

HUMAN RIGHTS, THE RULE OF LAW AND THE SITUATION IN SRI LANKA

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I. INTRODUCTION

Sri Lanka has long been widely regarded as a country in which democratic traditions are upheld, in which the rule of law prevails, and in which human rights are respected.

Sadly, this image has been changing. Recently the violence generated by the ethnic conflict between the majority Sinhalese, who are mainly Buddhist, and the minority Tamils, who are mainly Hindu, has escalated to alarming proportions, and democratic values and the authority of the rule of law are being eroded. One consequence of this combination of factors has been that grave breaches of fundamental rights have been committed, and that the perpetrators of these violations in many instances are not being brought to account before the ordinary criminal law.

In this article, firstly, brief examination will be made of some of the incidents in, and reasons for, the escalating communal conflict. Secondly, the erosions to principles of democracy and the weakening of the authority of the rule of law are considered. Finally, government actions indicating a commitment to human rights principles are looked at, and some conclusions are drawn as to the present situation in Sri Lanka today.

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II. THE COMMUNAL VIOLENCE OF JULY 1983, AND THE ESCALATING CONFLICT SINCE THAT TIME

1. The communal violence of July 1983

The population in Sri Lanka is predominantly Sinhalese (74%). Just over 7% of the population is made up of Muslims, and 0.7% were described as "others" in the 1981 census figures. Tamils form 18.2% of the population – of these 12.6% are "Sri Lankan Tamils" who, like the Sinhalese, arrived in Sri Lanka from India many hundreds of years ago, and 5.6% are "Indian Tamils" who were brought over by the British during the last century to work on the plantations as indentured labour.¹

During the last week of July 1983, a severe outbreak of communal violence in Sri Lanka saw hundreds of the minority Tamil community killed, thousands left injured and homeless and the systematic destruction of Tamil property. Tamil civilians in the capital, Colombo, and in many different towns and villages were attacked in acts of mob violence perpetrated by sectors of the majority community, the Sinhalese. There was a clear pattern to the violence.

Wherever disturbances occurred, whether in Colombo or in other towns and villages in different parts of the island,² the disturbances followed a set course. Gangs were transported from outside the districts. They had electoral lists with them from which Tamil property and residences could be identified. On the streets people were stopped by mobs and questioned as to whether they were Sinhalese or Tamil. Since many Tamils do not speak Sinhalese or do not speak it fluently, the converse also being true, it is generally not difficult to identify people simply from their use of language. Identity cards were also demanded.

The attacks were systematic and directed only against Tamil people and their possessions. Tamil factories, shops, businesses and houses were destroyed. In the worst of the violence petrol was poured over people and they were set alight. Others were hacked to death. Eye-witnesses reported that, during the first few days, attacks on Tamil people and property were made in the presence of the security forces. In some cases these personnel simply stood by, in others they disarmed Tamils who were offering any resistance, and in other instances they were said to have participated in the attacks.³

During this same week, on two separate days, there were massacres of Tamil political detainees held in Welikade prison, a top security gaol. On 25 July, there was what was described as a prison riot during which Sinhalese prisoners, armed with various implements, attacked the Tamil

1 1981 Census figures.

2 For instance in Kandy, Matale, Nuwara Eliya, Badulla and Bandarawella.

3 This information was learned by the author during interviews conducted while on a fact finding mission on behalf of the Lawasia Human Rights Committee, in Sri Lanka in August 1983.

political detainees (but not the Tamil prisoners held for ordinary criminal offences), and murdered thirty-five of them before order was restored. Two days later, before preparations to move the political detainees to another gaol as a safety precaution were complete, there was a second outbreak of violence in the same prison. A further eighteen Tamil political detainees were murdered, raising serious questions, never since resolved, as to how such incidents could have occurred, on two separate occasions, in a top security gaol unless there had been complicity by those in a position of control.

Basic tenets of a civilised and democratic society, the rule of law and the right of all citizens to equal protection before the law are collapsing when the security forces cannot be relied upon by citizens of a minority group to ensure their physical safety and when detainees are murdered while held in a state prison.

In circumstances such as these, in order that confidence might be restored, it was essential that public, independent, impartial enquiries be held and that the people responsible for the killings of the political detainees,⁴ for the organisation of the mob attacks on Tamil civilians, those who participated in the atrocities,⁵ and the members of the security forces who had breached their duties⁶ be identified and brought to account.

Repeated calls have been made by international, regional and local human rights bodies for such enquiries to be held.⁷ Despite these repeated calls independent and public enquiries have not yet been instituted and there has been failure to identify and to punish, by the

4 A magisterial enquiry was conducted immediately after the prison massacres. The magistrate returned verdicts of homicide upon all the deceased prisoners: Emergency Inquest Proceedings held on 26 July 1983 and 27 July 1983 at the Prison Headquarters, Welikade, by K.S. Wijewardene, Chief Magistrate, 14,17. Those who testified did not identify any of the persons responsible for the killings. The magistrate recommended that police enquiries be instigated. Inconclusive police enquiries followed. Despite the fact that these events had occurred in a top security gaol and hence there was a limited number both of offenders and of eyewitnesses, all identifiable and available, by early 1985 still no charges had been laid against anyone.

5 As regards interrogations carried out to reveal the causes and perpetrators of the communal disturbances, as at June 1985, police enquiries had been made into 16,469 complaints registered after July 1983. As a result of these investigations 648 prosecutions had been filed. In 680 further cases enquiries had been almost finalised and the filing of prosecutions was said to be imminent. In 7,378 cases enquiries are still pending, and in 7,762 cases there is no evidence available: information supplied to the author by Lieutenant-General D. Perera, Sri Lankan High Commissioner in Canberra.

6 No independent impartial enquiries by a body independent of the security forces have been carried out into the allegations of breaches of duty by security personnel during the last week of July 1983.

7 E.g. by Amnesty International, *Sri Lanka : Current Human Rights Concerns and Evidence of Extra-Judicial Killings by the Security Forces, July 1983 – April 1984* (1984) 1-3; by the International Commission of Jurists, Paul Seighart, *Sri Lanka : A Mounting Tragedy of Errors* (1984) 90; by Lawasia, Patricia Hyndman, *The Communal Violence in Sri Lanka, July 1983* (1984) 155, 156, by the Civil Rights Movement of Sri Lanka, see e.g. *Communal Violence July 1983* (Colombo, Sept. 1983) 2,3.

application to them of the normal criminal law, the people responsible for these atrocities.

2. The escalation of violence since July 1983

Since the eruption of the communal violence of July 1983, the situation has continued to deteriorate. The violence has, for the most part⁸ been contained within the northern and eastern parts of the island, which is the area claimed by the Tamil militants for the separate state which they wish to establish and where Tamils form a high proportion of the population. Throughout Sri Lanka, however, there is tension and insecurity and people and positions are becoming more and more polarised. The number of acts of violence being committed both by the Tamil militants on the one side and the almost totally Sinhalese armed forces on the other, in which combatants and non-combatants from both Sinhalese and Tamil groups are being killed and injured is rapidly escalating.

