March 1984

Sri Lanka

A Mounting Tragedy of Errors

Report of a Mission to Sri Lanka
in January 1984 on behalf of
the International Commission of Jurists
and its British Section, JUSTICE

by

Paul Sieghart

Chairman, Executive Committee, JUSTICE

International Commission
of Jurists

and JUSTICE

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T.S. Kumaran

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A   M O U N T I N G   T R A G E D Y   O F   E R R O R S

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INTERNATIONAL COMMISSION OF JURISTS
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PREFACE

In 1981 the International Commission of Jurists (ICJ) published a report by Professor Virginia Leary on Ethnic Violence in Sri Lanka, which Mr. Paul Sieghart describes as 'essential reading' for a full understanding of recent events in Sri Lanka. A second edition of that report was published in August 1983, updated by the ICJ staff with a summary of subsequent developments, including the tragic outburst of communal violence in July, 1983.

Shortly before this outburst occurred the ICJ, aware of the increasing tensions, approached the Sri Lanka Government with a view to sending another mission to the country. A few days before the events of July 24, the Government replied that it could not entertain such a mission. However, some months later President Jayewardene, in response to an inquiry, renewed an invitation he had previously made to Mr. Sieghart, the Chairman of the Executive Committee of Justice, the British Section of the ICJ, to visit Sri Lanka as a guest of the Government. Like the ICJ, Mr. Sieghart has over the years taken a keen interest in Sri Lanka, a country which, in spite of all difficulties, has persistently maintained since Independence a parliamentary democracy dedicated to upholding freedom under the Rule of Law.

During his brief visit in January 1984, Mr. Sieghart had unparalleled opportunities to discuss the present situation concerning the Rule of Law and the legal protection of human rights in meetings with President Jayewardene, the Ministers of Foreign Affairs and Internal Security, the Chief Justice, the Secretaries of the Ministries of Defence and Justice, the Additional Solicitor-General and others. In consequence, he has been able to set out authoritatively the Government's standpoint on many important issues.

The section of his report dealing with the law and institutions contains a clear analysis and critique of the constitutional provisions for the protection of human rights, the emergency legislation in force, the powers and role of the armed forces and police, and the independence of the judiciary. In particular, certain police powers under the Prevention of Terrorism Act, which has now been made permanent, are shown to

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be a serious violation of the Rule of Law and of Sri Lanka's obligations under the International Covenant on Civil and Political Rights. The same conclusion is reached in relation to the recent amendment of the Constitution which penalises anyone peacefully advocating separatism by depriving him of the right to be a member of parliament, to hold public office, or to engage in any trade or profession which requires a licence, registration or other authorisation.

Equally interesting and persuasive are Mr. Sieghart's reflections upon the wisdom and efficacy of the draconian measures the Government has introduced to deal, as it claims, with the terrorist activities of the minute organisation of Tamil extremists, the self-styled Tamil Tigers, which the Government itself estimates at only 25 to 30 hard-core members and no more than 100 or 150 on the periphery. He finds some of these measures to be counter-productive as well as being contrary to international law.

Although being at all times outspoken, Mr. Sieghart has confined his report and his conclusions to strictly legal matters, and when he has made judgments they are made strictly in relation to the principles of the Rule of Law and Sri Lanka's legal obligations. Like all questions of human rights they do, of course, deal with issues which are highly sensitive politically, but we trust that the Government and citizens of Sri Lanka will understand and accept that he writes as a friend of Sri Lanka over many years, seeking to remain objective and impartial insofar as that is humanly possible.

Two days before Mr. Sieghart's visit there began an extremely important series of all-party talks, which offer the best hope for a resolution of the long-standing conflicts which have plagued Sri Lanka with increasing frequency and severity since Independence. The International Commission of Jurists, like Mr. Sieghart, hopes that these talks, which are likely to be prolonged, may succeed in ushering in a new era for Sri Lanka. His report is published as a modest contribution to the process of understanding and reconciliation.

Niall MacDermott

Geneva, March 1984.

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1. INTRODUCTION

The interest of the International Commission of Jurists in the observance of the Rule of Law and the legal protection of human rights in Sri Lanka (previously Ceylon) goes back over many years. As long ago as 1962, the ICJ expressed its concern over the enactment there of a Criminal Law (Special Provisions) Act, a statute which the very Court appointed under its own provisions courageously held to be unconstitutional later in the same year. On several occasions since then, the ICJ has expressed both praise and criticism of the actions of Sri Lankan governments, of all political complexions, in the field of its special concern.

My personal interest in Sri Lankan affairs began more recently. I first visited the country in 1976, and again in 1981, and met politicians, Ministers, Judges, officials, and practising lawyers. In May 1981, I wrote on behalf of Justice (the British Section of the ICJ) to the President of the Republic, His Excellency Mr. J.R. Jayewardene, to express concern about reports that a number of people had been arrested, that they were being held incommunicado without access to lawyers and without their families knowing where they were, and that there were grave misgivings about their safety. In reply, the President invited me to visit Sri Lanka as a guest of the Government.

At the time, I was unable to take up this invitation. However, in the following month Professor Virginia A. Leary, of the Faculty of Law and Jurisprudence in the State University of New York at Buffalo, USA, carried out a mission to Sri Lanka on behalf of the ICJ, which published her very comprehensive report under the title "Ethnic Conflict and Violence in Sri Lanka" in December 1981, and reissued it with a supplement by its staff in August 1983. In January and February 1982, an Amnesty International mission visited Sri Lanka; its report was submitted to the President on 7 February 1983 and published on 6 July of that year. In June 1983, Mr. Timothy J. Moore, Ll.B., a Member of the Parliament of New South Wales, Australia, visited

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Sri Lanka on behalf of the Australian Section of the ICJ, which published his report in the following month.

At the end of that month, there was another tragic outbreak of communal violence in Sri Lanka. Houses and shops were burned and looted, and there was much loss of life - some at the hands of members of the security forces. At its height, 53 Tamil political prisoners were murdered in two separate massacres in Colombo's Welikada prison. In November 1983, I wrote to ask whether President Jayewardene's invitation was still open. I was assured that it was, and accordingly I visited Sri Lanka for a further short stay of four days from 12 to 15 January 1984, on behalf of both the ICJ and Justice.

Notwithstanding the brevity of my visit, I was able to see many people at the centre of Sri Lankan affairs. The Protocol Division of the Ministry of Foreign Affairs was unfailingly helpful, and with very few exceptions I was able to interview everyone I asked to see: the President himself on two separate occasions, Ministers, Judges, and high officials. A list of these appears in the Appendix. All of them were most courteous, and answered my questions with as much candour as their official positions allowed, and sometimes more - even though I had made it clear that I did not wish to receive any confidences, and considered myself free to publish anything I was told. I was also able to meet many people outside Government; some in Colombo, some in Jaffna (where the Government transported me in an Air Force plane), and others outside the Island - none of whom had participated in, or would support, the use of violence for political ends. I should like to express my thanks to all of them for their help and co-operation in my mission.

Clearly, in four crowded days and as a foreigner, I was not able to investigate a wide wariety of allegations and counter-allegations which have been made in various quarters about recent events in Sri Lanka. In any case, these ought to be investigated in the first instance by the competent institutions and individuals in the country itself, and later in this report I shall make certain recommendations to that effect.

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There are countries where such institutions no longer exist, or where there is no one left whose findings could be sufficiently trusted. But Sri Lanka is not - or at least not yet - in that category.

It may be that what I have to say here will disappoint various interest groups, and perhaps also some individuals, in or out of Government, who have taken trouble to help me on this mission. If that is so, I shall naturally regret it. But in the last analysis I can only report my own observations and conclusions - which, like the perceptions of any other individual, will necessarily be both selective and incomplete.

2. THE BACKGROUND

For a full understanding of the background to recent events in Sri Lanka, Professor Leary's report is essential reading, and Mr. Moore's report two years later also contains much useful information. Where possible, I have tried not to cover the same ground, but rather to bring their work up to date and to add my own findings, conclusions and recommendations. However, for anyone who does not have ready access to their reports, here is a summary of the salient facts.

2.1 First Impressions

Tourist brochures rightly describe Sri Lanka as an island paradise. It is blessed with a benign tropical climate, and much fertile land. Apart from the fabled palm-fringed beaches, it has cool hills, great areas of forest, much wild life, a profusion of ancient monuments, many towns and villages of great charm, as well as a modern airport and an increasing number of well-situated and comfortable hotels.

Sri Lanka is blessed in other respects too. Its civilisation is at least as old as Europe's. Buddhism arrived

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there around the third century BC, and founded a lasting tradition of courtesy, friendliness and tolerance. Statistically, the country is still very poor: according to the World Bank,[1] the gross annual per capita product in 1981 was a derisory US$ 300. But such figures can be misleading, as they can only count goods and services that are commercially traded, and leave out all private consumption such as of that of the subsistence farmer, and all local barter, which account for much of the real production and exchange in such a country. Though far from rich by Western standards, Sri Lanka displays none of the grinding poverty, or the massive urban or rural slums, which are such a conspicuous feature of many other developing countries. Instead, what the tourist will see is a land of friendly, healthy and well-fed people, and the bustling social life of the streets and markets. Though smiling children may ask him for "school pens" with some persistence, it will be rare for him to see a beggar or a cripple.

2.2 Legend and History

In Sri Lanka, legend and history are often difficult to disentangle. Before either the Sinhalese or the Tamils arrived there, there must have been some aboriginal inhabitants, whose modern descendants may be the few primitive Veddha tribesmen still to be found in the forests of the South-East. The Sinhalese believe that their own ancestors arrived in the first millenium BC. Their language belongs to the Indo-European (or "Aryan") group, and they are therefore apt to think of themselves as belonging to the Aryan "race" - though in fact, outside the Nazi imagination of half a century ago, there is no such thing. Successive waves of Dravidian Tamils also arrived over the centuries, conquering parts of the Island, settling there, and establishing independent kingdoms. In the early 16th century AD, the Portuguese came and set up trading posts, expanding from these to colonise the coastal areas. In the following century, the Dutch ousted the Portuguese from these places.

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Neither the Portuguese nor the Dutch ever penetrated far inland. But at the end of the 18th century, the British in their turn ousted the Dutch, and by a treaty of 1815 made with the dissident nobles of an unpopular King of Kandy in the central hill country, they became the first Europeans to bring the whole of the Island under their control. It is noteworthy that this treaty contained one clause guaranteeing respect for "the religion of Boodoo"; and another guaranteeing freedom from torture, of which the ousted King had evidently been guilty.[2] These were precursors of guarantees for human rights in the Island, but they were by no means the first; for the notions of the dignity of the individual, respect for minorities and the rights of others, and the fair and impartial application of laws, are to be found deeply embedded in both Buddhism and Hinduism - which after all spring from the same roots.

Before the British arrived in Sri Lanka, relations between the Sinhalese and the Tamils had alternated between peaceful coexistence and intermittent warfare. Feudal kings and lesser nobles in each group were apt to take up arms against each other, as well as against others of their own group, to advance their particular interests. But these skirmishes eventually came to an end under British rule: when the Tamil province of Jaffna in the North was merged in 1833 with the other British administrative units into a single Government of Ceylon, the whole Island came under a common administration for probably the first time in its history, and so remained until Independence in 1948.[3]

2.3 Independence and After

This independence was not the outcome of a bitter and bloody liberation struggle as in so many other colonial territories, but was achieved by peaceful negotiations. Elected members had served in the Legislative Council since 1911, and universal adult suffrage for elections to the State Council had been in effect since 1931. A report by the last British Governor, Lord Soulbury, led to the grant of Ceylon's first independent

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Constitution by an Order in Council taking effect on 4 February 1948, which has ever since been Sri Lanka's national day. For the next thirty years, Sri Lanka strove to follow the Westminster Parliamentary model, with more success than some other members of the "new" Commonwealth. Almost every general election has resulted in a change of government. A new Republican Constitution was introduced by a Constituent Assembly in 1972, but maintained the Parliamentary system. There have only been two attempts (in 1962 and 1971) to seize power by force, both mounted against the administration of Mrs. Sirimavo Bandaranaike's Sri Lanka Freedom Party (SLFP). Both proved unsuccessful - though the second induced her to rule for nearly another six years under emergency powers, holding some thousands in detention at a time. At the last general election in 1977, Mr. J.R. Jayewardene's United National Party (UNP) was returned with an overwhelming majority, taking 140 Parliamentary seats out of 168.

These two parties have alternated in power in Sri Lanka ever since Independence. Very roughly, the SLFP favours state intervention, subsidies, and a high level of social services, especially in the fields of health and education; the UNP favours liberalisation, the dismantling of unnecessary State controls, and the encouragement of free enterprise. Neither of the parties is extreme in these respects, and each accepts the principle of a mixed economy, though in rather different proportions. The favourable effects of both these policies are visible throughout the Island: at 85% or more, adult literacy is one of the highest in the developing world, and rivals that of many much richer countries; so does an expectation of life at birth of 69 years, and an infant mortality of only 37.7 per thousand. At the same time plantations, farming, industry, trade and commerce all appear to flourish remarkably well.

2.4 Recent Events

From that general survey, I must now turn to the matters with which my mission was more specifically concerned.

