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OBJECTIVES

The Law and Society Trust Fortnightly Review keeps the wider Law and Society community informed about the activities of the Trust, and about important events and legal personalities associated with the Trust. Our publication is aimed at raising public awareness on all issues concerning the legal rights of citizens, and at gaining wider recognition of law as society's instrument for peaceful change.

This issue focusses on civil rights. First, Neelan Tiruchelvam examines the origin of the office of the Ombudsman, its potential for redressing citizens' grievances regarding mal-administration and the need to reform the institution as set up in Sri Lanka. Secondly, we feature an excerpt from the Law & Society Trust's publication - *Sri Lanka: State of Human Rights 1993* written by Charles Abeysekera. This gives the facts on international standards and constitutional guarantees applying to Freedom of Expression and lists revelatory examples of its restriction in Sri Lanka in 1993 by the curbs of state harassment and intimidation. A review by Tej Thapa of the entire book from which this extract is taken follows. Next comes a review by Kanya D Tampoe-Sanders of *Human Rights in Developing Countries: Yearbook 1994* with emphasis on the section on Sri Lanka. Lastly, we publish the Burma Resolution of the General Assembly of the United Nations.

CIVIL RIGHTS

IN THIS ISSUE

Reform of the
institution of the Ombudsman
Neelan Tiruchelvam

FREEDOM OF EXPRESSION
from *Sri Lanka: State of Human Rights 1993*

Book Review -
Sri Lanka: State of Human Rights 1993
Tej Thapa

Book Review -
*Human Rights in Developing Countries:
Yearbook 1994*
Kanya D Tampoe-Sanders

BURMA RESOLUTION OF THE
GENERAL ASSEMBLY OF THE U N

The Redress of Administrative Grievances

The reform of the institution of the Ombudsman

Dr. Neelan Tiruchelvam

The goal of creating an effective institution for the redress of administrative grievances has eluded Sri Lanka for many decades. From the mid fifties many Sri Lankan students of Public Law have followed with great interest the office of the Ombudsman, an institution which originated in Sweden in 1809 for the purposes of receiving and investigating complaints from citizens against unjust administrative action. This institution was subsequently adopted by Finland in 1909 and spread to Denmark, Norway and New Zealand. Even the United Kingdom which had for many years resisted this institutional innovation, established a Parliamentary Commissioner for Administration in 1967 and a Commissioner for Local Administration in 1974 to remedy injustices caused by mal-administration. There was, however, an important conceptual difference between the institution of the Ombudsman as it operated in Scandinavia from that in Britain. In the Scandinavian model, the Ombudsman was conceptualised as an institution which was independent of existing political and administrative agencies, while in the British model the Ombudsman was conceived as an adjunct to Parliament. The Sri Lankan experiment with the institution has, however, floundered between these two models.

The first significant public discussion on the Office of the Ombudsman was during the United Nations seminar held in Kandy in 1959. The Danish Ombudsman presented a paper on his office and its operations and this stimulated New Zealand's interest in the concept. A Cabinet Sub Committee was appointed during the Dudley Senanayake Government which included Mr. C.P. de Silva, Mr. J.R. Jayewardene, Mr. M. Tiruchelvam and Mr. A.F. Wijemanne. This Committee adopted a rather cautious approach and recommended on 22nd December 1965 that the Ombudsman receive complaints only through Members of Parliament which were further filtered through the Public Petitions Committee. In 1978, the Law Commission under the Chairmanship of Chief Justice Victor Tennekoon was requested to give urgent consideration to the creation of a Parliamentary Commissioner for Administration as envisaged by Section 156 of the Constitution. I was a member of the Law Commission at that time. The Law Commission gave the most urgent consideration to this request and prepared a report and a draft Bill on the establishment of the Office of the Ombudsman. The report which provides an extensive and insightful commentary on the proposed Bill, needs to be reprinted and be more widely circulated. The Law Commission proposal followed the Scandinavian model and empowered the Ombudsman to directly receive complaints from any aggrieved persons or to conduct investigation on his own motion. It also provided that a

group or body of persons could invoke the jurisdiction of the Ombudsman by means of a written complaint. However, this recommendation was not accepted by the then Government. President Jayewardene decided to proceed on the basis of the report of the ministerial Sub Committee established in the mid 60s and to establish the office as an adjunct to Parliament in general and the Public Petitions Committee in particular.

This Bill, therefore, seeks to restore the recommendation of the Law Commission and remove those procedural constraints on the Office of the Ombudsman which has progressively eroded its effectiveness. Parliamentary Commissioner Mr. Sam Wijesinha in his Annual Reports to Parliament has complained about the procedural limitations of the law and the jurisdictional constraints which prohibited him from reviewing complaints against government policy or reviewing the exercise of administrative discretion. One of the principles which underline the jurisdiction of the Ombudsman is that he will focus on issues of 'mal-administration' and not have the authority to re-examine decisions on the basis of their 'merits'. The reports, however, do not refer to a more basic jurisdictional limitation which is that the Ombudsman could not investigate the recommendations and decisions of Ministers.

