speaking People, to convince the Tamil polity to reconsider their demand for secession. However, as I had elaborated in Section 3 of this Paper, problems of a structural nature as well as outright subversion by the State has once again brought the National Question to the forefront - notwithstanding the the APCs and the PSCs.

Hence, today we find ourselves in a situation where the processes of nation-building in Sri Lanka is not only far from complete, but the parochial and sectarian manner in which it is being pursued has in turn only served to intensify the Tamil Question - rather than resolve it. In my opinion this then constitutes the essence of the crisis in Sri Lanka.

A Formula For A Political Solution To The Ethnic Conflict: *Democracy, Devolution and Demilitarisation*

It is abundantly clear that without the restoration of democracy, substantial devolution and demilitarisation, it is meaningless to be discussing about a political solution to the ethnic conflict in Sri Lanka. Let me elaborate.

A. Democracy

The level of democracy that exists in a given society is determined by the political system and structures

that governs it, as well as the level of socioeconomic development. The demand for restoration of democracy, if it is to be potent enough to shape events, obviously, cannot be linked solely to socioeconomic development which is a long-drawn and an uneven process. Hence, any mass struggle for restoration of democracy has to necessarily focus on evolving a political system that is secular, pluralist, egalitarian - and most importantly accountable to the People. And such an evolution necessarily implies constitutional reforms. Hence, the need of the day, if not the hour, is a movement for constitutional reforms that must also immediately and simultaneously address the legitimate grievances of the Tamil-speaking People.

In addition, the present crisis has other manifestations which need to be addressed simultaneously. These manifestations and inter-connections are clearly brought out in a draft document recently circulated by the Movement for Racial Justice and Equality (MIRJE)

"...continuing rule under emergency regulations that bypass the normal procedures of democratic legislation, the use of the emergency for purposes of normal governance, the denial and/or restriction of democratic rights including the rights of free expression at both political and cultural levels, violations of human rights of a magnitude that has attracted the concern of international and UN human rights organisations and, serving as the basis for the maintenance of the situation of emergency, an ethnic conflict that has resulted from the denial of democratic rights to the largest minority ethnic group - a conflict that has reached the level of civil war."

Given below is a list of Constitutional Amendments which I wish to place before this Conference for further discussion:

1. Sri Lanka to be declared a multi-ethnic State.

Amendment: The following article to be inserted immediately after Article I and shall have effect as Article 1A of the Constitution:

"The Republic of Sri Lanka is a multi-ethnic State".

In addition, Article 18 of the Constitution to be amended as follows:

"The official languages of Sri Lanka shall be Sinhala and Tamil".

2. Demarcation of Sri Lankan territory on the basis of "Provinces" as opposed to "Districts".

Amendment: Article 5 to be amended accordingly.

In addition, the Northern and Eastern Provinces shall be constituted as an Autonomous State within the Republic of Sri Lanka. The Autonomous State shall have its own State Government with a legislative assembly, Governor, Chief Minister and A Council of Ministers.

3. Sri Lanka to be declared a Secular State.

Amendment: The Title to Chapter II of the Constitution to be amended with "Buddhism" being replaced by "Secularism" and Article 9 to be amended thus: "The Republic of Sri Lanka shall be a Secular State with every person being entitled to the freedom to have or to adopt a religion or belief of his/her choice. No special privileges shall be bestowed on one religion to the detriment of other religions."

4. The Executive Presidency to be abolished and replaced by a political system where the Prime Minister. The leader of the largest party in the legislature, shall be the Head of Government.
5. The President of the country shall be the Head of State to be elected indirectly by an electoral college. In order to ensure national integration, there shall be an office of a Vice-President who shall not belong to the same ethnic group as the President.
6. A Second Chamber of Parliament shall be created to reflect and represent the interests of national minorities.

In addition to the above, primacy should be given to the safeguarding of human rights which is inseparably linked to democratic rights as well as the rights of national minorities.

B. Devolution

A federal state structure or a federal polity, compared to a unitary constitutional is undoubtedly a more superior, rational and an equitable formula for resolving the Tamil Question. However, our primary concern is the content rather than form. Hence, we should be prepared to consider any proposal that confers/grants Regional Autonomy to the Tamil-speaking People and the Region, to be called the North-eastern Autonomous State, which constitutes the historical habitat and traditional domicile of the Tamil-speaking people of Sri Lanka. Further, since the majority of the Muslims of Sri Lanka, who linguistically are Tamil-speaking, live outside the North-Eastern Province, the rights of the Muslims in the Autonomous State should be guaranteed by ensuring that real powers are enjoyed by local

authorities (or an amalgam) in areas with substantial Muslim majority within the Autonomous State.

In the meantime, all steps must be taken to ensure that the devolution package manifest in the 13th Amendment to the Constitution, despite its deficiencies, is not subverted, undermined or eroded either through administrative fiat or chicanery. For this purpose, we refer to a document prepared by the EPRLF -led North East Provincial Government which identified the chasm between the theory and practice of the 13th Amendment to the Constitution.

On the question of devolution, it is imperative that the unit of devolution constitute a unified politico-administrative entity for the merged North-Eastern Province. It must not be forgotten that the Indo-Sri Lanka Accord, (on the basis of which the Tamil politico-military organisations laid down arms, joined the political mainstream and set-aside the demand for secession), in addition to recognising the unity and integrity of Sri Lanka also clearly posited the reality that Sri Lanka also clearly posited the reality that Sri Lanka is a multi-ethnic, multi-lingual society within which the Northern and Eastern Province constituted the historical habitat of the Tamil-speaking People.

It must further be borne in mind that the opposition to the demerger of the presently merged North-Eastern Province does not stem purely from an abstract obsession with the "traditional homeland" theory. There are politico-administrative, socio-economic and security compulsions as well. If the Tamil-speaking People and the Tamil polity that represent them are to settle for a political solution within a united Sri Lanka, then they must be assured of a political system that guarantees to them their identity, security and socioeconomic progress. This also necessitates rational utilisation of the resource base, decentralised administration and, most

importantly, real devolution of powers that are irreversible. The on-going attempts at fragmentation militates against the above - and by implication militates against the resolution of the National Question within a united Sri Lanka.

Having said this, it must also be clarified that there is nothing sacrosanct about the existing provincial boundaries. If the Sinhala polity is prepared to concede an Autonomous State to the Tamil-speaking People to be governed by a unified politico-administrative entity, then the Tamil polity should be prepared for readjustment of the existing boundaries of the North-Eastern Province so that Sinhala-majority areas could be annexed to other Provinces. What I have mentioned above is a statement of principle - the rest is a matter for negotiations.

C. Demilitarisation

As I had indicated in an earlier section, a decisive military victory by the LTTE is out of the question - and by the State highly improbable. In any event, leaving aside aims and tendencies, it must be clearly understood that nay attempt at a military solution to the Tamil Question is, neither, desirable nor feasible.

Under these conditions, a protracted military encounter, can only lead to a bloody stalemate - with the innocent, non-combatant civilians being the main victims. An immediate cessation of armed hostilities is, therefore, necessary to halt the spiralling violence arising out of the ethnic conflict.

However, I wish to stress here that while issues relating to ceasefire, buffer zones etc are matters that concern only the two warring parties (ie the LTTE and the Sri Lankan Government), the search for a political solution and its implementation ceases to be the sole concern of both. Further, it is imperative

that hegemonistic pursuits and tactical ploys to gain time and space are not permitted. More importantly, the search for a political solution should not be confined purely to those who wield arms or demonstrate the capacity for destruction.

To sum up, then, the mere cessation of hostilities should not be confused with a political solution.

D. On The Need For A North-East Interim Council

It is indeed unfortunate and ironic that the scheme of devolution and the provincial council system, which was formulated primarily as a means of offering the Tamil Polity and the Tamil-speaking People Regional autonomy, as an alternative to the demand for an Independent "Eelam", should lie dormant in the North-East.

Be that if may, it is imperative that we look ahead into the future, rather than get bogged-down with memories of a bitter and bloody past. The immediate task, then, is to allow the provincial council system and the scheme of devolution to become operative in the North-East - rather than allow the "Governor's Rule" to continue without any direction or purpose. It is essential that the Tamil-speaking People and their elected political representatives participate directly in the process of provincial representatives participate directly in the process of provincial autonomy, if the nation-building process in Sri Lanka is to proceed on the basis of unity and equality.