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After almost six years of emergency rule under Mrs. Bandaranaike, President Jayewardene evidently began his first term of office with a positive distaste for it. Soon after he came to power in 1977, he made the following speech in Parliament on the occasion of the repeal of one of the previous administration's more illiberal Acts:-

> "When you have these powers hidden away somewhere, in some wardrobe or closet, one feels like using them. I do not want that temptation in our Government. When these are repealed, all the laws that will be operative in Sri Lanka will be normal laws. No man can be locked up by the police for more than 24 hours. He must be brought to court ... This is the only piece of legislation that now exists on our statute book under which the police can keep a man indefinitely without any recourse to advisory boards or to anybody except the Criminal Justice Commission, which never goes against the advice of the police. For days and months they can be kept, they can be harrassed. When you are arrested by the police under the normal law you are not taken to this place or that place ... There are legitimate and recognised police stations, there are legitimate and recognised prisons and jails. Under this law the Minister can declare any place to be jail ... All such powers will be done away with once this Bill is passed."[4]

Those were fine words, and there is no reason to doubt that they were sincere. Unfortunately, however, the performance of President Jayewardene's administration has in the event not lived up to this promise. True, emergency rule has only been invoked on six occasions since it came to power, and on most of those there was a clear case for doing so: indeed, on one of them it was accused with some justification of waiting too long before using emergency powers to quell some very unpleasant communal violence. But since taking office in 1977, the President and his overwhelming majority in Parliament have introduced the following new measures:-

(1) A new Presidential-style Constitution, adopted by Parliament in 1978 (after earlier amendment of the old one) without any endorsement by referendum, which confers very wide executive powers on the President and renders him immune from legal proceedings, both in his official and his private capacity, while he holds office (see section 3.3 below);

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(2) A Special Presidential Commission of Inquiry set up under a new law of 1978, which retrospectively found Mrs. Bandaranaike and some of her followers guilty of "acts of political misuse or abuse of power" (not being offences under any law) during her administration, whereupon Parliament stripped them of their civic rights, so depriving them of the right to hold or campaign for public office, or to support anyone else who did;[5]

(3) The Prevention of Terrorism (Temporary Provisions) Act of 1979, which conferred on the Executive powers of detention, without charge or judicial review and without access to relatives or lawyers, as well as other powers, far more sinister even than those castigated in the President's speech less than two years before, and which was made permanent rather than temporary in 1982 (see section 3.2 below);

(4) The Third Amendment to the Constitution of 1982, which enabled the President to be re-elected (in the event by a majority of 52.9%, while Mrs. Bandaranaike was still prevented from standing against him) for a second six-year term, before the first had expired;

(5) The Fourth Amendment, also of 1982, under which the life of Parliament was extended for a further six years without any general election (which would, under the new Constitution, have been the first to be conducted by proportional representation), but by a vote of 54.66% in a referendum held under emergency rule, during which some important opposition printing presses were sealed, and a number of publications were banned;

(6) The Sixth Amendment, passed in the immediate aftermath of the communal violence in the summer of 1983 and during the next period of emergency rule, which has effectively excluded the remaining largest opposition party from Parliament (see section 3.5 below).

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In this report, I am mainly concerned with the content and operation of laws which may put at risk the proper respect for the Rule of Law and the legal protection of human rights which Sri Lanka is bound under international law to observe and ensure to its inhabitants, and I shall therefore have little more to say about items (2), (4) and (5) in this list, which are predominantly matters of politics. But in order to understand why President Jayewardene and his Government have felt impelled to undertake the others, despite the good intentions announced on coming into office, it is necessary first to give an outline of the ethnic tensions which have been developing in Sri Lanka for some time, and which have evoked mounting violence in the period since the general election of 1977.

2.5 The National Minorities

Of Sri Lanka's total population of around 15 million, some 74% are Sinhalese, a little over 18% are Tamils, and about 7% are "Moors", who claim descent variously from Arab traders or Indian Muslims. There is also a small group of Malays, as well as a few "Burghers" who claim Portuguese or Dutch ancestry.

Within these groups, there are important sub-groups. The Sinhalese divide themselves into a low-country and a slightly smaller Kandyan (hill-country) group, while around 70% of the Tamils are described as "Sri Lanka" Tamils, the rest being called "Indian" Tamils, or Tamils "of Indian origin". The reason for the latter distinction is the fact that the so-called "Indian" Tamils are the descendants of indentured labourers brought to the Island by the British in the 19th and early 20th centuries to work in the new plantations, first of coffee and later of tea, in the central hill country, while the ancestors of the "Sri Lanka" (or previously "Ceylon") Tamils arrived in the Island many centuries earlier. The label "Indian" or "of Indian origin" for one of these groups is in fact profoundly misleading, since all Tamils are descended from people who originally came from India - as, come to that, are all Sinhalese. The Sinhalese are concerned to differentiate their

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origins from those of the Tamils by claiming that they came originally from North India, and not from the South, which may well be true; but how they arrived in the Island is a matter of legend rather than history. Their legend has it that they came by sea, but it is quite as likely that they in fact came overland, by way of South India. Likewise, the Tamils can hardly have sprung into spontaneous existence in South India. If one goes back far enough, just about everyone's ancestors must have come from somewhere else.

Nor are there any true racial distinctions between these two communities - that is, genetic differences which are objectively ascertainable. They do not differ in size, shape or physiognomy; their hair is uniformly black, and either straight or wavy; their eyes are dark; and their skins range through many shades of brown. (I have myself heard one Sinhalese refer to another as "black as my hat".) A foreign visitor certainly cannot distinguish between Tamils and Sinhalese, and even Sri Lankans themselves are forced to admit under pressure that they cannot make reliable distinctions by physical appearance alone, but go largely by dress, speech, and other more subtle "acquired" indicators.

But although there are no strictly racial differences between these two communities, there are others which give each of them a strong sense of collective identity. They have different cultures, and different tastes in food and clothing. The Sinhala language is quite different from the Tamil one, and so are their respective scripts. In Sri Lanka, Buddhism is to all intents and purposes unique to the Sinhalese, and Hinduism to the Tamils. But there are also over a million Christians in both communities, of whom about 80% are Catholics; and both Sinhalese and Tamils have a caste system, though Buddhists in other countries normally do not.

Geographically, the Tamils in 1981 constituted around 86% of the population of the Northern province, centered on the Jaffna peninsula, and around 41% of that of the Eastern province, which includes the ports of Trincomalee and Batticaloa. In those two

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provinces, the Sinhalese population was only 3% and 25% respectively - outnumbered in the Eastern province not only by Tamils, but also by a 32% proportion of Moors. But many Tamils are to be found outside those two provinces: in 1981, for example, their proportion in the Colombo administrative district was over 11%, and at that time most of the "Indian" Tamil community was concentrated in the central highlands.

One of the most striking features of ethnic relations in Sri Lanka is that members of each of these communities are apt to see themselves as an oppressed minority. That seems at first sight startling in the case of the Sinhalese, who after all constitute nearly three quarters of the population. But to many of them, "the Tamils" are not confined to the 2.7 million in the Island: these are seen as forming only an advance guard of the 50 million or so Tamils in the Indian State of Tamil Nadu, just a few miles across the Palk Strait, at the other end of the chain of shoals and reefs known as Adam's Bridge. Both Tamils and Sinhalese are apt to invoke Northern Ireland or Cyprus as parallels of their circumstances, but in each case the parallel is false: to make the situation truly comparable, one would have to imagine (if one could) Northern Ireland without Great Britain, or Cyprus without Greece. The Tamils see themselves as persecuted by the Sinhalese, and oppressed by a Government dominated by Sinhalese, dependent for its survival on the Sinhalese vote, and therefore concerned only for Sinhalese interests; even well-educated Tamils will speak seriously of a concerted plan of "genocide" against them. In their turn, some Sinhalese are possessed by an atavistic nightmare of being driven into the sea, with no other homeland to go to, by a massive horde of 50-odd million Tamils: and even well-educated Sinhalese will construct fanciful scenarios of the State of Tamil Nadu forcing the Union of India, by threats of secession, to invade Sri Lanka in defence of the Tamil interest.

Such fears are plainly irrational and lack any real foundation, but they deeply pervade some sections of the population, and an appreciation of them is essential for any understanding of the roots of ethnic conflicts in Sri Lanka

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today, which lie deeply buried in emotional anxieties, and the misperceptions of fact which necessarily flow from these.

Among those misperceptions is a widespread belief, held by Sinhalese and Tamils in equal measure, that the other group enjoys some special and inequitable privileges. For this too there is, with one exception, no foundation in fact. A recent discussion paper by the respected and independent Marga Institute[6] shows that there are no statistically significant differences between the two communities in any of the critical social and economic indicators - infant mortality, nutritional status, life expectancy, literacy rate, educational index, average income of households, ownership of consumer durables, or unemployment rate. In none of these respects is either of the two communities collectively disadvantaged in relation to the other, and the grievances voiced about them are in fact quite illusory.

The single exception is in the provision of tertiary education. For climatic reasons, the traditional Tamil lands of the North and East are less fertile than those of the rest of the Island; farming and fishing alone have therefore never sufficed to maintain the Sri Lanka Tamil community; and as a consequence there has been greater pressure among them than among the Sinhalese to train for white-collar jobs. That pressure, combined with the activity of some Christian missionaries during the British colonial period, led to much greater provision for higher education in the predominantly Tamil Jaffna peninsula, both in universities and in vocational institutions. As a consequence, Tamils obtained a disproportionate share of administrative, professional and clerical jobs in the British administration, so understandably evoking the envy of the Sinhalese. Some time after Independence, the Government sought to restore the balance, first by a system of "standardisation", and more recently by a "quota system", to regulate admissions to institutions of higher learning. Not unnaturally, the Tamils have perceived this as a form of discrimination against them, though it was in fact designed as "affirmative action" to rectify an existing

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imbalance.

However, far worse than this was the institution, in 1956, of Sinhala as Sri Lanka's only "official" language - that is, the language in which the official administration was to be conducted. Since 1972, this provision has even enjoyed constitutional status, as has the "foremost place" accorded to Buddhism among religions (see section 3.1 below).

Though English continues to be one of the media of education, and many Sri Lankans of all communities are therefore bilingual in Sinhala and English, or in Tamil and English, very few are bilingual in Sinhala and Tamil. If you are a Tamil, you will be educated in the Tamil language and probably also learn some English; if you are Sinhalese, you will be educated in Sinhala and may learn some English too. But no one will be formally educated in both Sinhala and Tamil: if one of these is your native tongue (as it is in fact for every Sri Lankan), it will require an exceptional motivation, and a substantial effort, to learn the other. One consequence is a chronic shortage of Sinhala/Tamil translators, which adds to the difficulties experienced by Tamils in dealing with the administration.

However, there is one community in Sri Lanka that has every justification for seeing itself as a grossly underprivileged minority, and that is the so-called "Indian" Tamils. The bulk of these continue to work on the tea estates, and by their labour make a vast contribution to the national income. Yet they continue to be miserably paid, miserably housed, and miserably deprived in the provision of food, health and education. For none of these deprivations do they have any remedy, since most of them cannot now even be represented in Parliament, or in local government: although virtually all of them today were born in Sri Lanka, the great majority do not now even have Sri Lankan citizenship.

That extraordinary state of affairs came about as follows. Immediately before Independence, these estate workers - like

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everyone else born either in India or in Ceylon - were British subjects, and therefore full citizens with a vote. The Soulbury Constitution of 1948 said nothing about citizenship, but shortly after it came into effect the newly-independent legislature enacted two laws, of which the first conferred citizenship of Ceylon only on those whose fathers, as well as themselves, were born in the Island. (If they were not themselves born there, their fathers and grandfathers had to be.) The second law made Ceylon citizenship also available, in limited circumstances, by registration; but not many of the "Indian" Tamils took advantage of this provision - partly for lack of knowledge, literacy or initiative, and partly because their own leaders (by hindsight, probably foolishly) discouraged them from doing so. In the result, out of approximately 825,000 "Indian" Tamils today, only around 150,000 are citizens of Sri Lanka, and so entitled to vote at elections. The rest are effectively stateless.

If one takes the view that all residents of Ceylon who were British subjects immediately before Independence became citizens of Ceylon on Independence, then these people were deprived of that citizenship through the enactment of the new law; if the status of citizen of Ceylon did not come into existence until that law was passed, then they were deliberately excluded from its automatic acquisition at that time. Whichever view one takes, the result today is a wholly arbitrary deprivation of the fundamental right to the citizenship of one's country for a group of people almost all of whom were born there, who have lived there all their lives, who have never been anywhere else and have no other allegiance, and who have made an immense contribution to that country's wealth while being themselves allotted only a derisory share of it.

One might have expected the Sri Lanka Tamil community to espouse the cause of their "Indian" colleagues. Sadly, they have not, for reasons which are obscure but can scarcely be creditable. The blame for this particular injustice therefore rests originally on the British Government of 1948, and has today passed equally to all communities and political parties in Sri Lanka: neither the SLFP nor the UNP, and neither the

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Sinhalese nor the "Sri Lanka" Tamils, have taken any effective steps to redress it in the 36 years since Independence.

2.6 Growing Ethnic Conflict

Whatever the reasons, and regardless of whether the perceived grievances have been real or imagined, it is undoubtedly and sadly the case that relations between the Sinhalese and Tamil communities have progressively deteriorated since Independence. The first serious communal violence erupted in May 1958 (while an SLFP Government was in office); the next came in August 1977, soon after the present UNP Government was elected; then again in August 1981; and most recently in July/August 1983. The intervals between these episodes have become shorter; their extent over the Island has become wider; and the violence has become more intense. All these are characteristics of a situation that is getting worse rather than better. Communal riots in which Tamils are killed, maimed, robbed and rendered homeless are no longer isolated episodes; they are beginning to become a pernicious habit.

In many respects, the Tamils' response to these events, and to the more chronic discrimination to which they feel subjected, has been remarkably restrained. One of the most striking features of the episodes of communal violence, for instance, has been the lack of retaliation by Tamils against the Sinhalese in their midst, with the result that virtually all the victims on each of these occasions have been Tamils. But there have been other kinds of response, and two of these have proved exceptionally important because they have led to an increase in the polarisation not only between the two communities, but between the Tamil community on the one hand and the Sri Lanka Government on the other.

The first was a resolution, at the first national conference in 1976 of a political party called the Tamil United Liberation Front (TULF), proposing the establishment of a separate Tamil State in the Island, to be called "Tamil Eelam". The TULF's

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support for that objective has been consistently expressed as advocating its achievement only by legitimate, open, democratic and peaceful means, within the framework of Sri Lanka's established institutions, and none of its leaders has ever publicly advocated any form of violence in support of that aim. This is also the position of the overwhelming majority of TULF supporters within the Tamil community - but unfortunately not quite all of them. After some sporadic violence in the mid-1970s, including some on the part of police officers, certain disaffected Tamil youths banded together in 1978 in a group which they called the "Liberation Tigers of Tamil Eelam", explicitly committed to the pursuit of that objective by armed violence. Other similar small groups have since then been formed under different names, but here I shall call them all collectively "the Tamil Tigers". Between them, these groups have over the last six years perpetrated a series of assassinations of policemen, soldiers, potential witnesses or informers against them, and Tamil politicians who support the Government and whom they therefore regard as traitors to their cause. They have also damaged property, and carried out several bank robberies.