There are a number of reasons as to why the Parliamentary Commissioner for Administration, whose office was established in 1981, has failed during the last 13 years to fulfil the expectations of the public of an independent, impartial and informal watchdog against mal-administration. Firstly, the Office of the Ombudsman was essentially a very personal institution which derives its strength from the personality, vision and vigorous commitment to the value of justice and fairness which are critical to the office. I do not think that governments have attached adequate importance to this office in the selection of the Parliamentary Commissioner of Administration and in the financial and human resources that have been placed at his disposal. Secondly, public understanding and confidence in the institution of the Ombudsman is limited. No meaningful programme of public education has been undertaken and those who are aware of the institution have a negative view of its effectiveness. This is particularly marked in the case of fundamental rights, as for years the Ombudsman received no complaints of abuses of fundamental rights. Thirdly, the Ombudsman had an ambiguous relationship in a presidential parliamentary system. His appointment is made by the President and is accountable to Parliament. The principal Act now being amended envisaged a close link with Members of Parliament and the Public Petitions Committee. But this link has proved to be more formal than real. The Public Petitions Committee has not provided the legislative overview that the Select Committee on the Ombudsman has provided in the UK Parliament. In the circumstances, the authority of Parliament has not been invoked to give teeth to the Ombudsman, and there has been little legislative interest in the reports of the Parliamentary Commissioner and his recommendations. It is also significant that despite the explicit requirement of the law that

the Ombudsman shall at least once in every calendar year send to the President and the Parliament a report of the work done, there were only two such reports which were presented. Fourthly, a very important aspect of the jurisdiction and powers of the Ombudsman related to administrative practices which were unreasonable, discriminatory and oppressive. There has been no meaningful impact of the office of the Ombudsman on the review of such practices. In Sweden, the penal system was reformed as a result of the work of the Ombudsman. In New Zealand, the Ombudsman's recommendations had a significant impact on the reform of administrative systems.

The Public Petitions Committee needs to be reconceptualised to provide legislative oversight over the work of the Ombudsman. The Committee can (1) review the reports of the Ombudsman, (2) examine administrative practices which require review, (3) advise aggrieved individuals where the Ombudsman reports under Section 17 (3)(c) that no effective departmental action has followed his recommendations, (4) receive petitions with regard to injustices in respect of matters which fall outside the jurisdiction of the Public Petitions Committee. There are at present almost three thousand petitions pending before the Public Petitions Committee, and Parliament needs to augment the investigative capacity of the Committee.

In the circumstances, the proposed amendment to the Parliamentary Commissioners Act of 1981 needs to be welcomed. It represents a serious attempt to restore some credibility to this institution, both with regard to the procedures of receiving complaints and with regard to the nature of the determinations of the Ombudsman and the recommendations that he may make to the head of the institution concerned. In regard to Section 10 of the principal Act, it should be clear that the complaints may be made either by an aggrieved individual or a body of persons acting in the public interest. We would also urge the Government to manifest the seriousness of its commitment to administrative reform and administrative justice by appointing an Ombudsman who will immediately command public confidence and to empower such a person by providing him with adequate resources including the appointment of a deputy Ombudsman as envisaged by the law.

FREEDOM OF EXPRESSION*

This chapter first sets out the constitutional and legal framework in which rights to free expression are located in Sri Lanka. It then notes restrictions and restraints that generally affect that right. There follows in detail a record of the year indicating how exactly the right to free expression has been honoured or dishonoured.

(i) Relevant international standards

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of expression. This article, according to the ICCPR includes the following freedoms:

freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media ... (Art. 19(2))

(ii) The constitutional guarantees

Article 14 of Chapter 3 of the Constitution of 1978 guarantees every citizen "freedom of speech and publication". This article also guarantees citizens the right of freedom of assembly.

The restrictions that may be placed on the enjoyment of fundamental rights are set out in Article 15(2) of the Constitution. With regard to the right to free expression, it says:

The exercise and operation of the fundamental right ...shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to an offence.

*

An excerpt from the chapter on Civil and Political Rights in *Sri Lanka: State of Human Rights 1993* (Colombo, Law and Society Trust, 1994)

These restrictions are far wider than those allowed under the International Covenant on Civil and Political Rights (ICCPR) which stipulates that restrictions:

shall only be as such as are provided by law and are necessary,

(a) for respect of rights and reputations of others;

(b) for the protection of national security or of public order or of public health or morals.

Necessity is not a requirement under Sri Lankan law. The Supreme Court in a 1982 decision said:

In Sri Lanka the operation and exercise of the right to freedom of speech are made subject to restrictions of law not qualified by any test of reasonableness. Neither the validity nor the reasonableness of the law imposing restrictions is open to question ..
(*Malalgoda v. AG* (1982) 2 Sri L.R. 777)

The Constitution provides no guarantees of the right to information, but the Supreme Court has held that the right to know is necessarily implied in the right to free expression.