At the same time, it is clear that conditions do not exist yet for the holding of free and fair elections in the North-East, in view of the security situation as well as the unfinished task of refugee resettlement and rehabilitation. Further, it is impossible for the Tamil political parties to campaign in any elections in the North-East without offering the Tamil-speaking

People a political package and a concrete programme for their socio-economic advancement. Such a package and programme remains, to date ever elusive despite protracted negotiations for the past 3 years.

We, therefore, propose the immediate formation of an Interim Council for the North-East with the objective of involving the Tamil-speaking People and their political representatives in the following tasks.

- (1) The full implementation of the 13th Amendment to the Constitution and in any negotiations pertaining to constitutional reforms, enhancement of devolution package etc;
- (2) The rehabilitation and resettlement of persons displaced as well as economic reconstruction and development;
- (3) Creating the conditions for the holding of free and fair elections in the North-East.

Modalities pertaining to the actual composition, functions and powers of the proposed Interim Administration may be worked out in consultation with all parties concerned.

Some concluding remarks

As I had indicated in the Introduction, whatever ideas that I have placed here is not necessarily the ideal. Since we are gathered here to deliberate on the ways and means of breaking the ethnic impasse and to break-out of the spiralling violence that has shaken the Sri Lankan polity and civil society, I do not believe that a theoretical or an academic approach to the Ethnic Question would have been appropriate. It is in this context that I place this Paper before this forum.

However, I must hasten to add that the on-going ethnic conflict is only a manifestation of a problem with much wider ramifications - namely the exclusion of the national minorities in the task of nation-building. If Eelam later became the symbol of collective identity and resistance against the onslaught of Sinhala chauvinism, it is because the existence of a National Question in Sri Lanka was never recognised. Hence, the resolution of the ethnic conflict, which undoubtedly will go a long way in countering the spiralling violence, is no guarantee that the problem will not recur. Similarly, Democracy, Devolution and Demilitarisation can only constitute the basis for the resolution of the Ethnic Conflict - not the National Question. The resolution of the National Question, on the other hand, involves a fundamental social transformation in Sri Lanka which, in my opinion is outside the realm of the possible, in the immediate future, and, therefore, outside the scope of this Paper.

FOOTNOTES

1. See Ketheeswaran Loganathan, "A Note On The Thirteenth Amendment To The Constitution And Problems Of Devolution" in Rohan Edirisinha(ed) Provincial Councils And Local Government: Their Role In Strengthening Liberal Democracy, 1992.
2. See An Assessment Of The Parliamentary Select Committee - Its Scope And Limitations, Department of Information EPRLF, Colombo Committee (PSC) and the main contentious issues, including joint responses by the Tamil political parties.
3. The 4-PT Formula placed by the Tamil political parties before the Parliamentary Select Committee are:

- (1) Permanently merged North-Eastern province shall be the unit of devolution;
- (2) Substantial devolution of power ensuring meaningful Autonomy to the devolved unit;
- (3) Institutional arrangement within the larger framework of the unbifurcated North-Eastern Province for the Muslim community ensuring its cultural identity and security;
- (4) Sinhalese shall enjoy all the rights that other minorities have in the rest of the country.
4. See Statement Of Tamil Political Parties Regarding The Deliberations At The Parliamentary Select Committee On The Tamil Question, 14 December 1992.
5. See "Militarisation in Sri Lanka" in Tamil Information, July 1993.
6. The Trapped People Among Peace Makers and War Mongers, Report No 9 by University Teachers for Human Rights, 18 February 1992, PP 6-7.
7. This section is largely based on a Draft Research Proposal formulated by me in 1989, entitled The Processes Of Nation-Building In Sri Lanka: A Study On Political And Constitutional Reforms In Sri Lanka With Special Reference To The Tamil Question.

*These Constitutional Amendments are based largely on a proposal submitted by the EPRLF-led North-East Provincial Government in 1989. I am also indebted to Dr. Vikneswaran, former Secretary to the Chief Minister, who persisted with formulating proposals during his period of exile.

A POLITICAL SOLUTION TO THE ETHNIC CONFLICT

Javed Yusuf

I have been asked to place before you the Muslim concerns in the context of a political solution to the ethnic crisis in Sri Lanka.

The need for a political solution to the ethnic crisis has once again come in to focus following repeated assertions by the Sri Lankan President that what we have in Sri Lanka is a terrorist problem and not an ethnic one. While there have always been different opinions as to the nature of this problem the question has become of immediate and urgent relevance because of an apparent intensification of the pursuit of the military option by the Sri Lankan State as evidenced by the recent military operations in the North of Sri Lanka.

The recognition of the existence of an ethnic problem was inherent in all the past attempts that were held out as exercises aimed at resolving the problem. The All Party Conference, the Political Parties Conference, the Thimpu talks, the Bangalore talks, the Indo-Sri Lanka agreement and even the recently concluded proceedings of the Parliamentary Select Committee have expressly or impliedly recognised the existence of the ethnic problem. If these were attempts to address a terrorist problem the LTTE should have been made a party to all these exercises.

The United National Party's election manifesto at the General Election of 1977, and the manifesto of the Democratic Peoples' Alliance comprising among others the Sri Lanka Freedom Party and the Mahajana Eksath Peramuna recognised the existence of an

ethnic problem in Sri Lanka. Even the very recent policy statement of the SLFP accepts the position that the Tamil and Muslim communities living in the North and East have just grievances. Thus it is very evident that all shades of opinion across the political spectrum have recognised the existence of an ethnic problem.

The question of whether it is an ethnic problem or a terrorist problem can also be looked at from another angle. If it is purely a terrorist problem then by simply eradicating terrorism, if that is possible, the problem will be resolved. But everyone knows, that the grievances of respective communities will continue to remain as a festering sore. On the other hand if the grievances of different communities are redressed, terrorism will wither away or at best manifest itself in a sporadic way leaving it easier for the state to deal with.

Once the existence of the ethnic problem is accepted then the next question to be addressed is the nature of the ethnic problem. This presentation does not attempt to set out an exhaustive list of the component of the problem, because the perception of the problem defers from community to community and within each community from the extreme to the liberal points of view. The question of state aided colonisation, political structures, implementation of the official language policy, educational policies, employment, allocation of resources for the development of the North and East, are some areas that come immediately to mind. The security of the lives and properties of the minorities has become an area of serious concern since the late '70s.

In identifying the nature of the ethnic problem it is important to realise that the concerns of the Muslim community as well as those of even the majority community, the Sinhalese, should be taken into

consideration. When one talks of a political solution to the ethnic problem, we are really talking of the process adopted to arrive at a solution, rather than the contents of the package that constitute the solution itself.

The process would include sitting down and talking with those representing the varying shades of opinion in the different communities and gradually arriving at the widest possible area of agreement, with regard to the measures that have to be adopted to resolve the problem. It would mean hours of hard and gruelling talk among the different groups. But what is far more important is that all the parties to the process must have a genuine and a honest will to arrive at a solution. The lack of a genuine commitment in the past, so many years on the part of all concerned, has resulted in the whole question being allowed to drift. This process can be reversed only if any future attempts are seriously made.

Another matter that must be remembered if the process of a political solution is to succeed, is that non of the participants must insist on starting with non-negotiable positions. It would be as counter productive for any section of Sinhala opinion to insist that their position eg. that there should be no merger of the North and East, is non-negotiable. It would be for those arguing for a merger to insist that the merger must be accepted before any talks could be commenced. In other words, all positions must be subject to the negotiation process. All this is easier said than done, but there is no other way except the long and arduous process of negotiation.

The next question that arises is as to what the content of the political solution is going to be. While I do not intend to offer any solutions in this presentations will outline some of the options available.

Devolution is generally receiving general acceptance as the most effective way of resolving the problem. While almost all parties are agreed on this, opinion varies on the extent of devolution and the unit of devolution. In this scenario, the question of the merger of the North and east provinces remains a knotty problem to resolve. Both shades of divergent of opinion are fairly adamant on their respective stance. But a re demarcation of the north-eastern province is a suggested compromise.

But leaving aside the pros and cons of merger as viewed from either side of the ethnic divide, it must be stated here, that a merger of north and east goes against the very concept of devolution which is understood as bringing the powers of government closer to the people. This cannot be achieved as a merged north-eastern province will be a very large land-mass. The seat of provincial power, wherever situated, will be very distant from large sections of the population.

Another matter that should be guarded against is a setting up of a community oriented unit of devolution, whether it be for Muslims or for Tamils. If units based on a ethnic grounds are set up, it will further divide Sri Lanka and the different communities will live as compartmentalised regions. This is hardly desirable as the need of the hour is for the communities to live together, and thereby build the understanding among each other.