It is these two specific Tamil responses, reflecting in very different ways the collective desire of the Tamil community to resist what they perceive as their oppression by the established authorities, which have in their turn led to the counter-measures adopted by the Government: a massive deployment of its security forces in the predominantly Tamil areas of the Island, and especially at the Elephant Pass army camp straddling the isthmus of the Jaffna peninsula: the Prevention of Terrorism Act of 1979; and the effective proscribing, through the Sixth Amendment to the Constitution enacted in 1983, of even peaceful and previously legitimate advocacy or support for the establishment of a separate Tamil State within the Island. I deal with these in more detail in Chapter 3 of this report, but it is important to understand from the beginning how a sequence of discriminatory measures at comparatively low level, with only very occasional outbreaks of violence, eventually evoked two forms of response which the Government of Sri Lanka has found

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intolerable - the first because it challenges the very concept of the Unitary State of the Republic, and the second because it challenges the State's fundamental monopoly of force. These challenges have then provoked counter-measures from the Government which, in Tamil eyes, can only appear as a major escalation of the discrimination and oppression practised against their community by the official authorities of the State. Taken together with the increasing frequency, extent and level of the outbreaks of communal violence, this escalation of response and counter-response has led to divisions and perceptions of hostility which are now so deep that it is becoming increasingly difficult to bridge the widening gaps peacefully.

Undoubtedly, an independent Tamil State (the expression Tamil Eelam is increasingly going out of fashion among moderates) symbolises the aspirations of some Tamils. Professor Leary and Mr. Moore have dealt adequately in their reports with the legal arguments which have been advanced for it, based respectively on the right of self-determination and on the proposition that Tamil sovereignty has never in fact been abandoned, and I express no view of my own on either of those questions. Whether an independent Tamil State would be a feasible and workable proposition at a level of reality below the realms of aspiration and legal theory is quite another question, on which I have no particular competence to express any views. But the views of others to whom I have spoken seem to range between two extremes which may be caricatured as follows:-

For: Tamils work hard, have well-developed commercial skills, and are apt to become enterprising and successful traders. Jaffna, Batticaloa and Trincomalee are good deep-water ports. A Tamil State could therefore ultimately rival Singapore and Hong Kong as a free trade area, commercial centre, and entrepot. It might even develop profitable industries.

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Against: The North and East of Sri Lanka are many hundreds of miles off the beaten track, and no one would have any commercial incentive to use them. Partition would entail large-scale communal violence, ending in a mutual expulsion of the remaining minorities, as in the case of India and Pakistan. A land frontier between two different ethnic States on the same island would be a frontier of chronic hostility, permanently or at least frequently shut; at worst exchanging sporadic gunfire, and at best exacting retributory tolls, and restricting trade and other beneficial exchanges. Tamil Eelam's only supporter would be Tamil Nadu, and its position would therefore more closely resemble that of Israel than that of Hong Kong or Singapore: surrounded by enemies on all landward sides, and depending for its survival on a single overseas ally.

Between those extreme positions, there are of course others. It is difficult to predict which of them would most closely reflect reality, if such a reality ever came to be enacted. But whether the dream of an independent Tamil State in Sri Lanka could in fact be realised in social or economic terms seems questionable.

Meanwhile, the increasing divisiveness between the two major Sri Lankan communities is reflected in a variety of symbolic products. There is, for example, a species of mutually hostile propaganda as pointless as it is unedifying. It may be exemplified by two apparently matching pamphlets: one entitled "Sinhala People - Awake, Arise, and Safeguard Buddhism", and the other "Sri Lanka: where the State is at war with Tamils". The parallels between these publications are at the same time frightening and pathetic. Each displays a pictorial stereotype of the opposition: "Sinhala People Awake" has a cartoon of a Sinhala farmer in a loincloth spearing a Tiger (the animal, as a symbol for the human one); the Tamil confection has a photograph of a helmeted soldier about to bayonet a defenceless half-naked youth. But one crucial feature distinguishes these two unappetising productions: while the Tamil item comes from the

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Tamil Eelam Information Unit in Madras, "Sinhala People Awake" turns out to be the work of Mr. Cyril Matthew, occupying the responsible post of Minister of Industries and Scientific Affairs in Sri Lanka. The Tamil confection was produced in India, evidently in order to enlist international support for the Tamil cause; but the Sinhalese one was concocted at home, for home consumption, by a senior Minister of the Republic who is also the leader of the principal UNP trade union.

The attitudes of successive Sri Lanka Governments since Independence to what they sometimes call "the Tamil question" have displayed some curious ambivalences. There have, for example, been several negotiated "Pacts",[7] each welcomed as heralding the final resolution of all ethnic problems, but for one reason or another they never seem to have been fully carried out. Sri Lankan Governments are always careful to include Tamils in their administration: the present one has three Cabinet Ministers, the Attorney-General (who also served in the previous one), the Inspector-General of Police, and several other high officials. But even that does not seem to be enough to reassure the Tamil community of the benevolence of their Island's elected government.

There is of course one recent event that was scarcely calculated to instil such confidence. The last outbreak of communal violence began on 24 July 1983. For day after day, Tamils (of both the "Sri Lankan" and "Indian" varieties) were beaten, hacked or burned to death in the streets, on buses, and on trains, not only in Colombo but in many other parts of the Island - sometimes in the sight of horrified foreign tourists. Their houses and shops were burned and looted. Yet the security forces seemed either unwilling or unable to stop it - indeed, in Jaffna and Trincomalee, some members of the armed forces themselves joined in the fray, claiming an admitted 51 lives. Seen from the Tamil point of view, either the Government had lost control of the situation, or it was deliberately standing by while they were being taught a lesson. The first massacre in Welikada jail took place on 25 July, and claimed another 35 lives. The second - allegedly foreseen by the prison staff -

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came two days later, and claimed another 18. Not until the very end of that second episode was a special army unit sent in, to save the lives of the few remaining Tamil political prisoners.[8]

And not until the fifth day, on 28 July, did President Jayewardene finally appear on national television. In a brief address, he blamed the violence and destruction exclusively on the reaction of "the Sinhala people" to the movement for the establishment of a separate Tamil State, and announced a Cabinet decision to bring in what in the event became the Sixth Amendment, designed to ensure that even peaceful supporters of separatism could not sit in Parliament, and that "those who advocate the separation of the country lose their civic rights and cannot hold office, cannot practise professions, cannot join movements or organisations in this country."

In the course of that address, the President did not see fit to utter one single word of sympathy for the victims of the violence and destruction which he lamented. If his concern was to re-establish communal harmony in the Island whose national unity he was so anxious to preserve by law, that was a misjudgment of monumental proportions: I have yet to meet a single Tamil at any level in Sri Lanka or out of it who does not remind me of this glaring omission at the first opportunity. Nor are they reassured by the programmes for relief and rehabilitation of the victims which the Government has in fact since installed: at the time of my visit, six months later, around 10,000 homeless Tamils were still in refugee camps.

For months after the violence, the President consistently refused to hold any discussions with the TULF leaders, in or out of Parliament, unless they first formally abjured a separate Tamil State - something they clearly could not do, whether they privately believed in it or not, since they were bound by their party's explicit resolution of 1976 on which they had been elected. Not until after the Commonwealth Heads of Government Meeting in Delhi later that year, and some delicate diplomacy on the part of India, did the President finally agree to a round-table conference of all the political parties in Sri Lanka

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(including the TULF), as well as some other interest groups. Those talks in fact began, after some last-minute brinkmanship by Mrs. Bandaranaike, on 10 January 1984 - two days before my arrival - and they are still continuing, now in two Committees with complementary terms of reference, as this report goes to press. One can only hope that they will at long last produce a truly comprehensive "Pact" - and this time one that is carried out in full.

2.7 Goondas

There is one more political and social - albeit wholly unofficial - feature of Sri Lankan life which must be mentioned here, and that is the so-called "goondas". These are, essentially, organised gangs of hooligans available for hire by anyone whom it happens to suit to foment trouble in the streets. It is freely admitted that every major political party has its own rented or rentable goonda contingent: there are SLFP goondas, UNP goondas, and doubtless goondas serving other political interests. In private discussion, their employers seem to regard them as regrettable necessities on the political scene, and to play down the importance of the harm they can do; by contrast, those against whom their hooliganism is from time to time directed are apt to play up their importance, and to describe them as "private armies", in the pay and at the service of named politicians. That they exist is not disputed: what is less clear is the extent of the damage they can inflict, and how it comes about that their paymasters seem to enjoy a surprising degree of immunity from prosecution.

For example, the disturbances outside the private houses of some Supreme Court Judges referred to in section 3.4 below were undoubtedly mounted by goondas in somebody's pay. In the event, no one was killed or even hurt, but even so the episode was clearly intended and seen as an overt threat to the independence of the judiciary, and so a criminal offence under the Constitution, yet to this day no one has been able to establish who was behind it. Likewise, the communal violence which began

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in Colombo on 24 July 1983 bears every appearance of having been started by hired groups of goondas, and that led to much loss of life, suffering, and destruction of property. Yet here again, despite long-drawn-out police enquiries, no one has yet been able to establish the hand behind that initial episode, a matter to which I shall return in section 4.1 below.

3. LAWS AND INSTITUTIONS

After the 1977 General Election, Mr. Jayewardene's incoming UNP administration enjoyed an unprecedented majority of five sixths of all the Members of Parliament. That enabled it to amend the Constitution without a new Constituent Assembly, and by the following year to enact a completely new one, under which Mr. Jayewardene became President with very wide powers (see section 3.3 below). Like its predecessor of 1972, this Constitution accords "the foremost place" to Buddhism and declares Sinhala to be the only Official Language, though it adds that both Sinhala and Tamil are National Languages. It also includes a detailed catalogue of fundamental and protected individual rights.

3.1 Legal Protection of Human Rights

By Article 4(d) of that Constitution,

> "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."

Those fundamental rights are set out in Articles 10 to 14 in Chapter III of the Constitution, subject to specific and defined restrictions in Article 15. These Articles closely follow some - but not all - of the language of Part III of the International Covenant on Civil and Political Rights, to which Sri Lanka in fact acceded (without any reservations) on 11 June 1980.

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On the same date, Sri Lanka also acceded (without reservation) to the International Covenant on Economic, Social and Cultural Rights. Many of the provisions of that Covenant are reflected in Article 27 of Chapter VI of the Constitution, under the heading "Directive Principles of State Policy and Fundamental Duties". However, unlike the civil and political rights set out in Chapter III, these rights are not justiciable: Article 29 provides that -

> "The provisions of this Chapter do not confer or impose legal rights or obligations, and are not enforceable in any court or tribunal. No question of inconsistency with such provisions shall be raised in any court or tribunal."

Questions on the legal protection of human rights in Sri Lanka may therefore arise on three levels:-

(1) The Republic's compliance with its obligations under the International Covenants;

(2) The compliance of ordinary laws enacted by Parliament, or of delegated legislation, with the fundamental rights guaranteed by Chapter III of the Constitution;

(3) The observance of these fundamental rights by the Republic's public authorities, in the exercise of their executive or administrative functions.

3.1.1 Compliance with International Law

Sri Lanka has a wholly dualist legal system, in which international law has no domestic effect unless and until the Legislature expressly "transforms" or "incorporates" it into domestic law. There is therefore no procedure by which a Sri Lankan court could test the conformity of any Sri Lankan law, constitutional or ordinary, or of its executive or administrative actions, with the international human rights treaties (and in particular the International Covenants) by which the Republic is bound:[9] that can only be done by a competent organ at the international level.

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For civil and political rights, this function falls to the competence of the Human Rights Committee established under Part IV of the relevant Covenant. Sri Lanka submitted its first Report to that Committee under Article 40 of that Covenant on 23 March 1983,[10] followed by an Addendum submitted on 27 September 1983.[11] In the light of the events of July/August 1983, the Committee accelerated its consideration of these reports, and held public hearings about them in Geneva on 31 October and 1 and 3 November 1983, when representatives of the Republic attended and were closely questioned by members of the Committee - who, for the reasons which will appear below, found much to ask about.

That is one valuable international procedure for testing compliance, but a far more effective one is available under the Optional Protocol to this Covenant, which enables individuals who claim to be victims of violations of their protected rights to submit written communications to the Committee, which the Committee may then examine and on which it may express its views. So far, Sri Lanka has not adhered to that Protocol - not, so I was told during my visit, because it had anything to fear from such communications but because, being a poor country, it could not afford the resources of having to answer ill-founded complaints which might be made under this procedure, and defending itself against them before the Committee. Sri Lanka would prefer to wait until there was a justiciable regional Convention - like the European or American ones, or the new African Charter - and then join that system.

I confess I find that argument unconvincing. Among the 30-odd nations which have now ratified the Optional Protocol or acceded to it, there are several that are even poorer than Sri Lanka, as for example the Central African Republic or Madagascar. Under its procedure, the Committee filters all the communications it receives, and only passes on to the Government concerned those which disclose a clear *prima facie* case of violation. Accordingly, a State which genuinely has nothing to fear from such complaints has every interest in adhering to the Protocol, and so demonstrating its sincere concern to fulfil its

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obligations under international law. Even for a country at Sri Lanka's stage of economic development, the resources needed to answer communications which the Committee declares admissible are minimal - provided, that is, that the rights guaranteed under the Covenant are not in fact being violated on a substantial scale. Besides, those resources would anyway be needed for a regional system, if and when it comes into existence.

But that may yet be many years hence. I therefore strongly recommend that Sri Lanka should meanwhile accede to the Optional Protocol.

3.1.2 The Constitutionality of Laws

At the highest domestic level in any country, there needs to be a procedure for scrutinising domestic legislation for its conformity with the Constitution. By Article 120 of the Sri Lankan one,

> "The Supreme Court shall have sole and exclusive jurisdiction to determine any question as to whether any Bill or any provision thereof is inconsistent with the Constitution."

Unfortunately, sole and exclusive though it may be, this jurisdiction is in fact so restricted as to be largely illusory, at all events while a Government enjoys a Parliamentary majority greater than two thirds of all Members, which is the special majority needed for Constitutional amendments. By reason of four provisos to this Article, and the two following Articles, once a Bill describes itself in its long title as being for the amendment, repeal or replacement of any part of the Constitution, or the Cabinet of Ministers certifies that any of its provisions is intended to be passed by the special majority, the only question which it is open to the Supreme Court to decide is whether the Bill or provision needs additional approval by a referendum - which it does if it seeks to extend the term of office of the President or the duration of Parliament beyond six years; or affects the Republic's status,

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name, unity, national flag, national anthem, national day, or the sovereignty of its people, or the "foremost place" accorded in it to Buddhism; or affects two only out of the fundamental rights guaranteed in Chapter III: the freedom of thought, conscience and religion; and the freedom from torture and from cruel, inhuman or degrading treatment or punishment.