(iii) Other laws that affect free expression

The Sri Lankan Constitution also permits wide restrictions on freedom of speech with reference to parliamentary privilege. The Parliament (Powers and Privileges) Act No. 21 of 1953 created one offence - the publication of committee proceedings before they were reported to the House. Even here, Parliament had only the powers of admonishment and removal; only the Supreme Court could, after a trial, order a fine or a term of imprisonment.

This Act was amended in 1978 so as to broaden the range of offences. Under this amendment the following were made offences:

(a) wilfully publishing any false or perverted report of any debate or proceedings in the House or a Committee or wilfully misrepresenting any speech made by a member in the House or in Committee;

(b) wilfully publishing any report of any debate or proceedings of the House or a Committee, the publication of which has been prohibited by the House or Committee;

(c) the publication of any defamatory statement reflecting on the proceedings or character of the House; and

(d) the publication of any defamatory statement concerning any member in respect of his conduct as a member.

The Act of 1980 created a further offence; the "wilful publication of any report of any debate or proceedings of Parliament containing words or statements after the Speaker has ordered such words or statements to be expunged from the official report of Parliamentary debates". The Act of 1978 also gave Parliament the power to mete out criminal punishment for those found guilty of this broad range of offences.

The Prevention of Terrorism Act, first enacted in 1978 on a temporary basis and made a part of the permanent law in 1982, enables the government to punish acts that are deemed to be "terrorist" or "subversive". It includes a provision that prevents the publication of any matter relating to the commission or investigation of any act that constitutes an offence under the Act. Even the non-violent articulation of views supportive of secession is an offence.

(a) emergency regulations and their impact on freedom of expression

The constitutional guarantees, with all the limitations implied in the restrictions, are further affected by the state of emergency which has been in force in the country since 1983, except between January and June 1989. The state of emergency, justified in the name of the civil war that has been engendered by the ethnic conflict, and brought into force by a declaration under the Public Security Ordinance of 1947, enables the government to make regulations that override all laws except the Constitution and affect in various ways the operation of fundamental rights including the right to free expression.

The publication of any matter that would or might be, in the opinion of a Competent Authority,

prejudicial to the interests of national security or the preservation of public order or the maintenance of supplies and services essential to the life of the community or matters inciting or encouraging persons to mutiny, riot or civil commotion, or to commit breach of any law

is prohibited by article 14(1) of the emergency regulations.

Censorship has been imposed from time to time on the ground of national security and public order. Emergency regulations that affect the right to free expression vary from time to time. During the year under review, the regulations that were in force and affected in some way the right to free expression are set out below:

- i. regulation no. 1 of 1989 which requires the re-registration of all printing presses with provincial and district government authorities;
- ii. regulation no. 1 of 1991 which places restrictions on political activity including the holding of meetings, demonstrations, processions, pasting posters, placards or paintings.

Political parties in opposition to the government have combined to protest against government measures that affect freedom of expression. In March in a joint statement, they pledged to uphold press freedom. In December, they protested against the reimposition of emergency regulations regarding incitement. In September the SLFP issued a new policy statement in which they reaffirmed their commitment to freedom of expression. This did not, however, hinder Mr. Richard Pathirana, a leader of the SLFP and opposition whip in Parliament, threatening a few days later to nationalise The Island group of newspapers when his party came into power; he alleged that these had shifted into an anti-SLFP line. In spite of rhetorical protestations, most political parties do not show in action a deep rooted respect for the right of free expression.

(b) judicial affirmation of freedom of expression

The political parties of the opposition organized on July 1, 1992 a "sound protest" (Jana Ghosha). Members of the public were asked to demonstrate their opposition to the government by making any kind of loud noise at 12 noon, wherever they were at the time. The protest was obstructed by the police in various ways.

A member of the Horana Pradeshiya Sabha (Horana Divisional Council) whose participation in the protest had been obstructed by the police appealed to the Supreme Court, alleging that his fundamental right to criticise the government in power had been violated. The Supreme Court found in his favour, saying that "criticism of the government is, per se, a permissible exercise of the freedom of expression under Article 14(1)(a) of the Constitution"; the state was ordered to pay him Rs. 50,000 as damages (*Amaratunga v. Sirimal*, S.C. Appl.468/92 [decided 1993]). The Supreme Court also instructed the Inspector General of Police to bring this decision to the notice of all police officers so that similar violations do not take place in the future (see also chapter on Legal Background).

(iv) The press in 1993

To sketch in the background, there is the mainstream daily and weekly press in all 3 languages and a large number of weekly tabloids. Within the mainstream press, the major group is state-owned, following the nationalisation of the Lake House group in 1973; 2 other groups are privately owned - one headed by an uncle of the Prime Minister and the other by a brother of Mrs. Bandaranaike, the leader of the SLFP. These connections determine broadly the political trends within their newspapers. Language and readership also make a difference.

The weekly tabloid press consists generally of publications devoted to various sectional interests like students, women, children, astrology etc.; there are also 5 tabloids in Sinhala and one in Tamil that are politically oriented. These tabloids are a recent phenomenon; they came into prominence round about the time of the impeachment crisis in 1991. They deal with issues and news stories not normally covered in the daily press and are more critical in their approach. They have a reasonably large readership and manage to survive with almost no advertising revenue. Some of them receive support from NGOs. The tabloids are now collectively described as the 'alternative press'.