While devolution of power is a desirable thing and helps to democratise political structures by bringing government closer to the people, it is difficult to believe that the mere exercise of devolved powers will help to resolve the ethnic problem.

What is far more important and one to which much more attention should be given is to take positive

steps to build understanding among the communities. The different communities have to learn to understand and respect each other. The bridges of understanding between the communities have to be built and carefully strengthened. Only then will Sri Lanka become once again a haven of communal harmony and understanding.

The need to solve the ethnic problem has assumed a great urgency. The war is having its toll in terms of loss of human lives and destruction leaving behind a trail of tears. The sons' and daughters' of the people of Sri Lanka be they Sinhalese, Tamil or Muslim are falling victims to this senseless war. All these are visible manifestations of a war that is keeping the country in a perpetual state of anguish and sorrow.

But this war is also having the effect of driving the communities further and further apart without many realising it. What I seek to point out here is that the effects of the war are very visible in terms of loss of lives and destruction. But there are other areas where it is not so apparent and not so visible. But in these areas that danger of the communities remaining apart is very real.

Two examples of these are:

The children who are growing up in the refugee camps. They are bitter with the entire Sri Lankan nation. They are bitter with those who caused their families being uprooted from their homes. They are bitter with the agencies of the state who are not providing them with adequate rations.

The children in the north who are living in the midst of the war only know that after they are being bombed, and many people killed, that people who come from the south, kill them and their people. They

know that when the Air Force comes and drops bombs, many innocent ones get killed.

Equally, the children in the south, the Sinhalese and even the Muslims, only know that there are people in the north who come and cause havoc and cause mayhem in the south. They know that there are people in the north who kill their beloved relations in the army and their bodies come back to the south in polythene bags.

The Muslim children of the east know that there are people in the north who come and kill their beloved ones' as were seen in the massacre in the Mosque at Kattankudi and Eravur.

This is the climate that exists and the knowledge that the children have. They do not understand the intricacies these issues - the real issues. They only know this aspect of the war. Imagine the conditions under which they are growing up. These are the future generations. This is the bitterness that we will sow, we have sowed and the future generation will reap them. Inevitably, the next generation will find the communities are being driven apart more and more.

Coming to a more optimistic note, I believe that notwithstanding all the expressions of racism, chauvinism that is existent, there is a great deal of goodwill among all the communities in the country. And I hope to mention few instances in support of that.

For instance, if you take the incident of 1983, it is true that a small group, an organised group of Sinhalese went about killing Tamil people and destroying Tamil houses. But it is equally true, that large sections of the Sinhalese community and the Muslim community

worked in the refugee camps in Colombo helping out the Tamils who were displaced.

Equally, when the LTTE drove out the Muslims from Jaffna, there was an instance in the Muslim Mosque at Chavakacheri where certain LTTE members sought to take in Hindu Statues into the mosque. There were Tamil people who resisted that and some of them lost their lives. Surely that takes a lot of courage.

This demonstrates the goodwill that exists between the communities. When the LTTE wanted the Muslims to leave Mannar, the people of Mannar, the Tamil Christians and Tamil Catholics of Mannar pleaded with the LTTE saying we have lived with them, there is no need to send them out. But they paid no heed to their voices.

These are some instances of the goodwill that exists among the vast majority of our people. It is this goodwill that the peace lobby has to build on.

Despite the noises made by a small and vocal minority among the Sinhalese community, the majority of the Sinhala people - it is my belief - still are tolerant and if in this tolerance we can build on.

Another example which I wish to cite is one which most of you may probably know. In the emergence of the group called the "Hela Urumaya". This group also represents extreme Sinhala chauvinistic opinion. They held a meeting in the electorate of Bandaragama, the electorate of Mr. Tilak Karunaratna. Mr Tilak Karunaratna is possibly one of the most popular MPs, a very hard working MP who commands a great deal of support.

They held their first meeting at Bandaragama and on a very generous estimate, they could not draw over 2000 people. If Mr Tilak Karunaratna had his own

political meeting I dare say he could draw a larger crowd. Since then the Hela Urumaya has not held meeting anywhere. They have continued themselves to issuing statements to the press. I reiterate that there is great deal to be done to harness the goodwill that exists in the majority community as well as among the minorities.

I do not wish to take much more time, but I thought listening to some of the speeches made earlier today. I thought I might place a point of view particularly for the Tamil community for consideration.

It is my belief that it is high time the Tamil community followed the example of the Muslim community. And I say that not because that I am a Muslim but I believe that politically the Muslims have done the correct thing in being part of the mainstream.

It is high time the Tamil community came into the mainstream without having separate Tamil political parties. The voice of the Tamils must be heard within the mainstream parties. Only then they would be able to help to shape the policies of these national parties, who after all are going to be the parties that would rule the country. There is no point trying to influence them after those parties have formulated their policies, because by then attitudes have hardened. So, it is time to form party you prefer. I think that the same thing goes for the plantation Tamils.

On this note, I wish to state once again that it is the responsibility of those who love peace, who desire peace, like those who have gathered to ensure that a political solution is brought about to the ethnic crisis as soon as predicable.

AN INITIATIVE FOR PEACE

Joe Williams

Rationale

Sri Lanka has experienced over the last ten years a series of bloody convolutions which have had a traumatic effect on the people. The country has experienced insurrection, civil war, intervention by the Indian army, pogroms, internecine killings between groups and persistent violations of human rights. The war between the LTTE and the government continues.

Humanitarian agencies have engaged in relief, re-settlement and rehabilitation work assisting the thousands of displaced people of all communities. Unfortunately the real victims of this war are the voiceless non-combatants often consisting mostly of innocent children, women and elders.

The Social and Economic Development Centre (SEDEC), which forms an integral part of the Justice and Peace Commission of the Catholic Bishops' Conference of Sri Lanka, has in the recent past channelled a considerable portion of its resources to supporting relief and rehabilitation, and resettlement programmes through its diocesan centres in Sri Lanka. While these efforts have helped alleviate the sufferings of tens of thousands of civilians, the protracted war compelled these people to a state of despair and a life of dehumanizing dependency. In order to respond more effectively and to address more concretely the root causes of the internecine conflict, SEDEC sought to promote a proactive stance by embarking on a peace initiative with certain long-term goals and objectives.

The conflict has engulfed the entire island and has claimed the lives of thousands of people, displaced over one million people and wreaked havoc on the nation's political and economic development. To those engaged in the conflict, the voices of the civilian population living in the areas of conflict count for little. SEDEC feels that an adequate response to this state of affairs should be both inter-religious and people-centered, otherwise it will only remain an unattainable peace agenda. It is also felt that such an initiative requires also the active collaboration of other partner agencies which share the same commitment and convictions. It is in this way that this peace initiative is a joining effort undertaken by SEDEC and the Asia Partnership for Human Development (APHD).

Objectives

In an effort to stimulate popular support for peace we felt it was necessary for us to formulate a long-term programme which would address the need to seek alternative paths to peace and efforts which would encourage the Catholic Church and other faith communities in Sri Lanka to join a common peace agenda to stimulate support for peace.

To accomplish these objectives this initiative was divided into three phases involving first a visit to the Philippines by a group of Sri Lankan peace advocates to study the efforts at peace making undertaken by the churches and other concerned groups. The Philippine experience of establishing zones of peace studied to determine its relevance and applicability to the Sri Lankan context.

"Peace Zones are social spaces for dialogue engendering trust and confidence while enabling citizens weary of war and wishing to protect civilians from the consequences of conflict to make their

voices heard. Peace Zones empower community and create solidarity". (Ed Garcia)

The situation in Sri Lanka is more complex than in the Philippines but the thirst for living in peace is common to the people of both countries. Within Sri Lanka itself the situation in the North is different from the situation in the South. For people in the North, the immediate need could well be for a movement calling for the establishment of a "human corridor" to enable people to move about in peace without fear of armed persons. In the East, the need for re-settlement opens an avenue to attempt setting up of "Peace Zones". Concrete needs of the people as defined by the people themselves should form the basis for setting up of zones of peace.

Establishment of Peace Zones will have to be considered as a modest but bold attempt to intervene creatively in peace making.

The next phase was the visit of an international inter-religious delegation to Sri Lanka from 1-20 June to meet with representatives of the different faith communities, ordinary Sri Lankans affected by the conflict and other concerned groups who desire peace.

The Terms of Reference of the International Delegation

- to have discussed with concerned persons and representatives of religious bodies and organizations to pave the way for genuine reconciliation;
- to encourage spiritual leaders in Sri Lanka to play a bridge-building role and to advocate a more proactive stance on calling for peace and reconciliation;

- to commit themselves to sustained efforts, sacrifices and solidarity to create an atmosphere of trust, confidence and freedom to build a future based on the values of justice, human dignity and mutual respect;
- to have dialogue with religious leaders in order to seek alternative paths to peace with the active participation of the people.