The All Party Conference, the negotiations between the government and other parties which commenced meetings in January 1984, in an attempt to find a peaceful solution, collapsed in acrimony, without any agreement having been reached, in December 1984. Since then meetings between government and Tamil representatives held in Thimpu in Bhutan have seemingly reached an impasse and, at the time of writing, in late August 1985, are adjourned indefinitely.

The collapse of attempts to resolve the problems by negotiation, rather than by force must be the cause for serious concern. So far, attempts made by the government to control the problem by strong legislative, administrative and military measures have not worked. In fact they have been counter-productive, having hardened Tamil resistance and turned formerly moderate Tamils, who originally were opposed to the idea of a separate state, to view separatism as the only way in which to guarantee their physical safety.

3. Background to the escalation of communal violence

It is important to look at the escalation of violence both from the perspective of the government and that of the Tamil minority and, from the outset, it must be understood that not all Sinhalese citizens are anti-Tamil and not all Tamils are anti-Sinhalese. In fact, during the massacres of July 1983, there were many acts of heroism by Sinhalese people who, in many cases, risked their own lives to save those of their Tamil friends and neighbours.

⁸ An exception to this occurred on 14 May 1985, when an attack was perpetrated by Tamil militants in the predominantly Sinhalese city of Anuradhapura. Over 150 Sinhalese civilians were reported to have been killed and hundreds more were injured.

Nevertheless, since Independence, Tamils in Sri Lanka have felt that they have been treated by the Sinhalese dominated governments very much as second-class citizens. There is a history of perceived discrimination in the eyes of both communities, each group seeing the other as being in possession of unfair privileges and advantages. Some of these perceptions are due more to misunderstandings and myths than to actual facts, some have real foundation.

The Tamils had hoped that the Soulbury Constitution,⁹ the Order-in-Council of the British Parliament under which the country came to independence in 1948, would contain substantial guarantees for the minority communities. This was not to be but section 29(2) did state that,

[n]o...law shall...make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or...confer on persons of any community or religion any privilege or advantage which is not conferred on persons or other communities or religions.

Should legislation be enacted which was alleged to contravene the rights guaranteed by the Constitution the matter could be taken to the courts and ultimately to the Privy Council in London, which was at that time the final court of appeal in the Sri Lankan court hierarchy.

Despite the protections theoretically afforded by this section, Tamils in Sri Lanka have suffered from discriminatory treatment in various ways.

Firstly, in 1948 and 1949, large numbers of Indian Tamils were denied citizenship of the newly independent country and were disenfranchised.¹⁰ Even today many thousands of these people do not possess Sri Lankan citizenship, despite the fact that, in many cases, their ancestors have lived in the country for one, two or more, generations. As a result of agreements reached between the Sri Lankan and Indian governments some of these people have been granted Indian citizenship and most of those have gone to India to live. Many, however, have the citizenship of no country and are effectively stateless. They continue to be unable to vote within Sri Lanka.

Secondly, in 1956 the Official Language Act¹¹ was enacted providing that Sinhala would henceforth be the only "official" language. This reversed the resolution, adopted in 1944 by the State Council, that both Sinhalese and Tamil be the official languages of the country. Henceforth the official administration would be conducted in Sinhalese, and proficiency in Sinhalese became a requirement for confirmation of, appointment to and promotion within the public service.

9 The Ceylon (Constitution) Order-in-Council 1946.

10 Citizenship Act, No. 18, 1948; Pakistani Residents (Citizenship) Act, No. 3, 1949; and Ceylon (Parliamentary Elections) Amendment Act, No. 48, 1949.

11 Act No. 33, 1956.

Further, systems have been adopted which have favoured Sinhalese students in their applications for admission to universities and have favoured Sinhalese applicants for jobs in the government sector. These last discriminations favouring Sinhalese people have been seen by the governments practising them as necessary in order that the situation which had prevailed in colonial times might be reversed. During those times Tamils held what was perceived to be a disproportionately large number of university places and high governmental positions and dominated the professions. This happened partly because particularly good missionary schools had been established in Tamil areas and partly as a consequence of other factors which have motivated Tamils in Sri Lanka to view education as the means to economic progress and hence to work hard at education and to do very well. Since this is the case, from a Tamil point of view, accessibility to university places upon a criterion of merit is extremely important.

The measures taken to increase the number of Sinhalese in universities, in public sector employment and to improve the school education offered in Sinhalese areas have been effective. Statistics compiled in 1983¹² show that in relation to school educational facilities, admissions gained to universities, and posts held in the public sector, the Sinhalese now enjoy an equal or superior position to that of the Tamils.

Any previous disparity would seem to have been rectified. Since university education and government employment have been such traditional career paths for Tamil people the policies being practised have been, and still are, the cause of very real grievances.

In 1972 Sri Lanka became a Republic and a new Constitution was enacted by Mrs Bandaranaike's government. The guarantees of minority rights contained in the 1948 Constitution were not re-iterated in the 1972 Constitution. Constitutional status was given to the position of Sinhala as the country's only "official language",¹³ and "foremost place" among religions was given to Buddhism.¹⁴ Thus priority status was conferred upon both the language and the religion of the majority Sinhalese community.

The next Constitution, promulgated by the present government in 1978, did accord to the Tamil language, as well as to the Sinhala language, the status of being a "national" language.¹⁵ Sinhala is still the only "official language".¹⁶ Buddhism remains in the "foremost place" among religions.¹⁷

12 By the Marga Institute, a research institute based in Colombo; those compiled by the Division of Planning and Research of the University Grants Commission and figures compiled in 1980 by the Census of Public and Corporation Sector Employment.

13 Art. 7, 1972 Constitution.

14 Art. 6, 1972 Constitution.

15 Art. 19, 1978 Constitution.

16 Art. 18, 1978 Constitution.

17 Art. 9, 1978 Constitution.

It should be noted, however, that although considerable constitutional protection is afforded by the 1978 Constitution,¹⁸ guaranteeing for instance the right of all people in Sri Lanka to communicate with government departments in either the Sinhalese or Tamil language, the protection declared by these provisions has not in fact been realised due to the inadequacy of their implementation. For instance letters are still written in the Sinhalese language, even when this is quite inappropriate, as in replies sent to enquiries written by Tamil people in the Tamil language.