The tabloid newspapers as well as the 2 dailies run by private interests were, at the beginning of the year very critical of the late President, Mr. Premadasa, and of his policies and actions. Mr. Premadasa was critical of the press in many of his public speeches. He complained that their reporting was biased and unfair in that they ignored the many positive achievements of his government. He said that they were primarily concerned with attacking him personally. He hinted that these newspapers, particularly the tabloids, were part of a conspiracy to destabilise the government.

Other members of the government also claimed, with a great deal of vehemence, that the tabloids, which enjoyed no advertising revenue, only existed with foreign funding and were therefore the agents of foreign interests. These interests were committed not only to the destabilisation of the government but also to the destruction of indigenous values and the dismemberment of Sri Lanka. The state-owned press too joined the chorus of denunciation, and in condemning what they called the selective and partisan reporting of the alternative press and their financial base. Lankaputhra, a columnist of the Sunday Observer, wrote in the issue of 13 Jan. 1993 as follows:

Most of the journalists who spoke at the Nugegoda meeting (a public meeting organised by the Free Media Movement) run weeklies and magazines without a single advertisement. Anybody who knows about publishing will know that this is a miracle that could be performed only by these journalists. Obviously there is a hidden source that finances these miracles.

Actual harassment of the media quickly followed.

Officials of the Inland Revenue, claiming to check whether the laws regarding income taxes, and particularly the business turnover tax, were being complied with, simultaneously visited on 1st February the offices of *The Sunday Times* and *Lankadeepa* (mainstream dailies), of the *Yukthiya*, *Lakdiva* and *Ravaya* (privately managed tabloid weeklies) and of *Aththa* (the Communist Party bi-weekly). They also examined the accounts of the *Navamaga Press*, a commercial press that prints *Yukthiya* (Inform, Human Rights Situation in Sri Lanka: 1993).

Officials of the Labour Department also went to *Ravaya* on the same day checking whether legally mandated minimum wages and provident fund payments were being made. On the same day, officials of the municipality and of the electricity and water boards checked payments due to them from *Lalithakala*, the commercial press that prints *Ravaya*. Two days later on 3rd February, Inland Revenue officials went to the offices of *Wijeya Publications*, the publishers of *The Sunday Times* and *Lankadeepa*; and of *Upali Newspapers*, publishers of the *Island* and *Divayina* (Inform, 1993).

At 8.30 p.m. on the night of 5th February, the offices of the *Lakdiva* newspaper were sealed by a flying squad of Colombo municipal officials, allegedly for the non-payment of rates and/or the unauthorized sub-letting of a part of their premises. The publishers later filed a fundamental rights case on this issue. The Supreme Court ordered the Municipality to open up the premises (Inform, 1993).

The orchestration of the visits and checks indicate an attempt to harass and intimidate those sections of the press that are critical of the government. The blatant use of state agencies and officials for partisan purposes is also a sign of the government's contempt for democratic processes. While criticising the press, President Premadasa had repeatedly declared that he would not seal or suppress newspapers as his predecessors had done. He demonstrated by these actions that he was not, however, above using the state apparatus to achieve the same ends. That no prosecutions have been launched as a result of these checks indicate their intimidatory intent.

Other and more violent methods of suppression have also been resorted to. In September 1992, the UNP Mayor of Nuwara Eliya had apparently decided that her town should not be sullied by the Sinhala tabloid *Yukthiya*. She along with her guards visited the news agent responsible for distribution, seized all the copies and destroyed them. The paper promptly filed a fundamental rights case before the Supreme Court. The case first came up for hearing on 10 Jan. 1993. It had not been brought to a conclusion by the end of the year (Inform, 1993).

The law has been resorted to often in order to suppress coverage of incidents, the most notorious being the case of the Udugampola affidavits. Mr. Udugampola was the Deputy Inspector General of Police in the Southern range during 1988 and 1989 and was largely instrumental in suppressing the JVP insurgency in the area. His family was killed by the JVP and he was accused of unleashing a reign of terror in the region. He later fell out with the government and his services were not retained after he reached the optional age of retirement. He then swore out a series of affidavits, in April 1993, in which he revealed the names of a number of persons who had "disappeared", and details of the vigilante squads responsible (Inform, 1993).

Yukthiya, Aththa and Lakdiva published these affidavits in full while the Sunday Times and The Island published extracts. The first 3 newspapers were then charged by the Attorney General with bringing the government into hatred or contempt, creating ill-will or dissension among the citizens and/or slandering public officials. The newspapers were also visited by police officials who attempted to find out the provenance of these affidavits since Mr. Udugampola was himself in hiding.

Effective discussion of the matters referred to in the affidavits was prevented on the ground that the matter was sub-judice. After the assassination of President Premadasa, Mr. Udugampola made his peace with the government and swore out new affidavits claiming that the matters referred to in his earlier affidavits had been based only on hearsay. The cases against the newspapers were then quietly withdrawn.