What was perhaps most striking for the delegates were the countless stories they heard decrying the senseless violence, displacement of people, and the tremendous waste of both human and economic resources the war has caused. Stories of ordinary Sri Lankans both Tamils and Sinhalesel of all religious persuasions - spoke eloquently of their yearning for peace and a desire for normalcy to return to the country.

In the synthesis and recommendations of the two groups, certain common factors have emerged which are worth highlighting at present:

Role of religions and religious institutions

- Peace Through Religions (Philippino team)

The strong sense of religiousness and particularly the peace-centeredness of all four religions that are professed by Sri Lankans provides a dynamic catalyst for peace within the religious milieu. These religions have, over the years, shaped and moulded the different cultures of Sri Lanka which uphold the value of peace and articulate the necessity of peace through various forms of cultural behaviours.

- Credibility of the Church (Philippino team)
The Church's responsive participation in small scale development projects, relief, re-settlement and rehabilitation programmes transcending religious affinities has earned for the Church a remarkable credibility and acceptance. In addition to this, the Church at the institutional and informal levels has engaged itself in a harmonious process of inter-religious dialogue with almost all religious sectors of Sri Lanka. The Church's initiative has often been received with cordiality and optimism but this salubrious atmosphere has not been exploited to initiate a planned inter-religious dialogue for peace building. The Church's trans-national character is yet another resourceful potential that could be effectively channel Ed both at regional (Asia/Pacific) and international levels to forge a workable programme for peace and national harmony.

- Views of representatives of religions, religious institutions and NGOs in Colombo (international delegation)

All religious communities in different ways have made efforts towards building peace, even though these may have been minority efforts. These initiatives included peace conferences, initiatives to create peace zones, attempts at North-South dialogue programmes, peace walks dating back to the 1960s, peace brigades involving young people at village level and many more.

There was seen to be a great potential for inter-religious work and co-operation but common goals needed to be identified. The support and involvement of Buddhist monks was seen as crucial. It was important that initiatives should come from the Temples. There was a need to

strengthen inter-religious spirituality, to talk the language of love not the language of division. The Archbishop of Colombo noted that the Catholic Church consisted of just 7% of the population. It was therefore essential that programmes for peace be formulated in co-operation with and with the support of the leadership of the Buddhist community.

- Response of Religions (international delegation)

The team believes there is a need for a more proactive role for Buddhist, Muslim, Hindu and Christian communities - working together. Inter-religious co-operation and solidarity should be actively explored and pursued.

There is no basis in the teachings of these religions for division. The rich spiritual resources of people must be harnessed and focused towards building a future where every person could live and grow together in a spirit of love and compassion, equality and freedom, brotherhood and mutual respect.

Role of NGOs / people's initiatives and organizations

- National Potentials (Philippino team)

The higher rate of literacy in Sri Lanka together with a liberal and participatory democracy that has survived the test of time contains promising potential to evolve and sustain an accelerated peace process. The interminable conflict in the North/East as well as in other regions of Sri Lanka has instilled in the minds and hearts of people a deep desire for peace and harmony. A planned action for peace is bound to have productive

effect if this quest for peace can be positively responded to.

People's initiatives (international delegation)

The delegation was able to meet NGOs in the north, south and east where the importance of organizations outside the state to promote common values was continually stressed. Some felt that people's movements for peace may be the only hope for the country, but there was currently a major problem in communication and co-ordination between these initiatives. It was suggested that there was a need to create a peace force to promote harmony between peoples, and that people should ensure that no political party comes forward without a plan for peace.

Whilst a political agreement ultimately rests in the hands of politicians and political leaders, there is a need for alternative paths to peace to be pursued through the active participation of people at the grassroots level, especially those who are directly affected. The pursuit of peace is the responsibility of all people in Sri Lanka, not just the politicians and political leaders.

Such a path must be based on actively building mutual trust and respect between people of different religious and ethnic backgrounds.

In talking with people representing organizations and communities, the team identified an urgent need for communication and dialogue towards increasing understanding between peoples in the north, east and south at different levels - between fishermen, farmers, women, intellectuals and between different religious communities and others.

We also identified the need for more effective communication and co-operation between NGOs and People's Organizations and other initiatives with a view to creating more lasting alliances and programmes for peace.

People's aspirations.

In the experience of the team, people throughout the country shared the same aspirations: first and foremost for peace; respect for human rights and human dignity; respect for cultural and religious plurality; and a desire for justice and equality.

The third phase of the initiative will be the formulation of a long-term national programme for peace building and peace advocacy to be facilitated by an inter-religious core group of persons. In formulating the programme, the report of the team of peace advocates that visited the Philippines titled "Seeds of Peace" and the report of the international inter-religious delegation titled "Journeying Together for Peace" would be used as working papers besides available documentation on other initiatives for peace in Sri Lanka.

The group would aim to develop concepts of peace building and peace advocacy both at grass-roots levels and urban levels which would focus on building peace by peaceful means. The group would seek to promote co-operation and joint initiatives among the various faith communities in Sri Lanka to act as a catalyst for peace.

"Our goal," in the words of the Director of SEDEC, Fr. Oswald Firth, "is to seek alternative paths to peace with the active participation of the people."

The Core Group would:

"Help build a basis for Justice and Peace in Sri Lanka by initiating, supporting and inspiring an inter-religious and spiritual network aimed at promoting co-operation and joint initiatives among the various communities. This to be done through a variety of methods aimed at advancing the recommendations of the Sri Lankan team to the Philippines and the International and Inter religious Peace Delegation."

The Basis of Unity of the Group would be:

A common commitment to an issue/issues, in this case the issue of PEACE. Peace has to be defined and the levels of understanding have to be clearly specified, eg. peace understood as the absence of war; peace as respect and promotion of basic human and civil rights; peace as providing relief and thus, giving hope to the victims of war; Peace as a fruit of justice.

The aims of the Programme would be:

- To set up structures, define content and guide the peace process beginning with the recommendations of the Sri Lankan Team to the Philippines, the International Delegation and the Core Group to promote the steady growth of a peace orientation among the citizens, both in the short term and into the future beyond the resolution of armed conflicts.
- To build and develop resource materials for peace information, education, research and promotion.

- To provide venues for dialogue, discussion and consensus building on subjects and issues of peace and conflict resolution.
- To provide in-service training and institutional support for full time peace workers in their research and organizing peace advocacy work.
- To build linkages and networks with local and international peace organizations and other conflict-resolution groups.
- To train, initiate and establish peace-committees at rural, urban and other sectoral levels and to provide facilities for ongoing peace education with the intention of promoting people's participation and active involvement.

Conclusion

In practical terms a process towards lobbying for peace based on the concept of a pro-active and co-operative role between Buddhist, Muslim, Hindu and Christian groups towards peace building has already been set in motion.

It seeks to function as an effective lobby group at local, regional and international levels in waging peace.

The concept of people's participation in the peace process is also being lobbied because peace in Sri Lanka can be accomplished only by Sri Lankans themselves. The essential element of peace building must be the empowerment of local communities.

Promoting re-settlement of internally displaced persons as a means towards peace building, improving the quality of life and restoring normalcy in the lives of affected people to return in dignity

and safety to their places of origin. To promote setting up of peace zones in areas of re-settlement as a modest but a creative intervention in peacemaking.

This presentation forms a limited vision of a long term vision of the APHD/SEDEC initiative for peace. This flows from experiences and endearing perceptions than from mere theoretical conceptualizations. Our vision is not complete nor is our desire to promote the virtue of peace. We strongly feel that peace is not the responsibility of select groups and committees. Peace is what we long for and seek after. Peace is not achieved by a mere intellectual desire but involves actions of solidarity that bring together all our creative human resources. Working for peace can become meaningful only if it is seen as a spiritual effort that draws inspiration from the well-springs of our religions and cultures. Let us, therefore, contribute our mite that peace in all its fullness may blossom forth on all of us.

Time and again we have witnessed the paths to peace flawed by misconceptions that one must be militarily strong to negotiate peace. But a search for military solutions have only aggravated the conflict and increased the sufferings of innocent civilians. In such instances violations of human rights take their toll and brings to the surface the bestial tendencies in human beings.