Where the Court's jurisdiction does arise, it may be invoked by the President or by any citizen, but only within one week of the Bill being placed on the Order Paper of Parliament (Article 121). And even that short time limit can be further abbreviated if the Cabinet regards the Bill as "urgent in the national interest", in which case it need not even be published in the Gazette; only the President can refer it to the Supreme Court; and the Court must make its determination within 24 hours, unless the President extends that period, up to a maximum of three days (Article 122). Once these brief opportunities have passed, the jurisdiction of all Courts is exhausted for all time (Article 124). If, for example, Parliament were in fact to enact a Bill which was inconsistent with the Constitution, and either the Bill's long title did not say so, or the Cabinet failed to certify it, or if no one referred it to the Supreme Court within the appropriate brief time limit, no one could thereafter ever challenge it.

One can understand that the draftsmen of the Constitution were concerned to avoid uncertainty about the constitutionality of laws, and the risk that some law might be struck down as unconstitutional months, or even years, after its enactment - by which time many people might have arranged their affairs, or altered their positions, on the assumption that the enactment was constitutionally valid. But time limits as short as these cannot give any adequate opportunity for the consideration of such important matters, either to potential objectors or to the Court itself, and can very easily be abused.

I therefore recommend that the principal time limit should be extended to at least three months, reducible to an absolute minimum of one month only in circumstances of quite exceptional

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urgency, to be certified by the Speaker rather than the Cabinet.

3.1.3 Domestic Remedies for Violations

The fundamental individual rights guaranteed in Chapter III are made justiciable by a special procedure laid down by Article 126 of the Constitution. Under this, anyone who alleges that any of his fundamental rights under Chapter III has been infringed, or is about to be infringed, by executive or administrative action may "within one month thereof" petition the Supreme Court (which has sole and exclusive jurisdiction in such a matter) for relief or redress. If such a question arises in certain proceedings in the Court of Appeal, that Court must refer it to the Supreme Court. The Supreme Court must hear and finally dispose of such matters within two months of the filing of the petition or the making of the reference.

A full Bench of the Supreme Court has held that Constitutional time limits of two months for the final disposal of proceedings before it are directive and not mandatory,[12] on the ground that a petitioner should not be deprived of his rights if, without any fault of his, the Court fails to give its judgment within the time prescribed. But the time limit of one month for the presentation of the petition is even more important. It seems likely that the Supreme Court would not treat that period as beginning to run until the petitioner is in fact at liberty to present his petition, on the general ground that time cannot be held to run against anyone while it is impossible for him to perform the act to which the time limit applies. Accordingly, someone who wishes to complain of an infringement of a fundamental right which took place while he was in detention would probably not be held to be time-barred until, at the earliest, one month after his release from detention.

However, it appears to be a moot point whether, once a petitioner is free to launch his proceedings, the one month's time limit is mandatory or directory. Some believe that there

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is Supreme Court authority for the proposition that it is mandatory, others that there is authority for the proposition that it is directory, and yet others maintain that the point has still to be decided. The resolution of this difference of opinion is not assisted by the fact that, for some time past, the judgments of the Supreme Court have not been published in any printed series, and can only be studied by obtaining copies of the typed transcript, which are not very freely available. One can only hope that this important point will be decided at the first available opportunity, and that the decision will be widely publicised.

The Supreme Court has found in favour of petitioners in several cases which have come before it under this Article. In one case, it unanimously held that an act carried out by a public official "under colour of [his] office" constitutes an "executive or administrative action", notwithstanding that it was not expressly or impliedly authorised, or adopted or condoned or acquiesced in, by the State - the State having argued to the contrary.[13]

By Article 141 of the Constitution, jurisdiction in matters of <u>habeas corpus</u> is vested in the Court of Appeal. This jurisdiction cannot, it seems, be abridged or avoided by any ordinary law - so that, for example, the Prevention of Terrorism Act (see section 3.2.1 below) cannot preclude a detainee from bringing an application for <u>habeas corpus</u> - provided he is allowed access to a lawyer. On such an application, of course, the court can only test the <u>legality</u> of the detention, so that it would have to find as a fact that the Minister had acted <u>mala fide</u>, or that some specific requirement of the Act had not been complied with, before it could order the release of the detainee. In the course of such proceedings, the Court of Appeal has in fact found that some applicants were assaulted while in detention.[14]

Individuals who complain of the abuse of State power also have two other remedies: a petition to the Attorney-General, and a complaint to the Ombudsman (formally called the Parliamentary Commissioner for Administration).

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3.2 Emergency Legislation

Sri Lankan governments, of both the main parties, have been repeatedly criticised over the years for enacting two different kinds of legislation: emergency laws properly so called, which are only brought into force when a formal emergency is declared and become spent when it is revoked; and laws which remain on the statute book whether or not there is a formally declared emergency, and which may be called _de facto_ emergency laws.

It will be convenient here first to describe the contents and application of the two Sri Lankan laws - one in each of these categories - which have attracted the greatest recent criticism both in and out of the country, and then to consider whether these laws are justified, either in international law or in fact.

3.2.1 The Prevention of Terrorism Act

The full title of this statute is the Prevention of Terrorism (Temporary Provisions) Act, No. 48 of 1979. It was certified by the Speaker of the Sri Lanka Parliament, and published in the _Gazette_, on 20 July 1979, while an emergency was in force in the Republic. For the sake of brevity - and because its original Section 29, which confined its duration to three years, has since been repealed - I shall refer to it hereafter simply as the Prevention of Terrorism Act, or PTA for short.

The statute's main provisions fall into two categories:-

(1) It defines certain _offences_, and provides for their trial and penalties; and

(2) It confers certain _powers_ on the Executive.

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Offences under the Act

Many of the offences created by the PTA would already have been offences under the ordinary law - causing death, kidnapping, abduction, robbery, intimidation, offences in relation to firearms and explosives, etc. But some less serious ones are also included in the list, ranging from the speaking or writing of words intended to cause religious, racial or communal disharmony, or feelings of ill-will or hostility between different communities or racial or religious groups;[15] down to mischief to public property, and the erasure, mutilation, defacing or other interference with public notices.[16] To these, the Act adds at least one new offence (Section 2(1)(j)) of harbouring, concealing or in any other manner preventing, hindering or interfering with the apprehension of someone proclaimed in the Gazette to be a person wanted in connection with the commission of an offence under the Act, knowing or having reason to believe that he is such a person.

For all these offences (including abetting, conspiring, attempting, exhorting or inciting their commission, or doing any act preparatory thereto), the Act imposes a penalty of life imprisonment for the most serious ones, and imprisonment for not less than 5 years and not more than 20 years for the rest - together with the forfeiture of all moveable and immoveable property (Section 4). By Section 5, it is a separate offence, punishable with imprisonment for up to 7 years, not to report to a police officer any knowledge about the preparation, attempt or commission of such an offence, or of the movements or whereabouts of such an offender.

All offences under the Act may be tried without preliminary inquiry, on an indictment before a Judge of the High Court sitting alone without a jury, and - contrary to the provisions of the Evidence Ordinance dating back to the British colonial period, under which no confession made in police custody was admissible in evidence unless it was made in the presence of a Magistrate - at any such trial oral or written statements made to a police officer are admissible whether or not they were made

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in custody, unless the accused proves that they are "irrelevant" under the Evidence Ordinance, e.g. that they were obtained by violence or under duress (Section 16). Likewise, any document found in the custody, control or possession of anyone accused of an offence under the Act, or of his agent or representative, may be used in evidence against him at his trial without calling its maker, and the contents of any such document are evidence of the facts stated therein (Section 18(1)). If any witness at such a trial contradicts a statement he made earlier, the Judge may still act on the earlier statement, and then have the witness arraigned and tried for perjury, for which purpose it will not be necessary to prove which of the conflicting statements was false (Section 18(2) and (3)).

Powers conferred by the Act

The powers conferred by the PTA are all conditioned on the concept of "unlawful activity", defined in Section 31 as meaning

> "any action taken or act committed by any means whatsoever, whether within or outside Sri Lanka, and whether such action was taken or act was committed before or after the date of coming into operation of all or any of the provisions of this Act, in the commission or in connection with the commission of any offence under this Act or any act committed prior to the date of passing of this Act, which act would, if committed after such date, constitute an offence under this Act." (The words underlined were added, with retroactive effect, by Section 5 of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act 1982.)

This definition therefore covers not only serious offences of violence, but also mischief to public property, interference with public signs and notices, and the speaking or writing of religious, racial or communally divisive language.

Anyone "connected with or concerned in or reasonably suspected of being connected with or concerned in any unlawful activity" (whom it may be convenient henceforth to call "a PTA suspect") becomes subject, without more - and, most importantly, without the need for anyone to be satisfied that he is a danger to public security - to the exercise of all the following powers:-

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(1) Any Superintendent of Police, or Sub-Inspector of Police or above authorised by a Superintendent or above, may without any warrant arrest him, enter and search any relevant premises, stop and search him or any relevant vehicle, vessel, train or aircraft, or seize any relevant document or thing (Section 6);

(2) Any police officer conducting an investigation in respect of an arrested PTA suspect may take him during reasonable hours to any place for the purpose of interrogation, obtain a specimen of his handwriting, or fingerprint or otherwise identify him (Section 7(3));

(3) The Minister (who is in fact the President) may order his detention, anywhere and subject to any conditions, for successive periods of 3 months up to a maximum of 18 months (Section 9); he need not then be brought before a Magistrate at any time, but he has the right to make representations to an Advisory Board of three persons appointed by the President (Section 13); and such orders "shall be final and shall not be called in question in any court or tribunal by way of writ or otherwise" (Section 10);

(4) Even if he has been charged and is awaiting trial on remand, and even while his trial is proceeding, the Secretary of the Minister's Department may order him to be held in any place and subject to any conditions he directs (Section 15A, inserted by the amending Act of 1982);

(5) The Minister may subject him to a restriction order prohibiting or restricting his movements outside a specified place of residence (i.e. putting him under house arrest), or the places of his residence or employment, his travel within or outside Sri Lanka, his activities in relation to any organisation, association or body of persons (whether or not he is a member of it), his right to address public meetings, or to hold

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office or take part in the activities of, or to advise, any organisation, association or body of persons, or to take part in any political activities - again, for 3 months at a time, aggregating a maximum of 18 months (Section 11).

By Section 14, a "competent authority" appointed by the Minister may prohibit the publication in any newspaper of any matter relating to offences under the Act, or their investigation; any incitement to violence; or any matter likely to be divisive as between different communities or racial or religious groups.

Finally, by Section 26,

> "No suit, prosecution or other proceeding, civil or criminal, shall lie against any officer or person for any act or thing in good faith done or purported to be done in pursuance or supposed pursuance of any order made or direction given under this Act."

Width of the Act

These provisions are quite extraordinarily wide. No legislation conferring even remotely comparable powers is in force in any other free democracy operating under the Rule of Law, however troubled it may be by politically-motivated violence. Indeed, there is only one known precedent for the power to impose restriction orders under Section 11 of the Sri Lankan PTA, and that - as Professor Leary rightly pointed out in her Report - is the comparable legislation currently in force in South Africa. To a developing country of the Commonwealth like Sri Lanka, which has happily now ratified (as Professor Leary recommended) the International Convention on the Elimination of All Forms of Racial Discrimination, and has played an important role in the condemnation of the South African régime and all its contemptible works, it must be deeply wounding to have that comparison made publicly by a foreign observer, however distinguished and impartial. I am naturally reluctant to re-open that wound, but I have no choice but to endorse Professor Leary's conclusion. Such a provision is an ugly blot

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on the statute book of any civilised country.

The Sri Lankan authorities claim that, wide or not, these powers in fact go no further than similar ones conferred on Executives in other parliamentary democracies. Indeed, when it was first introduced into the Sri Lankan Parliament, the Prevention of Terrorism Bill contained a recital claiming that "other democratic countries such as the United Kingdom, Canada and Australia have enacted special legislation to deal with acts of terrorism". By the time the Bill reached the statute book, the words I have underlined were omitted. Nonetheless, the Sri Lanka Government has continued to cite the UK legislation as a precedent.[17]

In fact, under the UK Prevention of Terrorism (Temporary Provisions) Act, currently being re-enacted by the UK Parliament with some modifications,

(1) the special powers are attracted by "acts of terrorism", narrowly defined as "the use of violence for political ends", including "any use of violence for the purpose of putting the public or any section of the public in fear" - and not by a very wide range of "unlawful activities" as in the Sri Lankan Act;

(2) the maximum period during which anyone may be detained without charge is 7 days - as opposed to 18 months;

(3) there is no power to make any "restriction orders";

(4) there is no power to prohibit any publication in any newspaper;

(5) no one could be sent to prison for up to 20 years (and could not be sentenced to less than 5) for causing mischief to public property, or defacing public notices, nor could his property be forfeited for any offence;

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(6) the Act only remains in force for 12 months unless Parliament renews it.

When I put this to Sri Lanka's Additional Solicitor-General, he told me that the UK precedent he had in mind was not in fact the Prevention of Terrorism (Temporary Provisions) Act after which his own statute was named, but the Northern Ireland (Emergency Provisions) Act. However, despite the far higher level of political terrorism in Northern Ireland (see section 3.2.3 below), even that statute confers no powers to make restriction orders, or to prohibit publications; the powers of detention without trial which it does confer have not been exercised for ten years;[18] and the entire Act is a measure which can remain in effect only during the currency of a proclaimed emergency: it is not a permanent feature of the UK statute book.

Operation of the Act

There has been sustained criticism from many quarters about the manner in which the Sri Lankan PTA has been applied in practice. In the course of my mission, I had neither the facilities nor the time to conduct any substantial investigation into this, let alone to pursue individual cases. However, when I met General Sepala Attygala, the Secretary to the Ministry of Defence, on 12 January 1984 I asked him how many people were being held under the Act on that day. The answer was 83, together with two more who had actually been charged, and were being held on remand. These 85 had then been held for varying periods; the following Table gives their respective months of arrest:-

Month of arrest	Number still held on 12.1.84
June 1983	1
July	5
August	2
September	6
October	2
November	3
December	51
January 1984	15

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(Others had of course also been arrested during those months, but had either been murdered in Welikada prison at the end of July 1983, or been released again by the time of my visit.)

I asked General Attygala for certain other statistics about the application of the PTA and he promised to send me these, but they had not reached me by the time this report had to go to press.

A measure like the PTA could be used for two purposes: the preventive detention of terrorists and their accomplices, of whose guilt the security forces are convinced but which they do not have enough admissible evidence to prove; and the detention for questioning of potential informants who might be reluctant to make statements to the police while at liberty. During my visit, I was assured by the competent authorities that the Sri Lankan PTA is used only for the second of these purposes.