The approach adopted by the Tamil community to achieve what it sees as its due measure of recognition in Sri Lankan society was, for the first twenty-five years after Independence, a peaceful one. The Tamils sought a federal arrangement within one united country, not a separate state, and did not resort to, or advocate, violence as a means of achieving this. Indeed, their response to the attacks of communal violence which erupted against them in 1958, 1977, 1981 and 1983 has been very restrained. So also has been their response to repeated disappointments when concessions gained from negotiations with earlier governments, and pacts to which Tamil leaders and government leaders had agreed, failed to be given implementation.¹⁹

In the mid 1970s, disillusioned with the results achieved so far and feeling that they were steadily losing ground, the Tamil political parties re-formed themselves as one party, the Tamil United Liberation Front (T.U.L.F.), which adopted separatism as one of its election platforms, although with the stated aim of achieving this through negotiation and not by force. On this platform the T.U.L.F. gained all the seats in the northern part of the country, many of the seats in the eastern region and became the major opposition party at the time of the last general election, in 1977. At about the same time a small group of Tamil youth declared their intention to establish a separate state and began to resort to violence.

For the most part these acts of violence were not supported by the rest of the Tamil community and they were not condoned by the Tamil Members of Parliament. Many Tamils, particularly those in the southern parts of the island, continued to be opposed to the idea of a separate state. The Tamil militants remained a very small group until very recently.

¹⁸ See Ch. IV of the 1978 Constitution.

¹⁹ *E.g.* the Bandaranaike-Chelvanayakam Pact and the Senanayake-Chelvanayakam Pact reached between the governments and Tamil leaders in 1957 and 1965 respectively were each unilaterally abandoned by the governments of the day. These two Pacts contained provisions which, had they been implemented at the time, may have been able to secure resolution of the most serious Tamil grievances and so to avert the present ethnic violence.

In the past couple of years, however, their numbers have risen and they are increasingly well armed and well trained and the acts of violence perpetrated by the militants in their bid to secure a separate state by force have escalated sharply.

Despite this escalation of violence and despite the peaceful methods historically pursued by the Tamil population in Sri Lanka, today more and more Tamil people are coming to regard the militants as their only hope of salvation from the actions of a government which they increasingly see as brutal, racist and repressive.

4. Some measures taken by the government to control increasing Tamil militancy

The measures taken by the government which have brought about these feelings include those listed below:

i) The Prevention of Terrorism Act²⁰

The government has enacted harsh legislation, used almost exclusively to detain and restrict Tamils, which permits preventive detention of those suspected of having perpetrated, or having been connected with, an "unlawful activity". This concept receives an extremely wide and vague definition.²¹ Other provisions remove some of the protection for accused persons which exist under the ordinary criminal law.²² Further, under the legislation detainees may be held for up to eighteen months without trial,²³ and may be held in places other than the regular civilian prisons.²⁴ The detainees often have been held in army camps, *incommunicado*, without access to lawyers and relatives, and in some cases have been tortured and even killed while in custody.²⁵

20 The Prevention of Terrorism (Temporary Provisions) Act No. 48, 1979 as amended by The Prevention of Terrorism (Temporary Provisions) (Amendment) Act, Act No. 10, 1982 (hereinafter referred to as The Prevention of Terrorism Act).

21 See ss 2, 31.

22 S. 26(1) of the Evidence Ordinance, Legislative Enactments of Ceylon, Vol. 1, Ch. 14, provides that, unless made in the presence of a magistrate, no confession made in police custody is admissible in evidence. Under The Prevention of Terrorism Act, on the other hand, confessions made while the detainee is in police custody are admissible in evidence, provided that they were not made to a police officer below the rank of Assistant Superintendent, unless the detainee is able to prove that the statements are "irrelevant". They are "irrelevant" for instance, if obtained under duress: s.16. It would not be easy for a detainee to prove such an allegation. Other provisions, taking away the ordinary protections of the criminal law, are contained in s.18 which concerns the admissibility of certain types of documents as evidence and the procedure which may be adopted concerning contradictory statements of witnesses.

23 S.9.

24 S.15A. In Sri Lanka the civilian prisons are administered subject to laws providing strict regulations for the welfare and protection of prisoners.

25 See e.g. recent reports of Amnesty International, the International Commission of Jurists, and the U.K. Parliamentary Human Rights Group.

ii) *Mass arrests*

Mass arrests have been made from some areas in the north, of all the young Tamil males found there. The arrests made are usually of young men between eighteen and thirty years of age and are made for the reason that the race, age and sex of these people makes it likely that they may be offenders. Many, but not all, are released after questioning but sometimes the conditions of their detention have been reported to be inhumane.²⁶

iii) *The passage of the Sixth Amendment*

A constitutional amendment, the Sixth, was enacted in August 1983.²⁷ It requires the taking of an oath renouncing support for a separate state. Since one of the platforms of the then major opposition party, the T.U.L.F., consisted of support through non-violent means for a separate state, its members felt that to take this oath would be a denial of the platform upon which they had been elected. As a result they forfeited their right to retain their parliamentary seats.

The effect of the Sixth Amendment has been that, for the past two years, at a time when they are particularly in need of an organised political group able to act on their behalf through the normal parliamentary process and when it is particularly important to encourage Tamil participation in Sri Lankan political life, the Tamil people of the north and some of the people of the east find themselves in a situation in which they are no longer represented in Parliament. Their elected representatives and the major opposition party are no longer able to participate in the affairs of government.

iv) *Control of the press*

There has been failure, despite frequently imposed censorship regulations, to control inflammatory propaganda against Tamils appearing in the press and even emanating from government sources. Further, partial and selective reporting in the local Sri Lankan media has contributed to the exacerbation of misunderstandings and racial antagonism towards the minority group.²⁸

v) *The emergency regulations which establish "prohibited" and "security" zones in the north and east*

Sri Lanka has been continuously under a declared state of emergency

26 See reports of Civil Rights Movement of Sri Lanka and Amnesty International.

27 Certified on 8 August 1983. Supplement, Part II, Gazette of the Democratic Socialist Republic of Sri Lanka, 12 August 1983.

28 For instance, many attacks perpetrated by members of the armed forces on unarmed Tamil civilians are not given coverage in the press. This was the case, when members of the armed forces killed over 50 civilians in reprisal attacks carried out in the Jaffna area on 24 July 1983. In contrast, the ambush and killing of 13 Sinhalese soldiers by Tamil militants on the preceding day was given full coverage. This bias in reporting may have contributed to the violence which erupted in other regions of the island immediately afterwards.

since May 1983. All the emergency regulations are enacted under the authority of the Public Security Ordinance.²⁹

The relevant emergency regulations were promulgated in late November 1984, and declare certain areas in the north to be "prohibited" zones and others to be "security" zones. These regulations, if strictly implemented, necessarily must cause massive disruption to the normal civilian life of the regions affected. The regulations provide that no person may enter, or remain in, a prohibited zone for any purpose whatsoever without written authority.³⁰ Some public buildings, for example, hospitals and council offices, are in areas prohibited to access. The entire coastline of the northern region is declared a prohibited zone to a distance of one hundred metres inland from the beach and extending five miles out to sea.³¹ Since a sizeable proportion of the population of the Jaffna district lives very close to the shore, full implementation of this regulation will force the dislocation of very many people. In early 1985 thousands of families were already reported to have been evacuated from the prohibited zones to camps and the fishing industry was reported to be at a standstill. More than twenty thousand families of the fishermen, and others dependent upon the industry, were apparently left with no income.³²