Many incidents of personal harassment of journalists either by members of the security forces or by persons associated with political forces have been recorded during the year. The Free Media Movement, an association of journalists and media personnel committed to the freedom of expression, has spoken of over 50 such incidents. We record below some of the more significant:

Ruwanthi Kariyawasam, freelancer for the Lankadeepa, while covering a strike at a Ratmalana factory on 9th June; Dudley Wickremasinghe, Lankadeepa photographer at the police morgue after the assassination of President Premadasa; and journalists covering the mobile Presidential Secretariat in Batticaloa, were harassed by police and prevented from either reporting on or photographing the events (Inform, 1993).

Kamal Jayamanna, Lankadeepa photographer at a student picket in Colombo on 5th April; and Sena Ambalangoda, Divayina photographer, at a student demonstration in Kalutara on 20th April, were attacked by unknown persons (Inform, 1993).

A number of journalists have received death threats, mainly because of their coverage of politics or of corruption (Inform, 1993).

Journalists and photographers covering an International Human Rights Day celebration on 10 December 1992 at Slave Island, Colombo were assaulted by the police. In the face of the resulting publicity, the government appointed on 20th January retired former Court of Appeal judge Tudor de Alwis as a one man committee to inquire into the incident. He concluded his sittings on 25th February after hearing evidence from a number of journalists and others present at the demonstration. The report has not been published, and it probably found a number of police officers guilty of using unwarranted force. The Officer In Charge at that time, B.P.D. Karunaratne was sent on compulsory leave in March. He and several other officers will face trial (Inform, 1993).

(a) parliamentary reporting

The parliamentary reporters of Lankadeepa were censured and 'banned' from Parliament for a week in July. After this incident, the Parliamentary Privileges Committee said it would issue certain guidelines for reporters covering parliamentary proceedings; these related particularly to the reporting of matters ordered to be expunged by the Chair and not appearing in the Hansard, the official record of the proceedings (Inform, 1993).

This would have created difficulties in the immediate reporting of parliamentary proceedings, as the Hansard takes days to appear. The Prime Minister, in the face of severe criticism, later declared that Parliament would be flexible about reports appearing on the day after parliamentary sittings but that any reports appearing after the publication of the relevant Hansard would have to conform to the official version.

(b) reporting the war

Writing about the war in the North-East poses many difficulties, particularly any investigative reporting that questions the official versions put out in army communiqués.

Mr. Iqbal Athas, defence correspondent of The Sunday Times, wrote an article critical of an army operation in its issue of 10th October. He alleged that a caller, identifying himself as General Cecil Waidyaratne, Army Commander, threatened him with death on tyres. It is reported that tabloids which highlighted this incident and Mr. Bernard Soysa, General Secretary of the Lanka Sama Samaja Party which issued a statement, have also been threatened (Inform, 1993).

When this issue was raised in Parliament, the Minister for Parliamentary Affairs said that the Army Commander had categorically denied issuing any threat, directly or indirectly, to Mr. Athas; all that he had done was to bring to the notice of the editor of *The Sunday Times* a "complete distortion of facts in the paper's defence column which he believed would have a demoralising effect on the armed forces." A funeral wreath was delivered later to Mr. Athas' home by a funeral parlour allegedly in the name of the Sinha Regiment (Inform, 1993).

The army also expressed its unhappiness over what was called negative reporting in connection with operations in Jaffna in September and October. There was a call for some kind of censorship which was fortunately not heeded.

Reporting the war is tied up with the question of access to information. The practice was to have a press briefing after the weekly cabinet meeting. At the briefing at which defence spokesmen were also present, cabinet decisions were made known. There was also the opportunity for local and foreign journalists to question government and army spokesmen directly. The briefings were discontinued in August, despite protests by local journalists and the Foreign Correspondents Association, and were replaced by a communique.

(v) **The electronic media**

Both radio and television were state monopolies until 1993.

Two private radio stations were permitted this year. However, these are purely entertainment channels and, according to reports, are prevented from airing independent news bulletins. They may reproduce the news bulletins put out by the state radio (Inform, 1993).

Two television channels, both owned and operated by state agencies, were the only ones available at the beginning of the year. Since then 2 private channels have been licensed. It is understood that one of the terms of the license is that they do not put out independent news bulletins covering local events; the fact is that they reproduce international news taken over from CNN or other sources but do not cover the local scene (Inform, 1993).

Another private channel relays two services taken over from Star TV in Hong Kong, reportedly without authority. The services are the BBC world service and the Star sports channel, both on a 24 hour basis. The operator, obviously under state direction, scrambles the BBC news telecasts whenever any news pertaining to Sri Lanka begins to come over. The order is probably so rigidly worded that even news of a Sri Lankan cricket team abroad is known to have been scrambled.

Despite the opening of new radio and television channels, the government appears determined to keep its monopoly of news.