Whenever a statute of this kind confers discretion on responsible members of the Executive to detain individuals, or to make other adverse decisions about them which will not be subject to review by the Courts, it is of paramount importance that the Ministers or officials concerned exercise their powers with great care, and scrutinise as critically as they can the applications for such an exercise which will be put before them by the security forces. According to the Sri Lankan PTA, detention orders under Section 9 and restrictions orders under Section 11 are all to be made by "the Minister", who is in fact the Minister of Defence, a portfolio held by the President. In practice, however, they are made by his Deputy, the Minister for Internal Security, who in turn acts on the advice of the Secretary to the Ministry of Defence, though I understand that he may also receive independent advice from the Inspector-General of Police and the Special Branch.

I confess I did not gain the impression from either the Deputy Minister or the Secretary that they submitted the

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applications made to them by the security forces to any real degree of critical and independent scrutiny. For example, as appears from the above Table, one individual had been held in detention under the Act without charge since the previous June - that is, for the best part of seven months by the time of my visit - because, so I was told, the police had still not been able to complete their inquiries into the case in which he was believed to be concerned. Yet neither the Secretary nor the Deputy Minister appeared to have taken any great pains to enquire why, after so long a time, that investigation had still not been concluded. I am regretfully left with the impression that neither the Secretary nor the Minister in practice do much more than accede to the routine applications that are put before them, without either testing the case that is put, or laying down firm policy directives which will ensure that they do not receive requests based on unjustifiable delay. The Secretary was at pains to point out to me that the Sri Lankan police were still 3,000 men under strength, that their Criminal Investigation Department was poorly trained, and that there was a shortage of Sinhala typewriters for recording their reports and the statements made to them. All that may well be the case, and if it is then no effort must be spared to overcome these obstacles: I return to that point in section 3.8 below. But it is simply not good enough to seek to overcome these administrative problems by amassing detainees who are held on mere suspicion by some police officer of "unlawful activity" and have not been charged with any offence - still less when they are being detained merely in the hope that they will become informants.

The Deputy Minister is himself a former police officer. His position, as conveyed to me when we met, is that he is sorry if anyone is inconvenienced as a result of such shortcomings, but that he cannot risk releasing people before police enquiries are fully completed. In my respectful view, that just will not do.

A power to detain suspects for long periods without the opportunity for access by friends, family, or lawyers, or for regular judicial review, notoriously carries the danger that the

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detainees will be maltreated while in custody: it provides an open invitation for deprivation, assault, and worse - especially if the suspects may be detained by their interrogators in police stations or army camps, and more especially still if no real control is exercised over the periods for which they are detained. That point has been frequently and forcibly made about the Sri Lankan PTA by the ICJ, Amnesty International, and many others. Amnesty in particular has investigated and reported a number of well-documented allegations of the torture of detainees under the PTA, which the Sri Lankan Government has later denied in general terms. But so long as suspects can be held incommunicado for long periods by their interrogators, those allegations will continue to be made - and, the world being what it is, some of them will be well-founded, even if the use of violence in the course of interrogation is not official policy at the highest level. There were, for example, the cases in 1981 where the Sri Lankan Court of Appeal found as a fact that detainees had been assaulted.[19] And there is the still unexplained death in army custody in April 1983 of K.T. Navaratnarajah, who was found by the investigating Magistrate to have died of numerous external and internal injuries inflicted by blows and weapons - though no one has to this day been charged with his murder, even though the Magistrate returned a verdict of homicide.

General Attygala told me that he is very conscious of this risk. Since his appointment to his present office on 8 August 1983, he has therefore given the following instructions:-

(1) No PTA suspect is to be held by the army for more than 24 hours after his arrest;

(2) All detained PTA suspects must normally be held in one of the regular civilian prisons;

(3) If a PTA suspect is required for questioning by the police outside such a prison, that will only be allowed for a few hours at a time, and he will only exceptionally be allowed to remain out of prison overnight;

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(4) A PTA suspect's family must always be told where he is held, even if they are not allowed to visit him.

Those instructions are of course welcome; indeed, they should have been incorporated in the PTA in the first place, for they reflect the bare minimum that is needed to limit the very real risks of the abuse of powers such as these. I am glad that the General has thought it right to give them, and I can only express the hope that he will be able to ensure that they are strictly obeyed. Since meeting him, I have been told that compliance with them is not always complete, but I have no means of verifying that information. I hope that he will also find it possible to add an instruction that all detainees should have access to relatives or lawyers at the earliest possible opportunity: that still remains the best safeguard against maltreatment in custody.

Is the Act Retroactive ?

In her report, Professor Leary expressed the view that the Sri Lankan PTA contained retroactive criminal legislation, and accordingly violated Article 15(1) of the International Covenant on Civil and Political Rights, which provides that -

> "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed."[20]

That point was also taken up by members of the Human Rights Committee at the Geneva hearings, but strongly resisted by the Sri Lankan delegation at that time. When I met him during my visit, the Additional Solicitor-General was, quite rightly, very concerned about it, and went to some trouble to explain to me why Professor Leary had been wrong. His argument is simple. He points out that new offences under the Act are created only by Sections 2, 3, 5, 12, 14(3) and 24, and that none of these are retroactive. The only provision that might be said to be retroactive is the definition of "unlawful activity" in Section 31 (quoted above), but this does not create any new criminal

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offences. Accordingly, nothing in the Act is repugnant to Article 15(1) of the Covenant.

If that argument is technically correct, it can only be because Article 15(1) of the Covenant speaks of a "criminal offence", rather than a penal sanction. It is perfectly true that Section 31 of the Sri Lankan PTA, which is obviously retroactive on its face, creates (indirectly) new penal sanctions, but no new criminal offences. What it does, and is intended to do, is to confer new and wide-ranging powers on the Executive to detain people for up to 18 months, and to impose severe restrictions on them while they are at liberty, even if they have not been charged with - let alone found guilty of - any new criminal offence, but merely because they are suspected of being "connected with or concerned in the commission of" activities carried out before the PTA was enacted and which may have been perfectly lawful at that time, but which are retrospectively deemed to have been unlawful through the operation of Section 31. Putting it at its simplest, someone who has done something that was lawful before the PTA was enacted cannot now be charged or convicted of a criminal offence by virtue of the PTA, but he can now be imprisoned, or restricted while at liberty, for up to 18 months on the Minister's order, without charge, trial, conviction or judicial review. Technically, that is not being "held guilty of any criminal offence" and so, technically, there may be no conflict with the precise words of Article 15(1) of the Covenant. But the effect on a PTA suspect is exactly the same: indeed it is worse, since he need not even be charged and therefore has no right to defend himself at a "fair and public hearing by a competent, independent and impartial tribunal established by law", as Article 14(1) of the Covenant would require if he were.

Legislation of this kind is normally designed for the preventive detention, in an emergency, of individuals who are suspected, on good grounds, of being a danger to public security - either because they are known to have taken part in acts of violence in the past, or because it is very probable that they will take part in acts of violence in the future. That second

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inference may sometimes be drawn from the fact that the suspect belongs to an organisation which was once lawful, but has since been proscribed because it has adopted a policy of violence, or support for violence. There may therefore on occasion be some justification for a specific retroactive provision of that kind, provided that the measure clearly identifies the (retroactively) proscribed activity, and that it contains a clear requirement that the responsible Minister has to be satisfied that the suspect presents a danger to public security before he can order his detention.

Neither of these conditions is satisfied in the Sri Lankan PTA. Accordingly, although the Additional Solicitor-General's argument may be technically correct, I cannot say that I am impressed by its merits. Nor would I have thought it well calculated to enhance the standing of the Republic in the international community.

3.2.2 Emergency Regulations

Emergency rule in Sri Lanka is carried on by Emergency (Miscellaneous Provisions and Powers) Regulations made under the Public Security Ordinance which dates back to the British colonial period, whenever that Ordinance is activated by an official Proclamation, which Parliament must approve from time to time in accordance with Article 155 of the Constitution.

The regulations in force during the emergency proclaimed on 18 May 1983, which had not been lifted by the time of my visit, confer power on the Executive to arrest and detain suspects without charge or judicial review, to proscribe political parties, and to ban publications. These powers were used to proscribe the left-wing Janata Vimukti Peramuna party (JVP), the Lanka Sama Samaja Party (LSSP) and, for a time, the Communist Party of Sri Lanka; to arrest and detain a number of individuals, including the leaders of the proscribed parties; and to ban two Tamil newspapers, Suthanthiran and the Saturday Review. They had also been used during an earlier emergency to ban opposition publications, and seal their printing presses,

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during the campaign on the referendum for the extension of the term of Parliament, without a general election, at the end of 1982.

But the Sri Lankan emergency regulation that has (rightly) come under the most intense attack is a new Regulation 15A, made on 3 June 1983. This provides as follows:-

> "It shall be lawful for any police officer of a rank not below that of Assistant Superintendent or for the officer in charge of a police station or any other officer or person authorised by him in that behalf to take with the approval of the Secretary to the Ministry of Defence all such measures as may be necessary for the taking possession and burial or cremation of any dead body, and to determine in his discretion the persons who may be permitted to be present at any assembly for the purposes of or in connection with any such burial or cremation. Any person who is present at any such assembly without the permission of such officer or authorised person or who obstructs such officer or authorised person in the exercise of the powers hereinbefore conferred shall be guilty of an offence.
>
> It shall not be necessary for any officer or person taking measures relating to the possession and burial or cremation of a dead body under this regulation to comply with the provisions of any other written law relating to the inquest of death or to burial or cremation."

It may of course be pure coincidence, but I feel bound to draw attention to the fact that this Regulation was made precisely three days after the Jaffna Magistrate had returned a verdict of homicide at the inquest into the death in army custody on 10 April 1983 of K.T. Navaratnarajah, who died from no fewer than 35 external and internal injuries inflicted by blows and weapons - an incident in respect of which no one has yet been charged.

On the face of it, such a regulation is an open invitation for abuse. If the Executive can prevent impartial and public inquiries into deaths in custody, or deaths at the hands of the security forces in other circumstances, that could open the way to the worst kinds of extra-judicial execution. But it is also a hostage to fortune for the authorities themselves: so long as such a regulation is in force, it will always be open to their opponents to cite it as an unanswerable demonstration of

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scandal, whitewash, and cover-up.

In fact, this regulation is not a new invention of the Jayewardene administration: its almost identical predecessor first saw the light of day in 1971 under the previous administration of Mrs. Bandaranaike. At that time, Mr. Jayewardene strongly opposed it. Why therefore has he now felt impelled to bring it back to life ?

That question was put to the Sri Lankan delegation by members of the Human Rights Committee during the Geneva hearings in October/November 1983. On that occasion, Sri Lanka's Additional Solicitor-General is quoted in the Committee's Summary Records[21] as having given the following reply:-

> "It had been observed that following the murder of soldiers belonging to the majority Sinhala community by terrorists demanding a Tamil State, the public attending the funeral had been emotionally upset. The bodies of the soldiers had been mutilated by the powerful explosives used to blow up their vehicle and the relatives gathered at the cemetary had lost control of their feelings, with resultant incidents of violence ... It had also been decided to exclude persons from the funeral in order to prevent attendance by sensation-seeking journalists who might further exacerbate the feelings of the majority community."

Those may have been his instructions, but in fact I was able to ascertain that the principal reason for the regulation was rather different. Among high office-holders in Sri Lanka - including the President, as Minister of Defence, and the Secretary to that Ministry - the impression prevails that they are fighting a "war against terrorism." In a war, a general's first duty is to support his men. So, if those men are engaged in battle and shoot their enemies (who would very likely shoot them first if they were given the chance), that duty requires that the men should not thereafter be dragged through a civilian legal enquiry, conducted by some civilian lawyer who understands nothing about warfare, and (particularly if he happens to be a Magistrate of Tamil origin) may well end by imposing public and legal blame on some perfectly blameless soldier for firing at a shadowy figure whom he had every reason to believe to be an armed terrorist, even if it did turn out after the event to have

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been an equally blameless unarmed civilian. According to that view, enquiries into such incidents are far better conducted by soldiers who understand these things, rather than by civilian lawyers who do not.[22]

This perception may be understandable, but it is profoundly mistaken. The notion of a "war against terrorism" carries some very serious dangers to which I must return later (see section 3.7 below). But in this context there is quite another danger, to the security forces themselves; for <u>any</u> use of Emergency Regulation 15A will necessarily be seen by almost everyone else as a deliberate device for covering up murder, whatever the true facts may have been, and so will erode precisely the public support for those forces on which they are ultimately dependent for all the tasks they have to perform.

After all, a normal inquest is conducted in public; the deceased's family can view the body and give evidence; a forensic pathologist can conduct a <u>post mortem</u> and report his findings - as the District Judicial Medical Officer did in the case of Navaratnarajah; the Magistrate has power to summon all relevant witnesses; lawyers can make submissions; and everyone can see how the verdict is arrived at by an independent judicial officer. That is what ensures public confidence in public inquests, and that can never be the case for an enquiry that takes place in secret, and is conducted by the killers' own commander.

In his submission to the Human Rights Committee, and in his conversations with me, the Additional Solicitor-General made another point: this regulation, he said, in fact did no more than to substitute the Secretary of Defence for the ordinary Coroner; the Secretary still had to conduct precisely the same enquiry and reach the appropriate conclusion; and the only effect was therefore simply to substitute a different person and a different place for those that would apply under the ordinary law. I put this point to General Attygala, who entirely agreed. Since his appointment on 8 August 1983, he told me, he had conducted only three such enquiries, apart from authorising the burial of 13 soldiers who were ambushed and killed by Tamil

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Tigers on 23 July 1983. (This is puzzling, as there were also no Magistrate's inquests into the deaths of most of the 51 civilians who were admittedly killed by the security forces within the following week.) The General said that he had conducted all his three enquiries with complete impartiality, on full reports and statements furnished to him; and he had, he was sure, reached precisely the same conclusions as a regular Magistrate would have reached in similar circumstances, if he had understood the army's problems and exhibited no pro-Tamil bias.

I therefore asked the General whether, given his premise, he would in future be willing to publish the results of such inquiries, and the material on which they were based: after all, if he was right, the public would doubtless support him, and he would escape the censure which enemies of the Sri Lankan government could so easily direct against him so long as his inquiries were conducted in secret. He seemed open to this suggestion, and to the general proposition that anything that could attract ill-motivated criticism was better done openly, the more so if the person who was doing it had nothing to hide, and nothing to fear, even in his heart of hearts, from public disclosure of what he did.