Within the security zones there is strict curtailment of all movement. The regulations provide that no one may enter or leave such a zone without informing the Assistant Government Agent there.³³ Permits are required for every vehicle — even for bicycles.³⁴ The permit must be prominently displayed.³⁵ Continued possession of the vehicle, without a permit, is an offence.³⁶ Use of any such vehicle also requires written authorisation.³⁷ Travel, when authorised, is restricted to certain hours and specific routes.³⁸ Fuel is rationed.³⁹

Long curfews, up to sixty-one hours at a time, are reported to have been imposed. Schooling has been affected, so has the provision of medical care. Due to curfews and other restrictions farmers find difficulty in tending and harvesting their crops, or transporting the crops to markets for sale and farms are not being irrigated. Reports

29 Public Security Ordinance, Ordinance No. 25 of 1947, as amended.

30 The Emergency (Establishment of a Prohibited Zone) Regulations, No. 1, 1985, reg. 4(1)(a).

31 *Id.*, First Schedule.

32 The regulations do provide that any person who is deprived of his means of livelihood or his normal source of income as a result of these restrictions may seek relief from the Competent Authority: regulation 5. However, in many cases, the severe curtailment of all movement, the location of relevant offices within the prohibited zones and the general breakdown of services would seem to mean that it is difficult, if not impossible, for the affected persons to obtain such relief.

33 The Emergency (Establishment of a Security Zone) Regulations, No. 2 1984, reg. 6.

34 *Id.*, reg. 7(1).

35 *Id.*, reg. 7(2).

36 *Id.*, reg. 7(4).

37 *Id.*, reg. 8(1).

38 *Id.*, reg. 8(2).

39 *Id.*, reg. 20.

indicate that factories cannot operate without their supplies of materials and fuel, and that workers often are unable to travel to work. The postal service is unreliable. Many people and their families are without incomes.

Criminal activity is increasing as law and order collapses. Civil administration is said to have broken down.

The result is deprivation, hardship and suffering to the people in these regions and an exodus of great numbers of Tamils fleeing across the Palk Straits to Southern India. In May 1985, over one hundred thousand Tamils from northern Sri Lanka were said to be in camps in Tamil Nadu.

vi) Other emergency regulations

Many of the regulations adopted under the Public Security Ordinance concern supervision, search, arrest and detention.⁴⁰ These regulations are very wide in scope and are capable of being used to hold people in detention for long periods. They have been so used and some of the people held under them have been held *incommunicado* without access to either lawyers or relatives.⁴¹

Of the emergency regulations, regulation 15A has called forth the most severe criticism of all. This regulation concerned the disposal of the bodies of people who had died, and in this connection removed a vital safeguard which serves to protect human life, when it placed the decision as to the possession and cremation or burial disposal of bodies, not with a member of the judiciary, but with a senior member of the police force and a member of the executive. Regulation 15A has been criticised by all international human rights organisations which have commented upon it. It is pleasing to note that regulation 15A was repealed in 1984. However, another regulation, regulation 55A-G has been enacted in its stead. Regrettably this regulation still does not confer the safeguards which exist under normal inquest procedures.

Under regulation 55A-G the High Court in Colombo is given exclusive jurisdiction to enquire into deaths which occur in police or military custody, or are caused as a result of any action taken, in the course of duty, by a member of the security forces: regulations 55B and 55E. The judge, however, does not see the body. The doctor does not appear to give evidence, his report is simply forwarded to the court. Although regulation 55E(c) permits the enquiry to be held in any part

40 See e.g. Emergency Regulations 16, 17, 18, 19, 20, Emergency (Miscellaneous Provisions and Powers) Regulations, No. 4 of 1983, still in force at the time of writing.

41 Such detention amounts to a breach of arts 9 and 14 of The International Covenant on Civil and Political Rights. Art. 4 of the International Covenant on Political and Civil Rights does permit certain derogations to be made to some of its provisions when a country is in a declared state of emergency, but the measures taken must not exceed "the extent strictly required by the exigencies of the situation". These emergency regulations, and their manner of implementation, would seem on many occasions to have gone beyond what has been strictly required by the exigencies of the situation.

of Sri Lanka, so far the judicial enquiries have been conducted in Colombo. The deaths generally occur elsewhere in the country. The proceedings are closed to the public: regulation 55E(g). There is no provision for a lawyer to represent the family of the deceased. The regulation confers on the Attorney-General a wide discretion as to whether or not further proceedings should be instituted under normal criminal law: regulation 55F.

A normal inquest, on the other hand, is conducted in public. It is conducted in the area where the death occurred and there is opportunity for the deceased's family to be present.

The very existence of a normal inquest procedure and the open and public nature of the enquiry, in themselves would help prevent more indiscriminate killings. Further, by the repeal of Regulation 55A-G, and the introduction of usual inquest procedures, the government could go some way towards restoring the confidence of Tamil people that there is no official condonation of the killings of civilians by security forces and that, on the contrary, measures will be taken, and enforced, to ensure that these deprivations cease.

vii) The colonisation programme

At the same time the government colonisation programme, under which people are resettled in the areas rendered fertile by new irrigation schemes, is causing further unrest. Under this programme, which has been followed now for many years by successive governments, settlers from the southern parts of the island are being encouraged by the government to move to new settlements within and near to the borders of the north and east, which are the areas regarded by the Tamils as their "traditional homelands".

Tamils see the relocation of large numbers of Sinhalese from the south into the areas where Tamils have formed a high proportion of the population as a deliberate plan to change the ethnic composition of those areas. Amidst other consequences this type of resettlement inevitably has the result of reducing the effectiveness of Tamil voting power within the regions. The government approach, on the other hand, is that Sri Lanka is home to all Sri Lankans, that all should be free to live in any part of the island and that the colonisation programmes give due recognition to the rights of all in that under them people are resettled in numbers proportionate to the ethnic composition of the entire island.⁴²

Whatever the merits such a policy might possess in other circumstances, the inevitable result of its pursual at the present time, in the current climate of suspicion and distrust, would seem guaranteed to escalate the incidents of violence even further. In fact, in view of the

⁴² There are no statistics available from which it is possible to ascertain the ethnic proportions of the settlers.

mounting hostilities and tensions in these regions, the Sinhalese settlers are being trained in tactics of self-defence for their own protection and have been provided with arms. Reports indicate that Tamil militants have attacked the Sinhalese settlers and that armed settlers have attacked nearby Tamil villagers.