A cabinet reshuffle in August 93 saw the appointment of a new Minister of Information and Broadcasting, Mr. Tyrone Fernando. He began by assuring the public that his aim would be to safeguard freedom of expression. However, he also proposed to set up a "monitoring unit" for the media and advertising; fortunately we have had no further news of this unit. The President announced shortly thereafter a new set of guide lines for the radio and television, allowing the channels a degree of discretion in the choice of material and presentation. However, these do not appear to have influenced the channels in any way, they continue to project the policies of the government, albeit with a degree of tact, less blatant and more discreet than earlier.

Nevertheless, the government's concern with using the electronic media for its own advantage or at least in a way that does not benefit its opponents is illustrated by a rather bizarre incident. Soon after the announcement that Provincial Council elections would be held on 17th May, government banned, on both radio and television, all advertisements and even other programme material which mentioned the election symbols of political parties.

(vi) Freedom of expression in the arts

Public performances of plays and exhibitions of films require a license from the Public Performance Board. While the licensing of stage plays has been reasonably liberal, films have suffered from standards that do not apply uniformly to imported and locally produced films.

The Public Performance Board does not concern itself with dramas and serials presented on television. The state television authority has developed its own internal mechanisms for their evaluation and control. Scripts were examined and approved by one panel of evaluators, with or without amendment; thereafter the scripts went into production. Another panel of judges saw the finished film; their approval was necessary for telecasting. The efficacy and independence of these internal mechanisms was brought to public attention during the year when two television serials were stopped in midstream.

Ava Sanda (The Waning Moon) was a teledrama in 24 weekly episodes. It dealt in part with the situation in the country in 1988/89 and disappearances of students through the story of a female university student whose mind had been somewhat unhinged by these incidents. After 15 episodes had been televised, it was brought to an abrupt end on 28th January. Viewers were told that the telecasting of the serial had been stopped "due to unavoidable

circumstances" (Inform, 1993).

Mahamera Pamula (At the Foot of the Great Mountain), a serial in 14 episodes, dealt with moral and financial corruption at high levels in society and of the various methods, including murder, adopted by those involved to hide and cover up their misdeeds. On January 10th, viewers were expecting the 10th episode of the serial. They saw instead a badly botched version of the last episode with an abrupt incomprehensible ending (Inform, 1993).

Both these serials had gone through the internal approval and vetting procedures of the television authority as being suitable for exhibition. Nevertheless, their exhibition was brought to an abrupt end by an order of the minister responsible for broadcasting. When questions were raised in Parliament, Mr. A.J. Ranasinghe, the Minister of State for Information, justified his action by referring to Article 7(2) of the Sri Lanka Rupavahini Corporation Act and declaring that these two teledramas had "violated norms of decency" In public speeches, Mr. Ranasinghe has declared that he was not prepared to allow television film-makers to corrupt the minds of young children (Inform, 1993).

The government has not been able to mount any justification of these actions. It is reasonable to accept that the programmes were suppressed because of their content; it was probably deemed prudent not to remind viewers of the methods adopted to suppress the insurgency in the South or of corruption at top levels.

The Internal Review Board which had given final approval to these two serials also found itself replaced.

(vii) Conclusion

There is no overt censorship currently existing, either in terms of the normal law or even the emergency regulations. Yet, as indicated by the facts reported above there have been conscious attempts by the State to prevent, by harassment and intimidation, the expression of views that are not congenial to it. The State's control of the largest newspaper publishing group, radio and television means that these organs are not ordinarily open to the expression of any dissenting opinion. While it is true that there are newspapers that are critical of the state, the media with the largest circulation does not usually give equal or reasonable space to alternative viewpoints.

Review of *Sri Lanka: State of Human Rights 1993*

Tej Thapa

The Law and Society Trust, in a collaboration with the Nadesan Centre for Human Rights and INFORM, has recently published *Sri Lanka: State of Human Rights 1993* (Colombo: Law and Society Trust, 1994), the first report of an annual series on the conditions of human rights in Sri Lanka. *State of Human Rights* presents a comprehensive study of human rights in the country during 1993 as measured through various legal, political and social indices. The report also points to the Sri Lankan government's affirmative duties to its citizens, both under constitutional guarantees and under international obligations. The report is well-structured, and written in clear and simple prose. The complexity of the issues presented is at no point lost in the labyrinths of legal or technical jargon.

The book begins with a brief description of the legal background necessary for an understanding of human rights. This summary introduction, although drawn with a broad brush, is helpful in acquainting the reader with the basic premises and problems relevant to the ensuing discussion. The second chapter on emergency regulations is likewise brief but to the point, enumerating both positive and negative revisions to the emergency regulations as made in 1993. There follows at the end of this chapter a list of the emergency regulations that were in effect in 1993; this list interestingly reveals that not only are the more obvious subject matters dealt with through emergency regulations (Possession of Explosives, Licensing of Firearms) but also far more obtuse ones (Edible Salt, Games of Chance). The authors note that the list is not exhaustive due to the enormous practical difficulties involved in the compilation of such a list.