I share the view of every other international observer who has so far expressed one on this subject that Emergency Regulation 15A is a dangerous and obnoxious measure, and I strongly recommend that it be revoked forthwith. Until it is, I express the hope that, if the Secretary for Defence again feels impelled to exercise his powers under it to attempt the task of a Coroner ordinarily vested in a Magistrate, he will hear everyone with an interest in the matter and publish a full report of his findings, together with all the material that was before him when he reached them. In that way, he will avoid any risk of being accused of suppressing the truth. By the same token, if he does his job as a Coroner incompletely, ineptly or incompetently, he will expose himself to the risk of public criticism on that count; but that is a risk for every Coroner, whether his primary training is that of a soldier or of a lawyer.

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3.2.3 Is this Legislation Justified ?

On the face of it, the Sri Lankan PTA derogates from many of the rights which Sri Lanka is bound, as a State Party to the International Covenant on Civil and Political Rights since 11 June 1980, to respect and ensure for all its inhabitants: the right to liberty and security of person and the freedom from arbitrary arrest and detention (Article 9); freedom of movement and choice of residence (Article 12); the right to a fair trial and the rights of defence (Article 14); freedom of opinion and expression (Article 19); the rights of assembly (Article 21) and association (Article 22); and the right to take part in public affairs (Article 25). The Emergency Regulations also derogate from many of these rights.

Whether such derogations are legitimate is a question that falls to be determined by applying the provisions of Article 4(1) of the Covenant, which will allow them only if three conditions are all satisfied:-

(a) There must be a "public emergency which threatens the life of the nation";

(b) The existence of that public emergency must be "officially proclaimed"; and

(c) The measures taken must not exceed "the extent strictly required by the exigencies of the situation".

In order to justify derogations under that Article, there must therefore both be an emergency in fact, and it must be officially proclaimed: neither alone is enough; in addition, the measures taken must be strictly proportionate to the threat presented, and no more.

Proclaimed Emergencies

The previous administration under Mrs. Bandaranaike, which had come into office in 1970, proclaimed an emergency in March

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1971 shortly before the armed insurrection of that year, and maintained it in force until 16 February 1977, so keeping the country under emergency rule for almost six years. During that time, thousands of people were detained without trial. Mr. Jayewardene, both in opposition and in office, has always insisted that he would not follow that example, and since his election to power in 1977 emergencies have in fact only been officially proclaimed for the following periods:-

(1) From 11 July 1979 in Jaffna, following violent incidents there, until 27 December 1979;

(2) For a few days from 16 July 1980, following a wave of strikes;

(3) From 2 June 1981 in Jaffna, and from 4 June 1981 throughout the country, until 9 June 1981, following the disorders of that time;

(4) From 17 August 1981, following the resurgence of communal violence, until 16 January 1982;

(5) From 19 October 1982, the day before the Presidential election, until 20 January 1983, four weeks after the referendum extending the life of Parliament without a general election;

(6) From 18 May 1983, the day of local elections and Parliamentary by-elections: this state of emergency was still in force at the time of my visit, and has not yet been lifted as this report goes to press.

Emergency Regulations in Sri Lanka only have effect so long as a Proclamation under the Public Security Ordinance remains in force: those regulations therefore satisfy the test of an "officially proclaimed" emergency under Article 4 of the Covenant. But that is not the case for the PTA. Parliament enacted this in July 1979 while an emergency was in force, but the Act did not lapse when this was lifted on 27 December 1979:

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its own Section 29 provided that it should remain in operation "for a period of three years from the date of its commencement." In fact, that Section 29 was repealed in 1982 by section 4 of the Prevention of Terrorism (Temporary Provisions) (Amendment) Act, and the principal Act - despite its title - therefore now remains in force indefinitely, unless and until Parliament chooses to repeal it, and regardless of whether or not an emergency either exists in fact, or has been "officially proclaimed".

Accordingly, the Sri Lankan PTA does not appear to fall within Article 4 of the Covenant during periods when no emergency is officially proclaimed there; during those periods, to the extent that the Act derogates from the rights guaranteed under the Covenant, Sri Lanka seems on that ground alone to be in breach of its obligations under that treaty. (This is a matter quite separate from the fact that Sri Lanka apparently omitted to give the appropriate notice to the Secretary-General of the United Nations under Article 4(3) of the Covenant,[23] an omission which I was told has since been rectified.)

The view taken on this question by the Sri Lankan authorities is that, so long as the current level of terrorism perpetrated by the Tamil Tigers persists, there is in fact a "public emergency threatening the life of the nation"; in those circumstances, a government has two options for derogation: either to proclaim a formal emergency and enact temporary emergency regulations, or to keep permanent legislation (such as the PTA) on its statute book; the choice between these is a political question, and either is permissible under the Covenant.

In my view, that argument cannot be sustained. The only "public emergency which threatens the life of the nation" contemplated by Article 4 of the Covenant is one "the existence of which is officially proclaimed." Before one needs to consider whether there is an emergency in fact, one must therefore look to see whether one has been officially proclaimed. If it has not, the State's right to derogate has

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not yet arisen, and if it nonetheless derogates it appears to be in *prima facie* breach of its obligations under the Covenant.

Since there is no dispute that the provisions of the Sri Lankan PTA derogate gravely from the rights of individuals guaranteed under many of the Covenant's substantive Articles, it follows in my view that Sri Lanka is in breach of its international obligations so long as that Act remains on its statute book in its present form, and no emergency has been officially proclaimed in the country. There is indeed a political choice for President Jayewardene: either to follow Mrs. Bandaranaike's example and to rule under permanent emergency powers, or to refrain from that course. But in the latter case he does not then have the option of keeping what is in fact emergency legislation[24] permanently on the statute book. In matters of this kind, one cannot have it both ways.

Emergencies in fact

Let me turn, nonetheless, to the second question, namely whether there is in Sri Lanka in fact an emergency sufficient to justify this legislation, quite apart from whether one has been proclaimed. For this, one must first ascertain what level of emergency the Covenant has in contemplation. The expression "public emergency threatening the life of the nation" appears not only in the Covenant, but also in Article 15 of the European Convention on Human Rights. Both the organs competent to interpret and apply these treaties have had occasion to construe it. In relation to the Covenant, the Human Rights Committee has said -

> "that measures taken under Article 4 are of an exceptional and temporary nature and may only last as long as the life of the nation concerned is threatened, and that in times of emergency, the protection of human rights becomes all the more important ..."[25]

In relation to the European Convention, the European Court

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of Human Rights has said that the phrase means -

> "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed."[26]

Doubtless both these conditions are satisfied when there is communal violence on the scale, and with the intensity, that Sri Lanka tragically witnessed in 1977, 1981 and 1983, and in such circumstances a government is clearly entitled to proclaim an emergency, and to take all measures strictly required by the exigencies of the situation in order to bring the violence to an end, and to restore peace, order, and the organised life of the community. But the matter stands quite differently if the alleged emergency falls short of an exceptional situation of crisis affecting the whole population, and the measures are not temporary. While the public authorities of the State concerned, by reason of their direct and continuous contact with the pressing needs of the moment, are obviously best placed to be the judges of first instance as to these matters, and have therefore been said to enjoy a "domestic margin of appreciation",[27] the test is ultimately an objective one: both as to whether there is in fact an emergency, and as to whether the measures taken against it exceed the extent strictly required by the exigencies of the situation - that is, whether they comply with the principle of proportionality. For this purpose, one must therefore look at the size and scale of the problem presented to the authorities, and the size and scale of the counter-measures they take.

Size and Scale of Terrorism

Speculations as to the number of individuals engaged in the Tiger groups vary wildly. Extremists on both sides share an interest in maximising it: Sinhalese in order to show how greatly they are threatened and to justify the strength, and sometimes even the violence, of their response; Tamils in order to show the solidarity of their people against oppression. In both such circles, I have heard mention of figures as high as 1,400.

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However, according to the Government itself, such figures are a gross exaggeration. General Attygala, an experienced and distinguished soldier who was formerly in command of the Sri Lankan army, and has now been in overall charge of the entire security operation against the Tamil Tigers for more than six months, told me that he believed that their hard core numbered no more than about 25 or 30, with perhaps another 100 to 150 on their periphery. This tallies with the number of around 200 which Professor Leary was given in 1981 by the then Secretary to the Department of Justice.

The damage done by the Tigers is more accurately ascertainable: according to the official figures, from the time they began their bloody work in April 1978 to October 1983 they had killed 87 people, of whom 51 were police officers or soldiers, 9 politicians, 13 potential witnesses, and 14 others; they have also inflicted damage to property, and robbed several banks.

At the same time, there has been equally tragic loss of life in reprisal. In July 1979, six Tamil youths disappeared: two were later found dead and mutilated; one died in a prison hospital; and the remaining three have never been found. Following the report on this affair by a Parliamentary Select Committee under the chairmanship of Mr. Lalith Athulathmudale MP, the present Minister for Trade and Shipping, grave suspicion continues to rest on the police. Five more Tamils were killed when the police went on a rampage in Jaffna on the night of 3/4 June 1981. The representative of Sri Lanka appearing before the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in Geneva in August 1983 admitted that, of the Tamils who lost their lives during the communal violence of July and August of that year, 37 had been killed by members of the security forces: the Government has since revised that figure upwards, to 51.[28] A further 53 Tamils were murdered at that time in Welikada prison in Colombo, where they were held under the Prevention of Terrorism Act, either in detention or on remand. That makes a total, from official sources alone, of at least 112 individuals killed either by members of the State's

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own security forces, or while in the State's custody.

Unofficial reports increase that number. According to Mr. Moore's report of July 1983, not less than 23 individuals had died in custody since July 1979, and a further four had "disappeared". The Tamil leader and Member of Parliament, Mr. Amirthalingam, has said that 51 Tamils have been killed over an unspecified period in "unreported incidents".[29] It may of course be that some of these lives were taken by the security forces in actual or perceived self-defence, but as there has never been a public and independent inquiry into most of these deaths, that must remain a matter for speculation. And it certainly cannot be the explanation for the death in army custody, from multiple external and internal injuries inflicted by blows and weapons, of K.T. Navaratnarajah on 10 April 1983, where the investigating Magistrate brought in a verdict of homicide on 31 May 1983 (three days before Emergency Regulation 15A was made), but no one has yet been charged.

Every single death by violence must be lamented, whoever perpetrates it. There can be no excuse for it, and all governments must do what they can to prevent it. But no nation anywhere in the world can ever hope to be entirely free of violence: in every society, there will be at least a few who commit murder from greed, passion, rage, mental derangement - or, sometimes, misguided political motives. The question is at what level such killings take on the quality of a "public emergency threatening the life of the nation".

The Sri Lankan authorities have consistently taken the view that the current level of violence perpetrated by the Tamil Tigers does constitute such a public emergency. I am satisfied that they hold that view honestly, and are motivated by a genuine concern for the life of Sri Lankan citizens, and not by any malign, political or other extraneous concerns. Nonetheless, I am forced to the conclusion that they are mistaken in that judgement. The Tamil Tigers are, it is conceded, only a tiny group of violent youths in a fundamentally peaceful population of nearly 15 million. They have taken, on

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average, around 16 lives a year, almost all among people whom they either see as their armed oppressors, or as traitors to their own community, and entirely within a few small areas in the Island. (By comparison, the toll of deaths from terrorism in Northern Ireland over the same period - 217 members of the security forces, and 275 civilians - has averaged 90 per annum in a population just one tenth the size of Sri Lanka: that is, a rate per capita 57 times as high.) Unlike other and better-known terrorist groups in other parts of the world, the Tamil Tigers are relatively unsophisticated, as Mr. Moore explains in his report. While one must have every sympathy for their victims, and for the problems of those who carry the burden of responsibility for safeguarding the lives and safety of the Island's population, I cannot see that this level of violence can properly be described (in the words of the European Court of Human Rights) as "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed" - nor that, even if it did fall within that definition, the provisions of the PTA or of Emergency Regulation 15A are anything other than grossly disproportionate to the threat presented, and far more than is "strictly required by the exigencies of the situation."

On all these grounds, I am therefore driven to the conclusion that both the PTA and Emergency Regulation 15A are unjustified in law and in fact, and that emergency rule throughout Sri Lanka can only be justified on those occasions when there are acute and large-scale outbreaks of violence such as those of July/August of last year, and then only for a brief period until that situation has been brought under control. It could not, on that test, have been justified at the time of the referendum in December 1982 to extend the life of Parliament without a general election, when it was used to ban publications opposing the proposal.

Emergency rule in a limited area might also be justified if the scale of terrorism in that area were ever to increase far beyond its present measure, as in Northern Ireland. One can

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only pray that this will not happen: if it does, it can only be because the local community comes to feel so persecuted by the authorities that it gives much wider support to such groups than they now enjoy.

One last matter must be mentioned here, and it is perhaps the most important of all. Professor Leary rightly pointed out in her report that the PTA is counter-productive, and serves only to reinforce the Tamil Tigers in their determination, and to alienate even the law-abiding Tamil community from their legitimate government. But in addition to that, it has now become manifest that the PTA does not even achieve the objectives for which it was designed: it has simply not helped the police to catch the Tigers and bring them to justice, however many people they have detained for questioning, and for however long. I gained the impression during my visit that this realisation is now beginning to dawn on the responsible Sri Lankan authorities, and this at least provides some hope that Sri Lanka will see the last of this unsavoury statute before too much longer.

3.2.4 Prospective Legislation

The Sri Lankan Sun of 1 December 1983 carried a disturbing report to the effect that new legislation was being contemplated to extend to members of the armed forces the PTA's powers of arrest, search, stop and seizure without warrant, and to give them legal immunity from suit, and from judicial remand in custody if they were accused of offences while on duty. I thought it right to pursue that news item, and I was able to confirm that there was indeed a proposal within Government for a new Criminal Procedure (Special Provisions) Law. Since that proposal was still under discussion and had not yet been adopted by the Cabinet of Ministers, I was not able to obtain sight of any draft of it, and I make no complaint about that. But I would here express the hope that, after proper consideration, no such project will in fact see the light of day. Although it is just the kind of proposal which, for motives that are as readily

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understandable as they are misguided, is often put forward by security forces who see themselves engaged in a "war against terrorism" or a "war against crime" (see section 3.7 below), to accede to them can in fact render no service to those who put it forward, but can only strengthen the hand of the "enemy" by undermining the Rule of Law, and thereby reinforcing the perceptions of those who see Government as nothing more than an alien and oppressive power - a proposition of which they then find it all the easier to convince the gullible, who may up to that point have been in real doubt as to whether they ought in conscience to support the use of violence against the legitimate government of their land.