5. Reprisal attacks carried out against unarmed civilians by the security forces

The security forces, whose personnel is predominantly Sinhalese,⁴³ are in most cases unable to speak the language of the people of the northern and eastern regions to which they are sent. They are fearful and hostile towards the Tamil population and, when unable to locate the militants who attack them, frequently carry out brutal reprisals — murder, rape, arson and looting — in retaliation upon unarmed civilians in the villages in the locality of the attacks. Despite the frequency and brutality of these attacks, and despite protests from national, regional and international human rights bodies, adequate measures have not been taken to prevent them. Independent judicial enquiries are not held into these killings. Instead any enquiries which are held are conducted by senior security personnel. So far the severest penalty imposed for such deprivations has been dismissal.⁴⁴

II. THE EROSION OF DEMOCRATIC VALUES AND THE WEAKENING OF THE AUTHORITY OF THE RULE OF LAW

In addition to the increasing ethnic tensions and violence in Sri Lanka, there have been other recent developments within that country which give rise to concern when the protections afforded to fundamental rights, principles of democracy and the rule of law are under consideration. In this section are included the 1978 Constitution and the powers which it confers on the President, amendments to that Constitution, the proscription of opposition parties, changes in the electoral laws, threats to the independence of the judiciary and the growing number of incidents which have tended to encourage lawlessness.

43 I have been unable to obtain official figures. During my enquiry for the Lawasia Human Rights Committee in August, 1983, the estimates given to me varied. They were: between 80% and 95% Sinhalese personnel in the police force, up to 99% Sinhalese in the army, 95-99% in the Navy, and approximately 80% Sinhalese in the Air Force.

44 Information provided to the author in early June 1985, by the Sri Lankan High Commission in Canberra, Lieutenant-General D. Perera, indicated that the disciplinary action taken included the disbandment of one battalion, the discharge of 350 members of the armed forces, trial in military proceedings of 13, and the sending of one soldier to gaol for 3 months.

1. *The 1978 Constitution and the powers it confers*

At the last general elections, which were held in 1977, the present government gained a landslide victory, winning 140 of the 168 seats in parliament.

In 1978 a new Constitution was promulgated. It established a Presidential-style system and confers very wide powers on the President. Article 30(1) provides that he is “the Head of the State, the Head of the Executive and of the Government, and the Commander-in-Chief of the Armed Forces”. The Prime Minister, the Ministers and the Deputy Ministers are all appointed by the President,⁴⁵ and he has the power to remove them.⁴⁶

Under article 44(2) the President “may assign to himself any subject or function” and “may, at any time, change the assignment of subjects and functions and the composition of the Cabinet of Ministers”. As of February 1985, the President had assigned to himself the subjects and functions pertaining to the Ministry of Defence, the Ministry of Plan Implementation, the Ministry of Janata Estates Development, the Ministry of State Plantations, the Ministry of Higher Education and the Ministry of Power and Energy.⁴⁷

The President may dissolve Parliament.⁴⁸ He appoints the Secretaries (that is, permanent heads) to the Ministries,⁴⁹ and appoints the Attorney-General, the Heads of the Army, the Navy, the Air Force and the Police Force and all public officers required by the Constitution or other written law to be appointed by him.⁵⁰ The President also appoints the Chief Justice, the President of the Court of Appeal, all the judges of the Supreme Court, the Court of Appeal and the High Court.⁵¹

Article 42 does provide a safeguard, with its provision that the President shall be responsible to Parliament for the due exercise of his powers and duties. Nevertheless, the huge majority of government-party held parliamentary seats,⁵² renders this check on the President’s power much less effective than might appear to be the case from a simple perusal of the article. Also, the President has in his possession signed, undated letters of resignation of all the Members of Parliament of his party.

Furthermore, article 35(1) provides that, for so long as he holds office as President,

45 Arts 43, 44 and 46, 1978 Constitution.

46 *Id.*, art. 47.

47 Hansard, 20 February 1985, xxvi.

48 Art. 70, 1978 Constitution.

49 *Id.*, art. 52.

50 *Id.*, art. 54.

51 *Id.*, arts 107, 111.

52 140 out of 168, and since August 1983 when the T.U.L.F. ceased to occupy its seats, 140 out of 152 seats.

no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity.

The consequence is that there is today in Sri Lanka a dangerously large accumulation of power in the possession of one organ of government, the executive, and in the hands of one man, the President.

2. Amendments to the Constitution

Although the present Constitution has been in existence for only seven years it has been amended nine times. Due to the large number of seats held by the ruling party it is never difficult for the present government to achieve the two-thirds majority vote which is required by article 82(5) for constitutional amendments.

Only the Third⁵³ and Fourth Amendments⁵⁴ will be commented upon here. The Sixth Amendment and its effect was noted earlier.

The general elections, which were due in 1983, were never held. Instead, in 1982 the Third and Fourth Amendments to the Constitution were enacted. The first of these enabled an extension to be made to the term of office of the President, and the second enabled an extension of the life of the Parliament, both from six to twelve years and both by means of referenda. Thereby the necessity for the general elections was avoided. In the result the terms of office of both the President and the Parliament were extended for a further six years, without general elections, and the government maintained its massive majority in Parliament by a vote of 54.6%.

The referendum to extend the life of the Parliament was held under strictures which severely hampered the opposition campaign. Some opposition politicians were detained under emergency regulations, some had been stripped of their civic rights, some opposition papers were banned and some opposition presses were sealed, while the polling itself was marred by the harrassment of electoral officers, candidates and voters.⁵⁵

3. Proscription of opposition parties

From time to time opposition parties have been proscribed under the emergency regulations and some of their members imprisoned. Sometimes these detainees have been held *incommunicado*, without access to either lawyers or relatives, amidst government allegations of the parties' complicity in various suspected plots. So far no substantive evidence has been produced to support such allegations and no charges have been laid.

53 Certified on 27 August 1982.

54 Certified on 5 November 1982.

55 Information learned by the author while in Sri Lanka on a fact-finding mission for the Lawasia Human Rights Committee in August 1983. See also the account of the conduct of the referendum in Civil Rights Movement of Sri Lanka, *Was the Referendum Free and Fair?* 2 January 1983, Colombo.

Three leftist parties, the Janatha Vimukthi Peramuna (J.V.P.), the Nava Samasamaja Party (N.S.S.P.), and the Communist Party were proscribed after the July 1983 disturbances. The government alleged that these parties had been involved in plots to destabilise the country and overthrow the government. No evidence of such activities was ever produced. Those imprisoned had all been released by the end of 1983 and no charges were laid against any of the detainees. The proscription of the first two parties was then lifted, but the J.V.P. remains proscribed.

The use of proscription orders which immobilise opposition parties in circumstances where no evidence is produced to substantiate the allegations which are the justification for that proscription, and when people are nevertheless held in detention for weeks and months at a time, gives rise to serious concern about the value accorded by the present government to the right to political freedom. Such use of proscription orders can be turned into an instrument whereby the government seeks to remain in power at whatever cost.