It would therefore be sinful for the international community to look askance when precious resources, albeit borrowed, are being wasted on arsenal that can kill or maim people for the rest of their lives. Would it not devolve on the international community to urge the leaders of our nation to put forward their plan for peace when they come in search of financial aid. Failure of the international community

in this regard will only prolong the war and its attendant consequences even beyond the year 2000.

EDUCATING FOR PEACE: A TAMIL PERSPECTIVE

Charles R.A. Hoole

In the current climate of heightened tension and open hostilities, the need to develop a new initiative in educating for peace is very apparent. Its aim must be to create a climate of thought within which political leaders will be spurred on to work for the resolution of conflict between warring parties through non-military means. It must also be a climate conducive to fostering reconciliation between estranged communities, so that Tamil, Sinhalese and Muslims can once again live together as neighbours and friends - as they have done for centuries. Indeed, in the present atmosphere in which killing is so routinized, it is no longer adequate to educate toward the goal of avoidance of conflict or warfare. What Sri Lanka needs in this hour of crisis is a new and certainly a more inclusive vision of humanity, which could offer a basis for positive peace-making. Parents, teachers, journalists and community leaders have much to contribute to this process.

Peace-making on the other hand cannot expect to gain ground without also struggling against the prevailing, and indeed popular, ideology of "us" against "them", that is, the collective notions of identifying "us" Tamils as against all "those" non-Tamils and "us" Sinhalese as against all "those" non-Sinhalese. This ideology continues to inflame the distinctions between the peoples of Sri Lanka, which frequently manifests itself in the "Politics of hatred" and the "Politics of purity", the twin expressions of "identity politics".¹ The popularity of this ideology is to be explained by the fact that its proponents use age old materials, for example, the *Puranas* and the *Mahavamsa*, in new ways. Therefore, to be effective in dealing with this ideology, educators for peace

must be able to identify these sources and also the channels through which the ideas are transmitted.

Here I give a Tamil example of how the ideology that underlies the "politics of purity" and the "politics of hatred" is fashioned, by the use of old and new materials, making it a potent weapon wielded by communalists.

Images of "them": from ancient Puranas

In a recent work Rajmohan Ramanathapillai has shown how puranic and epic symbols of the past continue to operate intimately within Sri Lankan Tamil society, motivating people, shaping their conduct and instilling a sense of dharma; consequently giving meaning to social and political actions.²

One of the strongest ideas which the puranas and the epics convey is the notion that evildoers will be ultimately destroyed by good people, even with the aid of violence. This dominant idea found in the stories has been disseminated widely through school text books, newspapers and cinema, as well as through ritual enactments (*curan pur ceremony*), recitations (*kathapirasangam*) and theatrical performances (*natakam, nattu kuttu, villu pattu*).³

The Tamil puranic view of the fate of evildoers was based on the earlier Gupta Puranas, composed by brahmans. The Gupta Puranas portray a world in decline due to the corrupting and heretical nature of the Kali Age. In these works we would find sharp and contemptuous denunciations of the heretics (*nastikas*) and barbarians (*mlecchas*), followed by a confident assertion that they would all be exterminated at the end of the Kali Age, when dharma would again be restored. This theme was borrowed

and popularised by the authors of the Tamil puranas during their disputations with the Jains and the Buddhists, from the seventh to the thirteenth centuries A.D. We would at this time find the terms "barbarian" being used in a sense that is familiar to us today.

First, in the atmosphere of emotional, bhakti religiosity, heresy was very much in the eye of the beholder. Once the early heretics, the Buddhists and the Jains, had largely disappeared from the Tamil scene, we would find that to the Saivites the Vaisnavites became heretics and visa versa. As Wendy O'Flaherty has observed, from the sixth century onwards, "Hindus came to use the term 'heretic' as a useful swear word to indicate anyone who disagreed with them, much as the late Senator Joseph McCarthy used the term 'Communist'.⁴

In the current politically charged atmosphere, the same emotional approach to dealing with heretics is being reenacted in the Tamil politics of denunciation. Anyone who politically disagrees is turned into a heretic: he or she would be condemned as a *Thesathurohi* (betrayer of the nation), and be subject to either banishment or extermination.

Secondly, from the tenth century onwards when the caste system had become fully developed in the Tamil country, anyone who did not observe the *muraikal* (the rules) was regarded as ritually impure, an uncivilised barbarian who deserved social exclusion. In following this medieval puranic distinction between the civilised and the barbarian, the Jaffna Tamils, as Bryan Pfaffenberger has shown, regard the veddhas and anyone whose lifestyle resembles theirs, such as the nalavars and the pallars, as *kattumirantik* (barbarians), "deemed to be not only low caste but also thoroughly evil and dangerous (*kettavarkal*, bad people)", possessing a propensity to create disorder.⁵

When these vellalar-brahman standards of civility are pressed a little further, the Sinhalese, Tamil-speaking Muslims and Batticloa Tamils could also become classed as barbarians. Such a development is only to be anticipated. From a Jaffna Tamil point of view:

Sinhala people appear to be very easily angered and potentially violent, a character trait that, in Tamil ethnophysiology, is thought to stem from a lack of sexual and ritual diligence. What is more, Jaffna Tamils believe very firmly that the other Tamil-speaking groups of the island the Tamil-speaking Muslims, the so-called Indian Tamils of the central highlands, and the East Coast Tamils - are also less diligent than Jaffna Tamils in keeping up the ancient ways, and on this account Jaffna folk rank them lower and refuse to marry them.⁶

It would indeed be surprising if such a powerful concept does not enter into the current political discourse. When, for instance, Jaffna Tamils refer to the EPRLF, an East Coast based militant group, as *Eelattu pallar*, they are in-fact saying that "those" people are barbarians, *kettavarkal* (bad people), dangerous, and not to be politically trusted. The term clearly has powerful religious, social and political connotations. It is this perception that led to, and justified, the savage attacks on them in Jaffna, in December, 1986; when a large number of them were killed and the rest expelled from the peninsula.

Images of "us": from modern historiography

While the Puranas have been useful in defining "those" non-Tamils, modern historiography, since the publication of Rasanayagam's *Ancient Jaffna* in 1926, has served to define "us" Tamils, by presenting a separate and distinct past, often in conflict with the Sinhalese past.⁷ Rasanayagam, through selective use

of available data, tried "to prove that not only was Sri Lanka's Tamil history the history of Jaffna, but that practically the whole history of the island was Tamil - Hindu or Dravidian history, or at least widely influenced by Tamil history."⁸ Also, by connecting the Aryacakravarti rulers of the Jaffna Kingdom to brahmans, he bestowed Tamil ancestry with a sacred and prestigious origin.⁹ Pathmanathan's claims were more modest. In the *Kingdom of Jaffna* (1978) he too, presents a Tamil Hindu past, although it is a version of the Tamil past that is separate from the Sinhalese Buddhist past, and from this premise, he made an important claim that "the Hindu tradition, along with the Tamil language, forms the bases of Tamil identity"¹⁰ This same image of "us" was propagated more vigorously by Satyendra: to be a Tamil is to speak Tamil, and to be a Saivite, which for him is echoed in the saying, "Thamilum Saivamum, Saivamum, Thamilum"¹¹

It is difficult to avoid the feeling that Tamil nationalist historiography has in so many ways been directly influenced by Sinhala Buddhist nationalist writings and speeches, where it is frequently affirmed that Sri Lanka is *dhammadipa* and *sihadipa*, the alleged historical bases of Sinhalese identity. On the other hand there are definite limits to such influences. The Tamils have no written document along the lines of the *Mahavamsa* to authenticate their singular and separate historical identity, and therefore, the Tamils are in one sense free to choose and to present many versions of their past.

So far, however, the history of Sri Lankan Tamils has been written from a Jaffna vellalar perspective which authenticates their distinctive values and the prestige of their institutions. The independent traditions of the mukkuvar, vanniya, karaiya and the veddhas have been either excluded or made subordinate to the vellalar history.

Educating for peaceful co-existence and co-operation

We have noted how historical and mythical materials are currently being used or misused to construct stereotypes of "us" and "them", a distinction which offers a basis for the politics of purity and the politics of hatred. Identity politics in turn is reordering Sri Lanka's pluralistic cultural landscape, and in consequence reinforcing these homogeneous stereotypes.