The third chapter on civil and political rights constitutes the backbone of the report. This section is divided into three parts: respect for the integrity of the person, freedom of expression, and freedom of association. All three parts, read either severally or as a whole, reveal the extent and the nature of the violations perpetrated against individuals and organizations through active interference or indifference on the part of the various anti-government militia groups, most pointedly the LTTE. The authors provide the normative framework of civil and political rights, and detail specific instances of violations of these rights - except noticeably in the case of custodial torture, where no instances are cited. Of particular interest in this chapter are the discussions on detention and fair trial, harassment of the media, the infamous case of Premadasa Udugampola, and the regulation of labour unions. The discussion of the Prevention of Terrorism Act gets somewhat short shrift, however, and would be better placed in the chapter on emergency regulations.

The chapter on displacement and the right to remain presents a compelling account of the conditions of refugees and the contradictions involved in the efforts at resettling and repatriating them. The systematic neglect and abuse faced by the vulnerable population of refugees is an issue receiving much attention in the world today; the authors of this chapter point very clearly to the need for international and national attention to the plight of Sri Lankan refugees, particularly internal refugees. This chapter stands out from among the other chapters because of a conscientious effort made by the authors to reveal the differing accounts and conclusions drawn by various humanitarian organizations involved in the resettlement and repatriation process, creating thereby a full, and consequently more accurate, picture of the distinctive problems posed by refugees.

A study of human rights conditions in Sri Lanka must necessarily confront the issue of the civil war. The report not only contains a chapter devoted exclusively to the North-East problem, but the larger percentage of the report is concerned with violations perpetrated as a direct consequence of the war, as is evident from the foregoing paragraphs. What is exemplary about this report, however, is that it is not consumed by the civil war and its attendant consequences at the expense of other human rights indicators. The chapters on economic and social rights, women's rights, and children's rights highlight the need for well-formulated and sustained government programs to raise the national standard of living. Using birth and death rates, maternal and child mortality rates, literacy rates and electoral participation rates, these chapters make clear that the condition of human rights cannot be calibrated merely on legal and political scales. The chapter on women's rights, however, is disappointing in certain parts. The section on women and the family presents the basic tenets of national domestic law, but fails to mention actual conditions and problems faced by women in familial contexts. The section on violence against women does not mention, for example, the conditions faced by prostitutes, who have historically been much abused, or women who are victims of war crimes.

Although the writing is clear, there are occasional stylistic inconsistencies and the footnoting is somewhat idiosyncratic. That one report should cover exhaustively all issues pertaining to human rights while remaining stylistically perfect is perhaps an unreasonable expectation. This ambitious report succeeds in compiling into one document various important forms of human rights abuses. Despite a few shortcomings, the breadth of the issues examined is noteworthy. There is, for example, an interesting article on the rights of the Vedda community which emphasizes the importance of recognizing an ethnic group whose concerns currently exist beyond the boundaries of the North-East problem. There is a helpful bibliography as well as a list of all the relevant international instruments ratified and not ratified by Sri Lanka. *State of Human Rights* represents an important new step in the reporting of human rights conditions in Sri Lanka. All those concerned with human rights and with conditions in Sri Lanka generally would be well advised to read it.

Review of *Human Rights in Developing Countries: Yearbook 1994*

Kanya D. Tampoe-Sanders

Human Rights in Developing Countries: Yearbook 1994 was published as a joint project by Nordic Human Rights institutes, the Ludwig Boltzman Institute of Human Rights, Vienna, and the Netherlands Institute of Human Rights, Utrecht. The Yearbook project proposes to publish comprehensive assessments of human rights trends in developing countries of the South in the areas of civil and political rights as well as economic, social and cultural rights. It also aims to enable assessments of the overall trend of the human rights situation in each country by reporting on countries at three year intervals. Besides reporting on specific countries, the Yearbook also carries articles on human rights related topics with relevance to developing countries.

The 1994 Yearbook covers events during the period 1991-1993. The report is divided into two parts. Part One comprises of four thematic studies on human rights and development, and Part Two consists of reports on human rights in selected developing countries. The countries included in this issue are Angola, China, Ghana, Honduras, Pakistan, Sri Lanka and Tanzania. The Report also includes tables denoting ratifications of major human rights instruments.

The report on Sri Lanka is authored by Bendigt Olsen who is a political scientist and researcher at the Chr. Michelsen Institute in Sweden. Sri Lanka was last covered in the 1990 Yearbook, published in 1991. While covering the events that took place in 1993, the report notes particular trends and developments since the last report. Unlike other international organisations reporting on human rights situations in various countries, the Yearbook addresses human rights concerns in a wide range of areas. In terms of the breadth and depth of coverage, the Yearbook coverage of Sri Lanka in 45 pages is by far the most comprehensive among the reports done on Sri Lanka by foreign institutions.

The report begins with a discussion of Sri Lanka's international legal obligations and national Constitutional commitments to human rights; the structure of government and the implications of the Executive Presidency; the protracted armed conflict in the North and East of the country and its social, political and legal ramifications. Such a structure provides the reader with the conceptual framework necessary to grasp the significance of the ensuing discussion on particular civil, political, economic and social rights.