4. *Changes in electoral laws*

Last year the Ceylon (Parliamentary Elections) Order-in-Council 1946 was amended.⁵⁶ Until 1981, when blatant irregularities occurred at the Jaffna District Development Council elections, elections in Sri Lanka had always been conducted openly and honestly. On no occasion had there been any ground upon which the victory of a political party at an election could have been thrown into doubt. However, the irregularities which have now taken place, without check, indicate that the situation is deteriorating.

Among the provisions of the new Act which give rise to concern are the fact that henceforth a result may be declared even if ballot boxes are missing. An "information", which need not be in writing, that it is not possible to commence or continue a poll due to "the occurrence of events of such a nature", described as a "disturbance" in the marginal note, is conclusive of the existence of those events.⁵⁷ Once an information has been made, counting can commence without the receipt of the ballot boxes from the polling station at which a "disturbance" has been reported, and the result can be declared without these votes being counted.⁵⁸

The effect of this will be to disenfranchise those voters whose votes are in the ballot boxes which do not reach the counting station, and also to disenfranchise those who cannot vote due to the occurrence of "events of such a nature". This is a particularly disquieting development when, until so very recently, election irregularities were minimal and never of a serious nature.

⁵⁶ Act No. 36, 1984.

⁵⁷ S.47A, in Civil Rights Movement of Sri Lanka, *Change in Election Law Will Fetter Free and Fair Elections*, 2 Sept. 1984, Colombo.

⁵⁸ S.48, in *id.*, 2.

5. *Threats to the independence of the judiciary*

The independence of the judiciary, an essential and pivotal feature to the continuation of a free and fair society conducted under the rule of law, is well provided for in Sri Lanka under the terms of the 1978 Constitution. The preamble refers to the “immutable republican principles of representative democracy” and assures to “all peoples freedom, equality, justice, fundamental human rights and the independence of the judiciary as the intangible heritage that guarantees the dignity and well being of succeeding generations. . .”

Article 107 governs the appointment and removal of judges of the Supreme Court and Court of Appeal. The appointments are made by the President, the judges hold office “during good behaviour”, and shall not be removed except by the President after an address for removal made by Parliament, introduced by not less than one third of its members and supported by a majority of the total members of Parliament, including those not present. By article 108 judges’ salaries are to be determined by Parliament and may not be reduced for any judge during that judge’s term of office.

The judges of the High Court are appointed by the President and he has the power to terminate their appointments on the recommendation of the Judicial Service Commission.⁵⁹ The Judicial Service Commission consists of the Chief Justice, who is its chairman, and two judges of the Supreme Court appointed by the President. The President may, for cause, remove any member of the Commission.⁶⁰ The appointment, transfer, dismissal and disciplinary control of judicial officers (not including judges of the Supreme Court, Court of Appeal or High Court) is vested in the Commission.⁶¹

Article 116 provides that every judge shall exercise and perform his powers and functions without being subject to any direction or other interference, and that every person who, without legal authority, interferes or attempts to interfere with the exercise or performance of the judicial power or functions of any judge shall be guilty of an offence.

The constitutional safeguards securing the independence of the judiciary within Sri Lanka are excellent provisions. Despite them, however, the independence of the judiciary within that country has, in fact, been threatened more than once by incidents occurring in recent years. Constitutional guarantees depend for their effectiveness on a determination by those with substantial power under the Constitution that the guarantees be given force.

59 Art. 111, 1978 Constitution.

60 Art. 112, 1978 Constitution.

61 Art. 114, 1978 Constitution.

The transitional provisions of the 1978 Constitution provided that "all judges of the Supreme Court and the High Courts...holding office on the day immediately before the commencement of the Constitution, cease to hold office."⁶² This gave the present government the opportunity, which it took, effectively to remove a number of judges from the former court by not reappointing them and, instead, to appoint others to positions on the newly established Supreme Court. Many lawyers in Sri Lanka saw the changes thus made to have been politically motivated. The taking of such action meant that the government was able to avoid the effect of the constitutional safeguards to secure the tenure of the judiciary.

At the inauguration of the new Supreme Court the Chief Justice remarked:

We have gathered together to usher in the New Supreme Court in the traditional manner known to Bench and Bar. I and my brothers have been members of the Old Supreme Court and would have wished for it an honourable demise and a decent burial, but that was not to be. Words have been uttered and aspersions cast in another place which seemingly affect its hallowed name. What more is in store I do not know.⁶³

More has been in store. In two cases since 1982 members of the police force have been promoted after having been found by the Supreme Court to have acted unlawfully and to have breached the fundamental rights of citizen complainants. In each case the Supreme Court had heard complaints brought against the police officers concerned, under article 126. Article 126 gives to the Supreme Court sole and exclusive jurisdiction to determine questions relating to the infringement, by executive or administrative action, of any fundamental right protected by the Constitution.

The complaint made in the first case concerned the seizure, by a Superintendent of Police, of 20,000 pamphlets put out by an organisation called Pavidu Handa (Voice of the Clergy). The pamphlets expressed opposition to the referendum to extend the life of Parliament. The secretary of the organisation brought an action under article 126, alleging that this seizure infringed his fundamental right to freedom of speech and expression. In February 1983, the Supreme Court handed down judgment,⁶⁴ unanimously finding in the applicant's favour and awarding damages and costs against the Superintendent. In March it was announced by the government that the Superintendent was to be promoted, and that the costs and damages would be paid by the State. It was reported in Colombo newspapers at the time that this action was taken to ensure that "public officers should do their jobs and follow orders without fear of consequences from adverse court decisions."

62 Art. 163, 1978 Constitution.

63 In L. Wijeyayake, "Painful Blows on The Independence of the Judiciary – Can It Survive?" (1984) 23(2) *Logos* 119, 126 (Centre for Society and Religion, *Independence of the Judiciary*).

64 S.C. 57/1980 unreported, in M.J.A. Cooray, "Judiciary in a Democratic System of Government" in *Independence of the Judiciary*, note 63 *supra*, 62,97.

The complaint in the second case arose out of an incident occurring in March 1983, during a demonstration on the occasion of International Women's Day. A press photographer was apprehended and taken to a police station. Mrs Vivienne Goonewardene, a former Member of Parliament, went to enquire about the photographer. She was arrested and alleged that she was assaulted while in the police station. She too, brought an action under article 126.⁶⁵ The court found the arrest to have been unlawful,⁶⁶ and Mrs Goonewardene was awarded damages. Judgment was handed down on 8 June.