Despite these ominous trends, educators for peace can take encouragement from the fact that heterogeneity and not homogeneity is the characteristic expression of Sri Lanka's many traditions. As such they continue to serve us as models of co-operation and co-existence. Take for instance, the Rajarata civilisation¹² where many of Sri Lanka's traditions did at one time intersect, presenting us with a significant model of co-operation and co-existence. Rajarata civilisation embraced most of the dry zone, an agricultural zone comprising the capital province, centred around Anuradhapura (and later Polonnaruva), and several more or less autonomous outer principalities over which the centre exercised symbolic or ritual overlordship. This sort of highly decentralised state is typical of many contemporary states in South and Southeast Asia.¹³ As a result it was able to accommodate a variety of peoples; Buddhists, Hindus, Christians, Muslims and also the unforgettable veddhas, who would have had no difficulty in retaining their corporate identities and lifestyles, while also actively co-operating with others to create a common civilisation.

For many Tamils, the Rajarata example simply reiterates the obvious: that there have always been strong pluralistic elements within the Tamil speaking people. In Tamil Nadu, where most Tamil speaking people live, religion and territory have never been

considered essential components of the Tamil identity. In part because Buddhists, Jains, Christians, Muslims and Dravida-atheists, in addition to the majority Hindus, have made substantial contributions to the development of the Tamil tradition.

The best known example is the Tamil literary tradition, which developed over a period of two thousand years through the collective efforts of all these groups of people. Here is a sample of their works.¹⁴

1. *Tirukkural* (100-400 A.D.): The most celebrated Tamil ethical work. The author, Tiruvalluvar, is probably a Jain, since the work reflects Jain moral code and its theology.
2. *Manimekalai* (200-550 A.D.): A well known Buddhist epic. The heroine Manimekalai preaches the Buddhist ideal of serving all living beings with detachment.
3. *Cilappatikaram* (200-450 A.D.): An account of the rise of Kannaki-Pattini cult, which is popular throughout Sri Lanka, particularly in the East Coast.
4. *Tempavani* (1720 A.D.): An epic dealing with the legendary life of St. Joseph. The author, Beschi, a Jesuit priest, is known to the Tamils as Viramamunivar.
5. *Cirappuranam* (1715 A.D.): The author, Umarupulavars gives an account of Prophet Muhammad's life in a Tamil setting. Regarded as the basic text for Tamil Muslim religious life in Sri Lanka.

6. Iratcaniva Yattirirkam (1882 A.D.): A Tamil adaptation of John Bunyan's *The Pilgrim's Progress*, written by Krishna Pillai.

This literary evidence shows that the Tamil tradition, when taken as a whole, remains a powerful witness to the multiculturalism that has always been the hallmark of the Tamil heritage. The educators' task is to make this tradition of co-operation and co-existence more explicit and obvious to all Sri Lankans, by exploring creative methods of expressing those models, and in consequence to challenge those who are in actual fact inventing a monocultural tradition which never existed.

FOOTNOTES

1. Edward W. Said, "The Politics of Modernity and Identity", The Bertrand Russell Peace Lectures, no.2, McMaster University, Dec.4, 1992.
2. R. Ramanathapillai, Sacred Symbols and the Adoption of Violence in Tamil Politics in Sri Lanka, M.A.Thesis, McMaster University, 1991
3. Ibid, p.33
4. W.D.O'Flaherty, "The Image of the Heretic in Gupta Puranas", in B.L.Smith (ed), Essays on Gupta Culture, Delhi: Motilal Banarsidass, 1983, p.116
5. B. Pfaffenberger, Caste in Tamil Culture, Syracuse: Syracuse University, 1982, p.121-122; R.Thapar, "The Image of the Barbarian in early India", Ancient Indian Social History, Delhi: Orient Longman, 1990, pp.152-192
6. B. Pfaffenberger, "The Cultural Dimension of Tamil Separatism in Sri Lanka", Asian Survey, vol.XXI, no. 11. Nov.1981 p. 1149-1150
7. Dagmar Hellmann-Rajanayagam, "The Politics of the Tamil Past", J.Spencer (ed), Sri Lanka: History and the Roots of Conflict, London: Rutledge, 1990, pp. 107-124
8. Ibid, p. 111
9. S. Pathmanathan (1978) and S. Gnanaprakasari (1928) have on the other hand favoured a *ksatriya* connection. All these discussions on genealogy and *varna* status are highly speculative, but a *maravar* connection would seem more realistic in the light of linguistic and historical evidence. The Aryacakravartis of Jaffna were also known by the title Cetukavalan, meaning, the lord of the bridge - connecting Mannar and Ramesvaram. The Cetupatis of Ramanad, the traditionally acknowledged guardians of the bridge, not only bore the same title but have been known to have earned the title Aryacakravarti through allegiance and service to the Pantiyen kings. These Cetupatis were descendants of *maravars*, the martial predators dominant in the Ramanad district, who have a long record of engaging in predatory wars in Sri Lanka. See E. Thurstan (1909) on Maravar.
10. S. Pathmanathan, "The Hindu Society in Sri Lanka: Changed and Changing", J.R. Carter (ed), Religiousness in Sri Lanka, Colombo, Marga Institute, 1979, p.158. For a different view on this issue of identity see R. Coomaraswamy, Politics of Ethnicity, The Ethnic Conflict, (1984), p.179
11. Cited in R. Ramanathapillai, 1991: 7-8. For a critical analysis of this issue see S. Ratnajeewan Hoole, "The Tamils: A Definition and their Religion and Culture through Change", Indian Church History Review, vol. 36, 1992, pp.88-135
12. An account of Rajarata civilisation from a non-sectarian, non-colonial perspective is, to my knowledge, still to be written. This is a probable outline of that account.

13. B. Stein, 1980:23, S.J.Tambiah, 1976:113
14. Mu. Varadarajan, A History of Tamil Literature, Delhi, Sahtya Akademi, 1988. K. Zvelebil, Tamil Literature, Wiesbaden, 1974.

Charles A Hoole's paper was first published when he was working at McMaster University in Canada.

ENSURING THE ACCOUNTABILITY OF THE SECURITY FORCES AND UPHOLDING THE RULE OF LAW

Upali Cooray

Introduction

Sri Lanka, unlike neighbouring Pakistan, is not, and has never been, ruled by a military junta. Nevertheless the scale of human right abuses that has occurred in Sri Lanka, particularly in 1989 - with large scale "disappearances", summary executions and public display of mutilated or charred corpses of victims - had rarely been witnessed even in countries with notorious dictatorships such as Pinochet's Chile or Videla's Argentina.¹ Furthermore, in both Chile and Argentina, the repressive machinery which enabled these "golpistas" to organise such acts of human rights violations have been dismantled and what is more at least some members of the security forces responsible for these actions have been prosecuted.² In Sri Lanka the men who organised these crimes have been granted legislative immunity from prosecution and rewarded with promotions for the services rendered. The infra-structure of repression has been preserved and torture, abduction, illegal detention and "disappearances" of real or perceived enemies of the government continue, albeit on a smaller scale than in 1989. Critics of the government are also subjected to other forms of duress and intimidation such as death threats, transfer³ or dismissal from their employment.

The policy of repression was not initiated by the security forces. Their actions were in the main, planned, directed and put into operation on the

orders of the government. Some members of the security forces may have used the opportunity to settle old scores or to make a fast buck. On other occasions the soldiers may have lost control and wanted to take revenge. Apart from such exceptions, the actions of the security forces were organised by the government. This is true in relation to their operations both in the North & East, as well as in the South. For instance the abduction and brutal murder to 14 Tamil youths in June 1979 by the D.I.G, the Udugampola's action against the "Pavidi Handa" in Gampaha, the killing of Liyanarachi, large scale abduction and murder tens of thousands in 1989 - 1990, the torture and murder of Richard de Soyza, the more recent abduction of tamil youths in Colombo including some members of the EPRLF were carried out directly on the orders of the government.

Political background

The erosion of human and democratic rights in Sri Lanka is a direct consequences of the political project developed and nurtured by the United National party [UNP] government. The chief architect of this project was Mr J R Jayawardene in 1977. The UNP was determined to build a strong state which could achieve the political stability essential to implement their economic policies. Their new economic strategy involved the dismantling of the "welfare state" that had been built over decades and the UNP was well aware of the mass public opposition their strategy would evoke. Therefore an essential prerequisite was the weakening of all democratic forces and institutions that could mobilise mass opposition to their policies. This involved either the weakening or suppression of all democratic organisations [trade unions and opposition political parties]⁴ or their co-option into the government.⁵ The creation of the executive presidency was a part of this process.