3.3 Powers of the President

Under Article 30 of the Constitution, the President is not only Head of the State, but also Head of the Executive and of the Government, and Commander-in-Chief of the Armed Forces. He appoints the Prime Minister (Article 43(3)) and all other Ministers and Deputy Ministers, consulting the Prime Minister only where he considers that to be necessary (Article 44 and 46), and can remove any of them without consulting anyone; he appoints the Secretaries (that is, the chief permanent officials) of every Ministry (Article 52); and he appoints the Chief Justice and all the Judges of the Supreme Court, the President and all the Judges of the Court of Appeal (Article 107(1)), as well as all the Judges of the High Court (Article 111(2)). For all these things, he is "responsible to Parliament" (Article 42), but so long as he holds office, "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" (Article 35(1)).

By virtue of Article 44, the President may himself take charge of any subject or function which would otherwise be assigned to a Minister, and under that provision President

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Jayewardene has in fact assigned to himself the portfolio of the Minister of Defence.

3.4 Independence of the Judiciary

Sri Lanka has for long enjoyed the benefits of a respected and courageous judiciary, both before and since Independence. The Supreme Court, first of Ceylon and now of Sri Lanka, has produced many judges of outstanding integrity and learning, and its judgments have made signal contributions to the common law of the Commonwealth. Inevitably, this has more than once brought them into conflict with the Executive, under different administrations.

The 1978 Constitution, in its Preamble, associates the Independence of the Judiciary as a fundamental value with Representative Democracy, Freedom, Equality, Justice, and Fundamental Rights. Under the heading "Independence of the Judiciary", Article 107 provides that the Chief Justice, the President of the Court of Appeal and all the other Judges of both these Courts (who are all appointed by the President) shall hold office "during good behaviour", and the President may only remove them after an address of Parliament on the ground of "proved misbehaviour or incapacity", introduced by not less than one third of its Members and supported by an absolute majority of them. The salaries of these Judges are to be determined by Parliament, charged on the Consolidated Fund, and may not be reduced for any Judge during his tenure of office.

The Judges of the High Court (the highest court of first instance exercising criminal jurisdiction) are also appointed by the President, and may be removed only by the Judicial Service Commission (Article 111), composed of the Chief Justice and two Judges of the Supreme Court appointed by the President, who may remove its members only "for cause assigned" (Article 112). That Commission also appoints, transfers and dismisses all other judicial officers (Article 114).

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By Article 116,

"(1) Every judge ... shall exercise and perform [his] powers and functions without being subject to any direction or other interference ...

(2) Every person who, without legal authority, interferes or attempts to interfere with the exercise or performance of the judicial powers or functions of any judge ... shall be guilty of an offence ... "

The central importance of an impartial and independent judiciary for the survival of a free society under the Rule of Law is clearly recognised in Sri Lanka, not only within the legal profession, but very widely among the general public: Sri Lankans at all levels care a great deal about legality, legitimacy, and the impartial administration of justice. The Constitution indeed guarantees these things, but the effectiveness of those guarantees depends critically on the responsibility, free from all party-political or other considerations, with which the President exercises his powers in this field. Unfortunately, in this respect, President Jayewardene's record has not proved to be entirely free from blemish.

Under the 1978 Constitution's transitional provisions, the previous Supreme Court (but not the other Courts) ceased to exist when it came into force, so potentially giving the President a free hand to make a clean sweep of its members, and to appoint his own candidates. In fact, he confined his appointments largely to members of the existing judiciary, but in the course of the operation seven members of the previous Supreme Court lost their offices altogether (as did five of the High Court); four more were moved down to the new Court of Appeal; and one previous District Court judge was promoted over the heads of the entire High Court into the new Court of Appeal. I am not competent to make any judgment of the character, ability, or qualification for office of any of the judges concerned, but many members of the Sri Lankan Bench and Bar who do have that competence saw at least some of those appointments and dismissals as politically motivated. At the inauguration of the new Supreme Court on 11 September 1972, the Chief Justice (himself appointed to the previous Supreme Court, direct from

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the Bar, by the Jayewardene administration soon after the General Election of 1977) was reported as saying:-

> "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."

In the event, more was indeed in store. During the campaign for the December 1982 referendum to extend the life of Parliament without a general election, a Superintendent of Police, Mr. P. Udagampola, seized 20,000 pamphlets of "Voice of the Clergy", opposing the referendum proposal. A Buddhist monk, the Secretary of the organisation concerned, complained to the Supreme Court, under Article 126 of the Constitution, that this act had infringed his fundamental right to freedom of speech and expression. On 8 February 1983, the Supreme Court held in his favour, and awarded 10,000 rupees damages against the Superintendent personally, together with costs. On 2 March 1983, the Government announced that the Superintendent would be promoted, and that the State would pay the damages and costs.

That history soon repeated itself. On 8 March 1983, International Women's Day, a Mrs. Vivienne Goonewardene (a former MP), together with some others, went to deliver a letter of protest to the American Embassy in Colombo, where she was courteously received by a First Secretary who promised to forward it to the appropriate quarters. On their way back, some police officers took away their banners. Shortly after that, Mrs. Goonewardene heard that a press photographer who had taken pictures of this incident had been taken to the police station. She proceeded there to enquire after him, and soon after found herself under arrest, thrown to the floor, and kicked.

She too complained to the Supreme Court under Article 126 about an infringement of her fundamental rights. Because of the two-month time limit on the completion of such proceedings imposed by Article 126(5) (see section 3.1.2 above), there was no time to hear oral evidence, and the Court had to determine the matter on

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conflicting affidavits. In the event, it found that the arrest was unlawful, and directed the Inspector-General of Police to conduct further inquiries, and to take appropriate action in accordance with the law. That judgment was delivered on 8 June 1983. On the following day, the Acting Inspector-General of Police announced the promotion of the Sub-Inspector who arrested her.

Two days after that, two of the Judges of the Supreme Court who had heard this case found their private houses surrounded by unruly mobs, shouting obscenities at them. (The third judge had in fact moved house some time before, but his former residence was similarly invested.) It was a frightening experience, and no policeman was in sight. They tried to telephone the police, but found the lines mysteriously out of order.

Although the Prime Minister issued a public statement on 15 June that the Inspector-General of Police was being instructed to undertake a rigorous investigation of these incidents in order that the matter might be appropriately and publicly resolved, no matter who was discovered to be the culprit, and although the mobs arrived in public service buses and the disorders had clearly been organised in a concerted fashion, no one seems to have managed to this day to unearth anyone responsible: apparently, the relevant records of the bus station concerned have somehow been lost.

Such events are hardly calculated to encourage the judiciary to remain independent, or to enhance public respect for its members, their judgments, or the Rule of Law. I therefore sought further information about them during my visit. The Additional Solicitor-General told me that the promotion of police officers was the sole concern of the Inspector-General of Police and the Ministry of Defence, as were enquiries about alleged offenders and their apprehension, up to the point where reports and statements were presented to him with a view to formal prosecution. The Secretary to the Ministry of Defence told me that these were matters for the Minister, and not for him. The Minister for Internal Security suggested that I should raise them with the President, which I duly did.

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The President freely conceded that he had personally ordered the promotion of the two police officers, and the payment out of public funds of the damages and costs. This, he said, had been necessary to maintain police morale. He strongly criticised the Supreme Court for not affording Mrs. Goonewardene's Sub-Inspector the opportunity of giving oral evidence, and clearly regarded this as a case of the Court putting itself above the law.[30] He explained, in more general terms, the difficulties which Judiciaries are apt to present to Executives if they are wholly outside anyone's control - a line of argument developed so regularly by the holders of high executive office that it needs no elaboration here.[31] He also volunteered the information that he had left Sri Lanka for a foreign visit some days before the "demonstrations" outside the Judges' houses, but pointed out that the right to peaceful protest was always available to the people of Sri Lanka.

I do not suppose for a moment that President Jayewardene had any personal hand in the organisation of the mobs before he left the country, nor has anyone suggested to me that there is any evidence that he did. But he has now conceded that the promotion of the two police officers, and the payment of the damages and costs out of public funds, were his personal decisions - at a time when he found the Supreme Court a hindrance to some of his policies. The conclusion is inescapable that he was deliberately seeking to teach the Judges a lesson, in order to make them more pliable to the Executive's wishes. If that is so, these were grossly improper acts; but for the immunity from all suit which the President enjoys under Article 35(1) of the Constitution, they might well have been criminal offences under Article 116(2).

The President is of course perfectly right in contending that no one should be above the law - even if, under Article 35(1), he himself is. The Supreme Court is itself always bound by the law - and, under the Constitution, it is ultimately accountable to Parliament, which has the sole power under Article 107 to present an address for the removal of its Judges on the ground of "proved misbehaviour or incapacity".

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Accordingly, if the Supreme Court misbehaves itself, that is exclusively a matter for Parliament, and not for the President. The President's powers under the Constitution are exceptionally wide for a free democracy under the Rule of Law, and a heavy duty is therefore cast upon him to exercise them only with a very high degree of responsibility; never capriciously, and never in a fashion which will undermine confidence in the national institutions which the Constitution itself creates - above all, the Supreme Court as guardian of the fundamental rights declared and recognised by the Constitution itself. I find it a matter for regret that, in this instance, the President has on the basis of his own admissions fallen well short of that high responsibility. What he did may be understandable, but it is not excusable.

3.5 The Sixth Amendment

In July 1983, shortly before the outbreak of communal violence at the end of that month and while emergency rule was already in force, there was presented to Parliament a Bill which in the event became the Sixth Amendment to the Constitution. The Supreme Court's only jurisdiction over that Bill was to consider whether it needed a referendum as well as a two thirds majority in Parliament; as the Cabinet certified the Bill as being "urgent in the national interest", the Court only had 24 hours in which to consider even that question. It decided that no referendum was needed; the Bill was rushed through Parliament, received the necessary majority, and came into effect on 8 August 1983.

It inserts into the Constitution a new Article 157A and a new Seventh Schedule, and makes some other consequential amendments. The key to its effect is paragraph (1) of the new Article, which runs as follows:-

> "No person shall, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka."

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Anyone who contravenes that provision becomes liable to the imposition by the Court of Appeal of civic disability for up to 7 years, the forfeiture of his movable and immovable property (except what he needs to sustain himself and his family), the loss of his passport, the right to sit for any public examination, the right to own any immovable property, and the right to engage in any trade or profession which requires a licence, registration or other authorisation. In addition, if he is a Member of Parliament, he loses his seat; if he is a public officer, a judicial officer or a servant of a local authority or public corporation required by the Constitution to take an oath, he loses that office or appointment. By paragraphs (4) and (5), any political party, or other association or organisation, having any of these aims or objects may be proscribed by the Supreme Court on the application of any person; Members of Parliament belonging to that party thereupon lose their seats, and all office-holders or members of the party may thereafter be convicted by the Court of Appeal of an offence, subject to the same penalties as those who contravene paragraph (1) of the new Article.

All this happened after Sri Lanka had submitted its original Report to the Human Rights Committee under Article 40 of the Covenant, and the Addendum to that Report was not submitted until about a month before the Geneva hearings began. The Committee therefore had no opportunity to consider the effect of this enactment on that occasion, or to put questions about it to the Sri Lankan delegation.

In fact, Article 25 of the Covenant, by which Sri Lanka is bound, provides that -

> "Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:
>
> (a) to take part in the conduct of public affairs, directly or through freely chosen representatives;
>
> (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

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(c) to have access, on general terms of equality, to public service in his country."

The distinctions mentioned in Article 2 (to which I have underlined the reference) in fact include any distinction on the ground of "political or other opinion".

I asked the Additional Solicitor-General how, in the light of the provisions of this Article, he was able to justify the provisions of the Sixth Amendment. He pointed out that Article 2 of the Constitution declares that "the Republic of Sri Lanka is a Unitary State", and that the Sri Lankan statute book still retains, from the colonial days, the ancient British criminal offence of sedition (which has long since fallen into disuse in the United Kingdom). Accordingly, he argued, since it must be legitimate in principle to disqualify from public office people convicted of serious criminal offences carrying substantial terms of imprisonment, such disqualifications must a fortiori be legitimate where the offence is directed against a fundamental provision of the Constitution, and so in effect amounts to treason against the State.

In my view, that argument is not tenable. The Constitution itself guarantees freedom of thought and conscience (Article 10), and freedom of speech and expression (Article 14(1)(a)). Those freedoms must include the freedom to support, espouse, encourage or advocate amendments to the Constitution itself, provided of course that it is done peacefully, and within the democratic framework which the Constitution lays down. Were it otherwise, it would have been unlawful for anyone at any time to propose any amendments to the Constitution, including the Sixth Amendment itself. The freedom to express political opinions, to seek to persuade others of their merits, to seek to have them represented in Parliament, and thereafter to seek to persuade Parliament to give effect to them, are all fundamental to democracy itself. Those are precisely the freedoms which Article 25 of the Covenant recognises and guarantees - and, in respect of advocacy for the establishment of an independent Tamil State in Sri Lanka, those which the Sixth Amendment is designed to outlaw. It therefore appears to me plain that this

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enactment constitutes a clear violation by Sri Lanka of its obligations in internationl law under the Covenant.

Nor is this just a matter of technical legality, for the Sixth Amendment is not content to provide machinery for conviction by the Court of Appeal or declarations by the Supreme Court. It further requires that all Members of Parliament, office-holders of various kinds, and even every attorney-at-law, shall make an oath or affirmation to the effect that he -

> "will not, directly or indirectly, in or outside Sri Lanka, support, espouse, promote, finance, encourage or advocate the establishment of a separate State within the territory of Sri Lanka,"

on pain of the loss of the Parliamentary seat, or of the office concerned, or (in the case of attorneys-at-law) of the right to practise their profession.

Since the TULF is formally committed, by its party conference resolution of 1976, to the establishment of an independent Tamil State, the consequence is - and must have been intended to be - that the TULF Members of Parliament have now forfeited their seats. And the consequence of that is pernicious in two respects. First, before the Sixth Amendment was passed, the TULF was the largest opposition party in Parliament, and its effect has therefore been to increase the UNP's majority in that assembly from the previous 83% to 93% - at all events until by-elections are held. Accordingly, the President can now hardly be surprised if his opponents, both within the country and outside, regard the Sixth Amendment as nothing more than a piece of political chicanery, designed to move Sri Lanka even further towards a one-party State.

Worse still, this provision has now deprived the Tamil community of its remaining voice in Parliament, and so of its last opportunity to take part in the democratic process. Political terrorists need to put forward justifications for the violence which they perpetrate, in order to obtain support from the community which they claim to represent. Their favourite justification is that the democratic process has failed, and that in the last resort the gun is the only alternative to the

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ballot box. Since the Sixth Amendment, that ballot box is now closed to Tamils who wish to vote for candidates sincerely and peacefully advocating a separate Tamil State as the solution for their constituents' problems, and trying to persuade their fellow Members of Parliament of the rightness of that view. That fact can only help to gain support for those who seek to achieve their objectives by violence. In short, the Sixth Amendment has played straight into the hands of the Tamil Tigers.