On 9 June the promotion of the officer concerned was announced by a senior member of the force. An official communiqué stated this promotion was "for the work done...in dispersing a procession conducted by Mrs Vivienne Goonewardene on 08.03.1983".⁶⁷

Two days later, the houses of the three Supreme Court judges who had delivered the judgment in the *Goonewardene* case were surrounded by rowdy mobs who shouted obscenities and created disturbances. Placards carried referred to the judgment. No-one was hurt, but it was an unpleasant and frightening experience for the judges and their families. All attempts by the judges to obtain the assistance of the police proved futile.

An editorial in a Colombo based English language newspaper, *The Island*, on 13 June, 1983 stated:

There is proof that the demonstrators had been brought in buses. The authorities must initiate an immediate enquiry to ascertain who was responsible for this demonstration and why the police failed to respond...If the judges of the Supreme Court cannot receive immediate protection from vulgar mobs what chance will the ordinary citizen stand?⁶⁸

At the time claims for responsibility for these occurrences were made publicly by an alleged organiser. The mobs had arrived at the scene in public transport buses, and the evidence indicates that it was an organised, not a spontaneous, demonstration. Further, a state of emergency had been declared at the time, and the emergency regulations give to the government wide powers to control demonstrations. Nevertheless, no one has been found to be responsible for the organisation of this event, nor have the government-owned buses in which the demonstrators had travelled to the scene of the demonstrations been traced.

Such events neither protect the independence of the judiciary nor serve to re-inforce, in the minds of the citizens of the country, a belief that the rule of law will be respected and observed.

⁶⁵ *Id.*, S.C. 20/1983 unreported.

⁶⁶ As regards the assault charge, the court found itself unable to reach a decision due to the time constraints imposed by the Constitution. It recommended that the police investigate this charge.

⁶⁷ Note 63 *supra*, 37.

⁶⁸ *Ibid.*

Twice recently allegations of impropriety in the behaviour of judges of the Supreme Court have been made. The allegations have been considered by Select Committees of Parliament set up for the purpose.

Many people have expressed a concern that, taking into account the background in both cases: that is judgments delivered of which the executive disapproved,⁶⁹ and statements made criticising the executive⁷⁰ – the bringing of the judges before a Select Committee of Parliament was intended as a clear indication to the judiciary that the judges are subordinate to, and not independent of, the executive and the legislature. For reasons already mentioned, in the present circumstances in Sri Lanka, the Parliament does not have the independence from the executive generally enjoyed by legislatures in democratic systems.

The impression gained by many citizens is that it is becoming more and more difficult for judges of the Supreme Court impartially and fearlessly to uphold the rule of law in circumstances where this would mean a conflict with the interests of those in political power.

Without an independent judiciary democracy cannot survive for long. In Blackstone's words:

In this distinct and separate existence of the judicial power in a peculiar body of men, nominated indeed, but not removable at pleasure, by the Crown, consists one main preservative of the public liberty; which cannot subsist long in any state, unless the administration of common justice be in some degree separated both from the legislative and also from the executive power.⁷¹

Sadly, it is difficult in the present circumstances to reach any conclusion other than that the independence of the judiciary is under threat in Sri Lanka today.

6. *Other incidents which have tended to encourage lawlessness*

Attacks by organised mobs occur not infrequently in Sri Lanka. There are available for hire, for the purpose of intimidating others, persons known as "goondas" or hooligans and thugs.

Goondas undoubtedly were present in large numbers in the July 1983 disturbances. They were present also in the June 1983 attacks on the houses of the Supreme Court judges, and have been employed in many other disturbances in Sri Lanka in recent years, for instance in the violence at the time of the District Development Council elections in Jaffna in 1981.

69 The two judges had participated in the *Goonewardene* decision. Mr Justice Colin Percy Thome has given several judgments which could be seen as critical of executive government.

70 On 14 March 1984, the then Chief Justice Neville Samarakoon had made a prize-giving speech at the Sinnathuray Commercial Tutory which contained remarks critical of the President. It was as a consequence of this speech that the proceedings were taken.

71 *Blackstone's Commentaries*, Vol. 1 (7th ed.) 269.

There have been several occasions of attacks by organised mobs upon pickets and demonstrators.⁷² Meetings held by the opposition parties have been disrupted by mobs. Religious meetings have been similarly disturbed. Often police protection is not forthcoming. In some cases it has not been possible to hold proposed meetings at all because of acts of violence.⁷³

In addition women strikers and demonstrators are alleged to have been assaulted by both police and violent civilians.⁷⁴ Since 1977, university students on seven campuses have been attacked by organised mobs coming in from outside the universities. In some cases the police are alleged not only to have failed to provide protection but to have actively participated in the attacks.

In July and August 1977, serious post-electoral and communal violence occurred. Threats, assaults, thefts, murder and arson were so prevalent that an official committee of enquiry was appointed to carry out an investigation into the events surrounding the election, and the Sansoni Commission was appointed to investigate the later communal violence. The first committee's report was submitted to the government but was never made available to the public.

The Sansoni Commission documented cases of assault, theft and arson both committed in the presence of police who stood by, and cases of assault by the police themselves. Any actions taken by the government in response to the Commission's finding have not been made public.

In 1982 an Indemnity Act⁷⁵ was passed,

with a view to restrict legal proceedings against Ministers, Deputy Ministers, or any person holding office in the government in any capacity, whether naval, military, police or civil, in respect of acts done during the period 1st August, 1977 to 31st August, 1977.

Such legislation inevitably gives rise to the impression that the government has condoned any breaches of the law which may have been committed by these people.

The fact that acts of mob violence are an increasingly common occurrence within Sri Lanka and that the perpetrators and organisers of many disturbances are not apprehended and brought before the courts are cause for serious concern. The result is that lawlessness and intimidating behaviour carried out by organised mobs is becoming more and more prevalent and many ordinary citizens feel that they

72 E.g. during the January 1980 demonstrations which were held to protest a government decision to reduce the number of holidays which workers had previously enjoyed. In June 1980 demonstrators preparing for the general strike were attacked. See *Civil Rights Movement of Sri Lanka, Some Significant Examples of Incidents Tending to Encourage Lawlessness* (June 1983, Colombo).

73 This happened to a proposed meeting of Buddhist and Christian Clergy organised by the Pavidhi Handa (Voice of the Clergy) in December 1982, at Gampaha.

74 An example is the attack upon trainee teachers demonstrating at the Maharagama Training College in June 1980.

75 Act No. 20, 1982.

cannot be confident about receiving protection from the security forces in the event of mob violence.

III. CONCLUDING COMMENTS

The tragedy of the present situation of erosion of democratic values, weakening of the authority of the rule of law, perpetration of violence and increasing racial antagonism is highlighted when seen against the background of the country's exceptional assets. Whereas it has been necessary to note some areas where government action has made severe inroads upon the principles of democracy and the rule of law, it is also the case that the present government has taken several steps which indicate a substantial commitment to the protection of human rights.