Legislative framework

Apart from the creation of an executive presidency, the enactment of several anti-democratic laws such as the Prevention of Terrorism Act, the continuous use of Emergency regulations, granting security forces immunity from prosecution have all eroded the ability of the ordinary citizens to assert their basic human rights. The Courts have become either powerless or ineffective. Even in those rare instances where members of the security forces have been convicted, the government has blatantly disregarded such judgments.⁶ While the Prevention of Terrorism Act and emergency regulations give the police enormous powers of arrest, detention without trial and holding persons in detention incommunicado up to 18 months etc. the government has also guaranteed members of security forces freedom from prosecution even if they act in a completely arbitrary and unlawful manner.

Extra-judicial actions

In addition the UNP relied heavily on illegal armed groups. They were organised and financed by UNP ministers and members of parliament. Although they were not under one central command they could be mobilised at any given moment by the UNP leaders. During the joint trade union campaigns in 1978 to 1980 such gangs were used against peaceful pickets, public meetings and workers on strike.⁷ Subsequently they were also deployed against the tamils. The most well co-ordinated and organised action taken by these armed gangs was the attack on Tamils living in the south in 1983.⁸ After 1987 they were used more skilfully. In some instances they were ordered to mobilise for and attend JVP meetings to give the impression that the JVP had popular

support. In 1989 they were used as an auxiliary force to complement the work of the police.⁹ Often it was difficult to distinguish the activities of the police from those of these UNP thugs, because the modus operandi of both were often similar - use of unmarked vehicles, abduction at night or early hours of the morning, dressed in mufti etc. The police know the key cadres of these armed gangs because they are often people with criminal records.¹⁰ Apart from a few exceptions, these groups are still in existence and could be mobilised again if the need arose.

Internal structures

The internal organisation in both the security forces as well as the illegal armed gangs is structured in a tight hierarchical fashion - it is a pyramid type organisational structure with orders coming from the top. Generally, the provinces are controlled from the central command in Colombo, and the local police chiefs do not have any autonomy. The command structure of illegal armed groups are similar although in this case, the control of each group is mediated through the political leader of the locality. For this reason the centre does not have direct control of the local units. Neither the army nor the police permit any form of trade union rights for their members, so that even if individual members have any grievances there are no channels to convey them except through the hierarchical command structure.¹¹

Legal accountability

In theory the police and the armed forces are accountable to the people through the ministers responsible for these services. The ministers should be able to provide periodic reports about the activities of the security forces to the parliament and to answer

any questions in relation to complaints made by members of the public. The ministers are both members of the legislature [parliament] and the executive [Cabinet], and in reality they direct and oversee the activities of the security forces. In the past 15 years it has become patently clear that there is no proper accountability of the activities of the security forces. As already stated above, the government has effectively prevented the possibility of taking legal action against members of security forces who have acted in clear breach of the law. Even when investigation commissions appointed by the government have concluded that the security forces had acted unlawfully, no actions have been taken against the erring officers.¹² Therefore in reality there is no real democratic control of the security forces and there is no independent complaints authority to whom the members of the public could present their grievances.¹³

Opposition inactivity

Apart from certain individual members of parliament in the opposition SLFP and a few grassroots organisations, the political parties in the opposition have failed to make the issue of human rights violations by the security forces, a central plank in their campaign against the government. This is partly due to the reactionary political position the SLFP leadership has adopted in relation to the Tamil national question. They have often portrayed themselves as the champions of the security forces and criticised the government for reining in the armed forces without permitting them to do their "job" against the Tigers. Generally the SLFP has been reluctant to campaign against human rights violations in the North and East for the fear of being branded as a "pro-tamil" party. Faction fights inside the SLFP has also influenced their position on this

issue. For instance when the UNP fabricated the "naxalite conspiracy" to deepen the rift between the Chandrika/Vijaya Kumaranatunge wing and the Anura/Sirimavo wings of the SLFP, the SLFP leadership fell into this trap and failed to organise a mass campaign against the incarceration of Mr Kumaranastunga and others.

The SLFP position on the Provincial Councils also prevents them considering the possibility of decentralising the police powers and bringing them under the control of the provincial governments.

Apart from the NSSP and some Tamil representatives in Parliament, opposition parties have also failed to oppose the renewal of the Emergency regulations. This standpoint on the Emergency also flows from their general line on the Tamil national question. It is however important to mention the invaluable work done by certain members of parliament such as Chandrika Kumaranatunge, Mangala Samaraweera and Mahinda Rajapakse of the SLFP and Vasudeva Nanayakkara of the NSSP, particularly in relation to detainees and the "disappeared".

Institutional guarantees

In spite of all the promises they have made to the United Nations sub-committee on human rights and to the Amnesty International, the government has not taken any meaningful steps either to dismantle the repressive machinery they have built up in the last 15 years or to prosecute the perpetrators of even the most vile human right abuses. Their unwillingness is largely because there are men at the very top, who are directly implicated in these crimes.

However, even if this government is replaced with another, the opposition parties do not seem to have a clear policy in relation to this issue. It is therefore

important for grassroots organisations to campaign for a comprehensive programme of institutional changes that could guarantee the rule of law and ensure the accountability of security forces. Such a campaign would compel opposition parties to adopt a more positive political standpoint on this issue.

Some proposals

In a discussion paper of this nature it is difficult to put forward a comprehensive proposal that should be adopted by a mass movement campaigning for institutional guarantees on human rights and accountability. Such a programme should be formulated after a democratic discussion amongst grassroots organisations and the victims of the repression. At this stage all this could be done is to make an initial contribution to that discussion.

Repeal of all undemocratic laws.

While every person would support the need to bring to book persons who act in breach of the law, it is a fundamental right of every human being that no person should be punished except where a person is found guilty of a crime after a due process of the law. The laws that permit arrest of persons without any evidence of a wrong doing and detention for long or indefinite periods are clearly inconsistent with this right. There must be clear custody time limits and clear time limits within which a person charged with an offence should be prosecuted. If the prosecuting authorities failed to act within those time limits all charges against such persons should be dismissed and the prosecution disbarred from bringing any further charges in relation to that alleged incident or circumstance. Concretely this involves the repeal of the Prevention of Terrorism Act as well as the removal of Emergency regulations that permit such arrests and detention.

A new Statute should be enacted which lay down detail provisions relating to arrests, the right of the arrested person, custody time limits, rules regulating places of detention, rights of remand prisoners, detention of young persons, confessions and time limits within which prosecutions of alleged offenders should be begun.

All laws which gives immunity to members of security forces from prosecution for violation of human rights should be repealed.

All members of the security forces who are found guilty of any violation of human rights should be dismissed from these services. A programme of educating all members of security forces on human and democratic rights should be made compulsory part of their training.¹⁴

Members of the police as well as the armed forces should be given the right to form and join a trade union and to enter into collective bargaining on their terms and conditions of work.

The police service should be decentralised and each police authority should be under the control of elected members of the local or provincial authority.

An independent complaints authority with wide powers of investigations should be set up in order to investigate complaints against members of the security forces.

It should be the aim of all democratic governments to ultimately abolish the standing army altogether.¹⁵

A statutory prosecuting authority independent of the government should be set up in order fulfil the task of evaluating evidence and making all decisions relating to prosecuting offenders.

FOOTNOTES

1. The most important exception is Indonesia where the butcher of a million communists Suharto still remains in power.
2. This week the police chief who organised the assassination of one of Salvador Alleande's ministers - Orlando Letelier - was convicted and sentenced to prison.
3. (a) Mr Buddhipala, the Magistrates, who contrary to the dictates of the Attorney General wanted the prosecution to go ahead with the charges against a Senior Police Officer charged with the rape of a 11 year old servant girl, has been transferred from Colombo to Galle.
(b) A journalist who wrote an article in the Sunday Times about the Killali fiasco has received death threats.
4. The revocation of Mrs Bandaranaike's civil rights and the incarceration of Vijaya Kumaranatunga on a trumped up charge were some of the measures taken against the opposition SLFP.
5. The UNP tried to co-opt the TULF into the government offering the carrot of political concessions and then by threat or the actual use of violence against Tamils.
6. In the "Pavidi Handa" case and in the government promoted the police officers who were found guilty of violating human rights.
7. Somapala, the middle aged worker was clubbed to death in Colombo in 1980 by one of these armed gangs.

APPENDIX

THE GENERAL ELECTIONS AND THE STRUGGLE FOR HUMAN AND DEMOCRATIC RIGHTS

Statement of the Committee for Democracy and Justice in Sri Lanka

The decision of Mr D.B. Wijetunge, the President of Sri Lanka, to call a snap elections on August 16th, has created, perhaps, the first meaningful opportunity to discuss seriously the key political and economic issues facing our country. No doubt in the run up to the elections many people may seek to focus the minds of the voters on personalities rather than political issues. *However, in our view, it is extremely important to give priority to a discussion on human and democratic rights and to consider ways and means of preventing the abuses that occurred in the last 17 years.* A society which is not able to guarantee human rights and establish democratic structures, through which the people could freely express their hopes and aspirations, will never be able to achieve social stability or sustainable economic development.