The events and developments during 1991, 1992 and 1993 with human rights implications were innumerable in Sri Lanka, especially in the civil and political rights spheres. Presenting a comprehensive picture of the human rights situation in all the areas covered by the report in just 45 pages is impossible. The author's valiant attempt at presenting the panorama of events during 1991 to 1993 is commendable. High incidence of disappearances, torture in police custody, arbitrary arrest and detention and periodic round ups of Tamil youth especially after incidents such as assassinations or bomb blasts in Colombo, the pervasive curtailment of freedom of expression of the media, and the impunity enjoyed by the perpetrators of human rights violations are well presented. The discussion presents not only violations by the government but the LTTE as well.

The author also notes that the government had relented during this period towards international monitoring of human rights in Sri Lanka by allowing organisations such as Amnesty International, the ICRC and others to operate within the country and send periodic missions to Sri Lanka. She goes on to show how the government has implemented several of Amnesty International's recommendations by noting that government has established several national commissions and organisations for the purpose of protecting human rights. However, the author fails to discuss the failure of some of these organisations such as the Commission for Elimination of Discrimination and Monitoring of Fundamental Rights and the Official Languages Commission which have neither exercised the powers nor performed all the tasks specified in their mandates either due to lack of resources or political will. She, nevertheless, notes that the work of the Presidential Commission of Inquiry into the Involuntary Removal of Persons has been circumscribed by the revised mandate, and accords due recognition to the commendable work done by the Human Rights Task Force in undertaking 1,600 visits to detention camps holding a total of 5,068 detainees, thus preventing the 'disappearance' of those arrested and detained.

Sufficient depth of coverage on all issues is too much to expect from a report of this length the coverage of which encompasses a wide range of topics and a span of three years. As a result the report provides a bird's eye-view on topics such as women's rights, children's rights, minorities and refugees. For example, the plight of the displaced is an acute problem in Sri Lanka where there are approximately 600,000 displaced persons, most of them living in refugee camps. The civil, political, economic and social rights implications of these people are many and has not been sufficiently addressed. Moreover, the women's rights section focuses primarily on women's economic rights in relation to employment opportunities and right to proper working conditions. Even though the coverage of these issues lack depth, the major problems are highlighted.

Another article in the Yearbook of relevance to Sri Lanka is Thomas Hammarberg's "The Rights of the Child in Developing Countries: International Norms and Procedures for Real

Change?". The article discusses the rationale for the World Summit for Children of September 1990, the consequent World Declaration on the Survival, Protection and Development of Children [Declaration] and the UN Convention on the Rights of the Child [Convention]. The basic tenets of the Declaration and Convention, "Best Interests of the Child", "Views of the Child", "Right to Survival and Development" and "Non-Discrimination" are discussed in light of the relevant articles of both instruments. What is disappointing about this article is that it stops short of presenting the provisions of the Declaration and the Covenant. As the title suggests "The Rights of the Child in Developing Countries: International Norms and Procedures for Real Change?", one would expect a discussion of international norms in relation to the realities of the condition of children's rights in developing countries. The article, however, serves only as an exposition of the Declaration and the Convention.

Overall the Yearbook is a noteworthy publication in terms of its coverage of human rights developments and trends in developing countries, as well as in its inclusion of topical articles of relevance to the developing world. The Yearbook is a valuable addition to the libraries of policy makers, activists and institutions concerned with human rights.

BURMA RESOLUTION

OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS

20th December 1993

Whereas the General Assembly of the United Nations on 20th December '93 resolved without a vote that:

- a) it is gravely concerned at "the continuing violations of human rights in Myanmar, as reported by the Special Rapporteur and in particular summary and arbitrary executions, torture, forced labour, abuse of women, restrictions on fundamental freedoms, including the freedom of expression and assembly, and the imposition of oppressive measures directed in particular at ethnic and religious minorities";
- b) it is "gravely concerned that the Government of Myanmar has not implemented its commitments to take all necessary steps towards democracy in the light of the results of the elections held in 1990"

Whereas the Universal Declaration of Human Rights states that "the will of the people shall be the basis of the authority of government".

Whereas the peoples of Myanmar and Sri Lanka have had strong historical, religious linkages and cultural exchanges.

And whereas human rights activists in Sri Lanka made an appeal on Vesak day in 1992 to all concerned groups in Myanmar to respect the verdict of the people as expressed in the elections of July 1990 and to work towards an immediate transition to democracy.

The House:

1. strongly urges that the Nobel Peace Prize Laureate Aung San Suu Kyi who is in her sixth year of detention without trial be released unconditionally and immediately, together with other political leaders and remaining political prisoners;
2. strongly urges that immediate steps be taken to transfer political power to the democratically elected representatives and to allow all citizens to participate freely in the political process; and
3. calls for full respect for human rights and fundamental freedoms and more particularly the right to life and the integrity of the human person, and in that regard urges that full effect be given to the Resolution 48/150 of 20th December 1993 of the General Assembly of the United Nations.

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