Under its leadership Sri Lanka, in 1980, acceded to the International Covenant on Economic, Social and Cultural Rights⁷⁶ and the International Covenant on Civil and Political Rights.⁷⁷ She also made a declaration under article 41 of the latter recognising the Human Rights Committee as competent to hear inter-state complaints of violations, although so far there has not been ratification of the Optional Protocol which allows individual complaints. This would be desirable. In 1982 the government acceded to the International Convention on the Elimination of all Forms of Racial Discrimination⁷⁸ and the International Convention on the Suppression and Punishment of the Crime of Apartheid.⁷⁹

The 1978 Constitution, promulgated by the present government, contains a more comprehensive chapter on fundamental rights than did the 1972 Constitution which it replaced. Chapter III enumerates the fundamental rights afforded constitutional protection. Many, but not all of the rights contained in the International Covenant on Civil and Political Rights are included.⁸⁰

By Article 4(d) it is stated:

the fundamental rights which are by the Constitution declared and recognised shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided.

⁷⁶ Adopted 19 Dec. 1966, entered into force 3 Jan. 1976, G.A. Res. 2200 (xxi) 21 U.N. GAOR, Supp. (No. 16) 49 U.N. Doc. A/6316 (1966).

⁷⁷ Adopted 19 Dec. 1966, entered into force 23 Mar. 1976, G.A. Res. 2200 (xxi), 21 U.N. GAOR, Supp. (No. 16) 52 U.N. Doc. A/6316 (1966).

⁷⁸ Opened for signature 7 Mar. 1966, entered into force 4 Jan. 1969, 660 U.N.T.S. 195.

⁷⁹ Adopted and opened for signature 30 Nov. 1973. Text : annex to U.N. G.A. Res. 3068 (xxiii).

⁸⁰ Protected are freedom of thought, conscience and religion; freedom from torture or cruel, inhuman or degrading punishment; the right to equality and freedom from discrimination on the grounds of race, religion, language, caste, sex, political opinion or place of birth (the possibility of providing special protection for the advancement of women, children or disabled persons is preserved); freedom from arbitrary arrest; detention and punishment; prohibition of retro-active penal legislation, and freedom of speech, assembly, association, occupation and movement.

This constitutional protection of fundamental rights, and that afforded to the independence of the judiciary as noted earlier, is commendable. Unfortunately, the government, by certain of its legislative provisions, the modes of implementation employed and some of the operations such as those outlined earlier, has not always observed these constitutional protections.

Further, regrettably, the effectiveness of the protection afforded to fundamental rights by chapter III of the Constitution is substantially diminished by article 15. This article allows restrictions to be placed on many of the protected rights. Restrictions may be made in the interests of national security, racial or religious harmony, national economy or public order, and the protection of public health or morality. No limitation, however, of the rights protected by article 10, freedom of thought, conscience and religion, or article 11, freedom from torture, cruel, inhuman or degrading punishment is permitted by article 15.

Article 27 of chapter VI of the Constitution contains many of the provisions which receive protection under the International Covenant on Economic, Social and Cultural Rights. These are included as "directive principles of state policy and fundamental duties." They are not enforceable.⁸¹

A very valuable provision which this government has introduced is article 126. This article provides for the enforcement of the rights protected under chapter III, giving to the Supreme Court the sole and exclusive jurisdiction to determine questions relating to the infringement, by executive or administrative action, of any fundamental right, or language right, protected by the Constitution.

Article 126 is not uncommonly invoked but, again unfortunately, the effectiveness of the protection afforded is restricted, not only by the government actions noted earlier, but also by the limiting time constraints contained within the article itself. It is necessary to invoke article 126 within one month of the occurrence of the breach. This is not always possible. For instance, a detainee may have been assaulted while still in prison and then remain in prison for more than one month after the assault, or it may be that upon release he or she is in no proper physical or mental condition to institute proceedings immediately.

Regarding the problem of Tamil grievances, from the outset the President expressed a willingness and a desire to deal with these,⁸² and encouraged Tamil participation in the process of government. In the new Constitution Tamil was given the status of a national language, and, in 1980, District Development Councils were set up, designed to provide a measure of regional autonomy. The purpose behind both innovations was to give recognition and effect to Tamil aspirations.

⁸¹ Art. 29.

⁸² Indeed the government party's 1977 election manifesto contained a precise statement of Tamil grievances, and the party's determination to take speedy action to resolve them.

These were commendable steps and it is regrettable that the manner of their implementation has resulted in a failure to achieve their aims.

Another significant step which this government has taken and which has the potential to be of great value is the support it has given to the Human Rights Centre of the Sri Lanka Foundation. This organisation undertakes promotional and educational activities. While a protection role also would be desirable, within its confines the activities of the Centre have been beneficial. For instance, one of the achievements has been the creation and introduction of programmes within schools to propagate knowledge of the international human rights covenants. The Centre is currently involved in setting up an organisation to promote awareness of the importance of human rights principles among the personnel of the law enforcement agencies.

Also encouraging is the continued and active presence of a number of effective and independent non-governmental organisations, for example, the Civil Rights Movement, the Centre for Society and Religion, the Movement for Inter-Racial Justice and Equality and other similar groups. Such bodies, to the embarrassment of this and previous administrations, publicly express clear criticism of alleged government actions which threaten to breach the fundamental rights of the citizens.

Further, among members of both communities there is still a willingness to try to understand and a sincere desire to achieve a resolution to the ethnic conflict through moderation and compromise. In fact a number of bodies, committees of concerned citizens and religious groups, have been taking steps to re-establish dialogue and trust between the Tamils and Sinhalese, and have set up some excellent programmes in their endeavour to achieve this aim.

Turning to other aspects of the Sri Lanka situation, while the *per capita* income of the country is low, Sri Lanka possesses the essential resources to be successful. The population is highly literate (there is a more than 85% literacy rate amongst adults), life expectancy is 69 years at birth, and there is a low infant mortality rate (37.7 per thousand). Sri Lanka has a long-established civilisation, a rich and varied culture, a tradition of democratic government and freedom of speech, respect for the rule of law and, the present problems notwithstanding, a charming, friendly and overwhelmingly hospitable people. In addition to all of this Sri Lanka enjoys a good climate and physically is truly a tropical paradise.

Much of her quality of life and many of her assets and the achievements of which she can be justifiably proud are now under threat. The government must bear the major part of the responsibility for the trends which recently have eroded the democratic system and shaken the authority of the rule of law, which failures in turn have allowed breaches of the fundamental rights of citizens to go unchecked.

As is stated in the preamble to the International Covenant on Civil and Political Rights,

recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Under the Charter of the United Nations all member states have an obligation “to promote universal respect for and observance of, human rights and freedoms for all without distinction as to race, sex, language or religion.”⁸³ It is now incumbent upon the government of Sri Lanka to ensure that, in relation to the people of that country, this obligation is fulfilled.

⁸³ Charter of the United Nations, art. 56.