The Darkest Hour

It is not necessary to catalogue here the innumerable human rights abuses that took place in the last 17 years, which was without doubt the darkest hour in Sri Lanka's history. It is sufficient to say that the scale of the government sponsored massacres, disappearances, torture, incarceration without trial and the sheer brutality and the cold precision with which they were carried out was unprecedented.

8. In the 1983 attack different gangs were given specific tasks. It is known that the attack in Pettah was carried out by the Borella gang. This was probably the reason why many sinhalese were confronted by Muslim thugs who asked them whether they were tamils or sinhalese! The murder of prisoners inside the Welikada jail was organised by late President Premadasa.
9. These groups were referred to as "black cats" by Udugampola. However, contrary to his claims these gangs often acted with the knowledge and support of the local police.
10. In fact people who were sentenced to prison had been pardoned by the government in order to secure their release. The case of Mora Sunil is one of the best examples.
11. In 1977 the writer of this article raised this demand at election meetings in Dehiwela and there was tremendous support for it amongst the rank and file members of the police as well low ranking officers. On the other hand the top officers were very hostile to it.
12. The Commission of inquiry into the Kokkadicholai massacre in which 67 people including 10 infants aged 3 years or less were gunned down concluded that the members of the army had unlawfully killed them. But to date the government has taken no action against those responsible for this heinous crime.
13. The lack of accountability does not always protect the members of the security forces. Sometimes the government is prepared to make them scapegoats to satisfy foreign donors. This was indeed what happened to Mr Udugampola at the time Mr Premadasa was President.
14. This has already been initiated in Ecuador.
15. This is already the case in Costa Rica.

Although organisations such as the Amnesty International and the UN sub-committee on human rights went through the motions of asking the Sri Lankan government to stop such violations and punish those who perpetrated human rights abuses, such exhortations could produce little change. Instead the government often rewarded the very men who were guilty of human rights abuses with promotions; furthermore, it enacted laws in order to grant immunity from prosecution to the men who committed these acts.

The UNP and the opposition

Therefore the UNP and their allies are unlikely to either accept responsibility for those odious actions or adopt any concrete measures to prevent their recurrence. The opposition parties have rightly criticised the reign of terror that was unleashed by the UNP, and sought to highlight the more despicable crimes of the government, such as the cold blooded massacre of school children at Embilipitiya. *However, the opposition too has, so far, failed to put forward concrete proposals that could guarantee human rights and civil liberties and prevent the recurrence of what happened in those dark days.* Clearly what we need is not pious declarations and political rhetoric but detailed and concrete proposals that would ensure respect for life and liberty and the preservation of the rule of law; an institutional framework which would ensure that those who exercise executive power are accountable to the people, respect the law and prevent the arbitrary use of state power.

Mass pressure

It is therefore necessary for all of us, who value human life and liberty, to demand from those who seek electoral power, a clear policy statement about the measures they intend to put into effect in order to

guarantee fundamental rights. We must confront every politician and every political party and demand how they propose to guarantee human rights and democratic liberties. Furthermore, we should try to raise these issues in an organised manner by setting up democratic rights committees in every locality and village up and down the country.

The key issues

For this purpose it is useful to identify here some of the key issues which must be addressed by any government which is genuinely interested in protecting human rights and civil liberties. While this is not an exhaustive list, we believe that without dealing with these issues we cannot even begin to lay the foundations of a democratic society:

(a) The abolition of the executive presidency and ensuring the accountability of the executive.

The centralisation and concentration of all executive power in the hands of one person under the executive presidential system was, at least in part, responsible for the growth of arbitrary use of power by the government. However, it is not sufficient merely to abolish the executive presidency and return to the old parliamentary system. Even the previous system did not provide adequate democratic checks and balances that could adequately control the power of the Prime Minister and the Cabinet. Therefore it is necessary to strengthen the powers of the parliament, judiciary and the local and regional governments, in order to prevent the Executive from exercising unbridled power. The powers of each organ of government or local government should be clearly specified and clearly demarcated and members of parliament should be made accountable to those who elect them.

(b) The guarantee of national and minority rights

The ethnic conflict has squandered billions of Rupees and resulted in the death of thousands of people both in the North and the South. This unending war could only be stopped by recognising the national rights of the Tamils. In 1972 the SLFP led coalition government removed even the nominal constitutional guarantee of minority rights that had been enshrined in the Soulbury Constitution. This was a great leap backward. There can be no democracy without adequate protection of the rights of minorities - be they political, ethnic, religious, caste or any other minority. It is therefore necessary to make provisions in the constitution to protect minority rights and thereby prevent the majority from riding roughshod over minorities.

(c) The right not to suffer discrimination

No member of the society should suffer discrimination on the grounds of their national identity, language, religion, caste, sex, disability or age in employment, education or any other sphere of public life. This right too should be enshrined in the constitution.

(d) Repeal of repressive laws

The UNP government has enacted a number of draconian laws which has imposed permanent restrictions on the democratic rights of every citizen. Initially they were enacted on the pretext that security forces needs extraordinary powers to deal with "Eelam separatism". In reality such laws have not enabled the security forces to achieve any significant progress in their war against the LTTE. On the other hand, such laws have been used largely to arrest, abduct, detain, torture and disappear political

opponents of the government as well as innocent civilians. Moreover, the security forces have felt that these laws enable them to act with impunity and with little regard to the human rights of ordinary citizens. Therefore all such laws and regulations should be repealed without delay.

(e) Ensure the accountability of the security forces

The armed forces and even more frequently the police have acted with little regard to the rights and interests of the people. They behave not as the servants of the public but as their masters. Often ordinary citizens are too scared to visit a police station even in order to make a complaint. They defy even the orders of the courts and act as they are above the law. It will never be possible to guarantee human rights and democratic liberties without proper institutional measures that would secure the accountability of the police. In order to achieve this it may be necessary to completely restructure the security forces including their decentralisation and the establishment of community control of the police. The conduct of the police in relation to arrest, detention and prosecution of offenders must be subject to strict legislative controls. An independent body with disciplinary powers, including the power to dismiss police officers who abuse their power, should be set up to investigate public complaints against the police. Similarly the so called intelligence services such as NIB etc. must be subject to parliamentary scrutiny and their activities must be regularly examined by a parliamentary committee.

(f) Investigate all human rights violations

Even today there are many people who do not know what had happened to their loved ones. Sometimes all that they know is the fact that their spouse or child was arrested by the police, the army or some unidentified men who came in the night. Men who were responsible for extra-judicial killings and disappearances as well as other dastardly acts such as the setting fire to the Jaffna Public Library, the organisation of the 1983 pogrom, the Embilipitiya massacre, Kokkadicholai massacre etc. roam around freely while the families who suffered at their hands have no recourse to justice. It is important to investigate all such human rights abuses and bring to book all those responsible for such acts.

custody for long periods without trial. All those who are still being held in custody should be released or charged and tried under the law. A law must be enacted which restricts the power of the police to hold any person in custody without trial. Where a person is held in custody relatives and the legal representatives of the detainee must be made aware of the place of detention and must have the right to visit such detainees.

Sunil Silva
S. Kumar
Joint Secretaries

(g) Guarantee the right of association and the right of assembly

All restrictions that has been imposed on the right of association including the right of workers in the Free Trade Zone to form or join a trade union must be removed. Similarly there should be no restriction of the right to peacefully picket or hold public meetings. All laws and administrative regulations which give the police the powers to interfere with these democratic rights should be removed. In order to make meaningful decisions on any matter of public importance people must have free and uncensored access to information. Therefore it is necessary to ensure that the media is not subjected to intimidation or control by the executive.

(h) Free all political detainees

Using various draconian laws such as the Prevention of Terrorism Act large number of men and women have been detained without trial in camps, police stations and prisons. No person should be held in

The committee for Democracy and Justice in Sir Lanka (CDJ)

CDJ was formed in 1989 at the height of the reign of terror that was unleashed by the UNP government led by late Mr. Ranasinghe Premadasa in order to campaign for democratic rights and against state sponsored repression.

- **CDJ** is neither affiliated nor supports any political party. **CDJ** campaigns against the suppression of democratic rights by the State as well as by other organisations, including opposition parties and groups.
- **CDJ** demands justice for the families of the disappeared.
- **CDJ** stands for the resolution of the ethnic conflict through political and not military means.