3.6 Freedom of Expression

It is sometimes said that Sri Lanka does not enjoy the benefits of a free press. Certainly, the Government has some limited powers of censorship under permanent legislation: the Press Council Act, strongly opposed by the UNP when the Bandaranaike administration enacted it, but not repealed since the UNP came into office; and the PTA (see section 3.2.1 above). Whenever there is emergency rule, the Government can also ban publications altogether, as it did in the case of some that opposed the referendum in December 1982 to extend the life of Parliament without a general election, including the opposition paper _Aththa_; and again in July 1983 in the case of the two Tamil newspapers _Suthanthiran_ and the _Saturday Review_. The Government also controls all broadcasting, all the time.

Despite that, I have to say that I do not get the impression of a Sri Lankan press in chains. True, I am only able to read (though not only when I am there) the four daily newspapers that are published in the English language: the _Daily News_, the _Island_, the _Sun_, and the _Mirror_. Of these, the _Daily News_ and the _Mirror_ are said to be actually owned by the Government, and they certainly read as if they were. But that cannot be said for the others, which seem to have little hesitation in expressing (admittedly muted) criticism of at least some of the Government's policies. One does not need to be particularly perceptive to detect the influence of Government pressures on what is printed, but the fact alone that this is visible is a

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good sign.

In my view, the pressures that the Government does seek to apply on the press are both mistaken and counter-productive. The best demonstration of that may be found in a speech that Dr. Anandantissa de Alwis, the Minister of State for Information and Broadcasting, made in the immediate aftermath of the communal violence on 29 July 1983:-

> "We can help by not passing on rumour. Lots of these rumours are passed on the telephone. 'Did you hear', somebody says. 'I heard from a very reliable friend', and if only these reliable friends have heard from other reliable friends, and if only these reliable friends will keep their mouths shut, many of the troubles we had would not have occurred. For example, somebody invented a rumour that there were terrorists on the roofs of tall buildings in the Fort [in Colombo] and that they were shooting at our troops. There was no such thing. But it became so believable, people described them. They said they were in uniform. There were some who invented a beautiful story that some of these people were white people, from some other country. And one was a magnificent invention: the person said he saw one of them dead and his body was white.
>
> This is what imagination, fevered imagination, can create, out of nothing. What really happened you have read in the daily press. Some people from a roof (some Sri Lankan people, some Sinhalese people) threw some explosive at our troops. Our troops fired back and these people on the roof, some of them died. That is how the rumour began. But see, what you heard was not what happened. What you heard was a fantastic story, a deadly story. It caused panic. People ran for their lives. That is what rumour can do. So you can stop it. If you do not repeat it to somebody else the rumour stops at your door. You can help in that way."

That was a cry from the heart at a time of real emergency. But the only sure protection against dangerous rumours <u>is</u> a free press which the public can trust. So long as there is well-founded suspicion that the truth may not appear in the newspapers, there will be wide scope for rumours, with all its dangers.

This was well illustrated by an event which took place during my visit. On the morning of Thursday, 12 January, I heard on the BBC World Service that two police officers had been killed by terrorists in Sri Lanka's Northern Province. Neither on that day nor the next was there any mention of this incident

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in the Sri Lankan newspapers, yet several people seemed to have heard of it somehow - except that they believed the number killed to have been much larger, and the police officers to have been Sinhalese. I mentioned this to General Attygala when I saw him on 13 January, and he reassured me that the story would appear on the following day, Saturday 14 January. And so it did, correctly reporting that two police officers had been killed and one wounded, and that all three were Tamils. Evidently, the "competent authority" under the PTA had thought it right to prohibit publication of this incident for 48 hours, doubtless because the all-party conference had then just begun its sessions. But, in so doing, he only made matters worse by encouraging a rumour which fed on itself and both magnified and falsified the actual event, until it was laid to rest by publication of the truth.

Happily, none of these strictures can be applied to the spoken word. No one I met, at all events outside Government, displayed any inhibition in what they said to me. In all places and at all levels, everyone I spoke to seemed to feel perfectly free to express their views, including some that were pungently critical of the Government and its policies.

Moreover, Sri Lanka still has the benefit - and I use that word advisedly - of what, in proportion to its population, is a large number of independent, vigilant and effective non-governmental organisations. These include the redoubtable Civil Rights Movement (CRM), an organisation chaired until his untimely death last year by the revered and much-loved Bishop Lakshman Wickramasinghe, which has been a thorn in the flesh, impartially, of the successive administrations of both Mrs. Bandaranaike and President Jayewardene, criticising each of them with sharp precision for their alleged misdeeds. In return, it has been criticised by both those administrations while in office, and praised by some of their members while in opposition. That is a phenomenon familiar to many non-governmental organisations, and furnishes the best testimony to their independence.[32]

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There are also the respected Marga Institute, a centre for development studies which publishes research papers of high quality about Sri Lankan affairs; the Centre for Society and Religion; the Movement for Inter-Racial Justice and Equality; and a wide variety of comparable organisations, expressing their views with sincerity and courage. Between them, they vouch for the freedom that continues to exist in the Island for the expression of views and opinion by people of all persuasions, uninhibited by fears of governmental retaliation. So long as that remains the case, it provides some grounds for real confidence in the survival of Sri Lanka as a free democracy under the Rule of Law.

Another institution of potentially great value is the Sri Lanka Foundation, chaired by Mr. H.W. Jayewardene, QC, a distinguished lawyer who is also the President's brother and close advisor. That institution is funded by the Government, and its principal activities are holding seminars on human rights and publishing their proceedings, and - through an associated Centre for Human Rights directed by Mr. E.A.G. de Silva, Secretary of the Sri Lankan Section of the ICJ - public education about human rights. Under the sponsorship of these organisations, research is currently being conducted on the contribution to human rights of the different religions represented in Sri Lanka, and some years ago a human rights poster competition was organised in Sri Lankan schools, some of which were exhibited at the Palais des Nations in Geneva during the hearings by the Human Rights Committee, eliciting deserved praise by members of that body which was reflected in the Summary Records of its proceedings.

That Foundation and its associated Centre could play an important part in the future in contributing to the observance of human rights and the Rule of Law, and the restoration of communal peace and harmony, in Sri Lanka, and I shall return to this subject in section 4.3 below.

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3.7 The Army

Sri Lanka has a standing army of around 11,000 regular soldiers, supplemented by about another 2,000 to 4,000 volunteers. Tamils are proportionately under-represented in that force, constituting only about 5% of it.

As Mr. Moore rightly pointed out in his Report, the Sri Lankan army has never fought a war. Nor is it likely that it ever will, since Sri Lanka is in the happy position of having no foreign enemies. There is no prospect at all that India, its only close neighbour, would ever wish or attempt to invade it - and if it did, even the largest army that Sri Lanka could muster would be unable to resist such an attack for long.

In fact, the only function performed by the Sri Lankan army since Independence has been to give aid to the civil power to maintain internal security in times of trouble. Though armies are used for that purpose in many parts of the world, it is a function that they are inherently unqualified to perform. While policemen are trained to protect the State's citizens in peacetime, the basic training of all armed forces is to kill the State's enemies in wartime, and the Sri Lankan army is no exception. It may be understandable that a distinguished professional soldier like General Attygala should see himself and his troops as being engaged in a "war against terrorism", and perhaps only a little less understandable that President Jayewardene, in his capacity as Minister of Defence, should have a similar perception. But that perception is profoundly - and, in my view, dangerously - mistaken, as is the facile phrase so often used by policemen all over the world that they are fighting a "war against crime". In a war, each side seeks to pursue the patriotic aim of defending its national territory and heritage against a foreign aggressor, sparing no degree of force or violence in the defence of those hallowed values, seeking by all available means to outgun and overpower the enemy, and so striving for an escalation of violence rather than its reduction. To transfer those objectives to a conflict between citizens of a single country can only have one effect: to

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escalate such a conflict into a civil war in the true sense - that is, the division of the nation itself into two groups so hostile that each treats the other as a foreign aggressor. Yet that is precisely what the Government of Sri Lanka must avoid at all costs, genuinely concerned as it is to maintain the Republic as an unitary state and to resist the mounting Tamil calls for separatism.

For that reason, the Sri Lankan army is peculiarly unsuited to come to any useful aid of the civil power in seeking to reduce the terrorist activities of the Tamil Tigers, however useful it may be to call it out briefly on the rarer occasions of mass communal violence, in order to enforce a curfew or to bring rioting or looting mobs to order. To the Tamils in the Jaffna peninsula, the army base at Elephant Pass on the isthmus which connects that peninsula with the rest of Sri Lanka can only be perceived as the encampment of a foreign army of occupation, and even to the independent observer it is difficult to see any useful purpose for it. In fact, the only roles which those soldiers perform are either to go on "Tiger-hunting" forays - which, at night or in circumstances of confusion, can result only too often in the shooting of what may later turn out to be innocent civilians - or to supply targets for Tamil Tiger snipers or ambushes which, if they are successful, can only evoke a renewed desire for retaliation, and so escalate the level of violence on both sides even further.

General Attygala appears to be well aware of this dilemma, and to have no great relish for maintaining his troops in an uncomfortable role of armed policemen for which they have not been trained. But he has another, and disturbing, problem about discipline. An army that has no wars to fight, and no foreign enemy to learn to oppose, is apt to fret when confined to barracks, and to blow off steam when deployed in any field, even if it is the domestic one. It is not in dispute that some members of the Sri Lankan armed forces have, on such occasions, got out of control, and that even their own officers have found it briefly impossible to bring them to order. That is how at least some of the now admitted 51 civilians were killed by armed

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members of the security forces during the communal violence last summer, which included a wholly unauthorised rampage by some naval ratings in Trincomalee. I was told that 120 soldiers and 105 sailors have since been dismissed the service as a result of those incidents, and that at least is encouraging news.

It may yet take some time before discipline is fully re-established in Sri Lanka's armed forces, but it is essential that it should be. It is fundamental to the concept of any army that it should be a fully disciplined force: without that, it is no more than a dangerous armed rabble. I am satisfied that General Attygala is well aware of this problem, and will do what he can to resolve it. I can only express the hope that he will have the full support of all his colleagues in the Sri Lankan administration in the pursuit of that aim.

3.8 The Police

Unfortunately, the Inspector-General of Police was away from Colombo during my visit, and I was therefore unable to meet him. What I say here about the Sri Lankan police must therefore be read subject to the caution that its official Commander did not have the opportunity of discussing my concerns with me.

As I understand it, the Sri Lankan police has long been under-paid, under-trained and under strength. At the time of my visit, it was still a full 3,000 men short of establishment. Recent improvements in its pay and conditions have made it able to recruit better qualified candidates, but there is still a long way to go. On any view, it is clear that it has lacked for many years at least some of the skills which are essential to the performance of its functions.

For instance, it seems to take the police an unconscionable time to complete their enquiries, even into crimes which must have involved a large number of people, and where the evidence is all to be found in one place. The prime example is furnished by the two massacres in Welikada jail on 25 and 27 July 1983, in

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which 53 Tamil political detainees were murdered within the confines of an allegedly secure prison. The Magistrate's enquiries at the time called on the police to carry out the necessary investigations. Yet seven months later, a special unit of the Sri Lankan police under a Superintendent has still not been able to find the culprits: indeed, just as this report went to press, I was officially informed by the Sri Lankan High Commissioner in London, on direct instructions from Colombo, that the investigation had not disclosed enough "cogent and legally admissible evidence to identify any of those responsible for the killings with a view to a successful prosecution in a court of law." I confess that I find this difficult to believe.

Again, as long ago as July 1982, the Parliamentary Select Committee under the chairmanship of Mr. Lalith Athulathmudale MP had urgently recommended further enquiries into the circumstances in which six Tamil youths disappeared, of whom two were found dead and mutilated, one died from injuries in a prison hospital, and the other three have never been found. Yet, by the time of my visit, those enquiries had still produced no result.

During the six months before my visit, many people had been arrested and detained under the PTA, and on 12 January 1984, 83 of them were still in detention without charge. Many of these had been held for a month or more, the longest for nearly seven months. One must assume that, when the police decide to arrest someone under the PTA, it is because they have reason to think that he may be able to help them in some investigation. If he is still being detained months later, that can only be either because they arrested the wrong man in the first place, or because they conduct their investigations incompetently. A shortage of Sinhala typewriters is hardly a tenable excuse for detaining people without charge or trial for months on end.

Given that, on the Government's own admission, there are only 25 or 30 hard-core Tamil Tigers, and no more than 100 or 150 on their periphery, and the undoubted fact that, as Mr. Moore reported, these are not particularly sophisticated

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terrorists, there are only two possible explanations for the consistent failure by the police to identify the members of these small groups and to bring them to justice: either the police are incompetent, or the support for these few violent youths in the Tamil community is so pervasive that they are able to camouflage themselves completely. Whichever of these explanations is right, the fault can only lie with the administration, which is responsible both for the competence of the police, and for maintaining broad support for the legitimate government amongst the Tamil community, which after all composes nearly a fifth of the population for whose safety and well-being the Government is responsible.

All the Tamils occupying responsible positions in Sri Lanka to whom I have spoken are unanimous on one thing: they profoundly oppose violence and terrorism as a solution to their community's problems, and they are satisfied that, if that community's legitimate aspirations can be met by peaceful negotiations through the democratic process, any tacit support for the Tigers will rapidly evaporate, and even the Sri Lankan police will have no insuperable problems in identifying them and bringing them to justice. Before that, there may well be a transitional phase when the Tigers may feel impelled to resort to violence against their own community - including those of its leaders to whom I have spoken, and whose lives might then be especially at risk. But they are willing to accept that risk, confident that this transitional period would not last long, and that its end would signal an end to political violence, and with it an end to what the Government perceives as the "war against terrorism".

One clear conclusion emerges from this: within the limited means that are available to it, the Sri Lankan Government should give the highest priority to improving the standards of recruitment, training, command, control and operation of the police, as a civilian force concerned to protect the citizen under the Rule of Law, and so to earn the confidence and co-operation of <u>all</u> the law-abiding population of the Island.[33] There may still be a long way to go in this respect, but it is a

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challenge that simply must be met.

Some means must also be found for introducing a truly independent element into the investigation of complaints about police misconduct. A special unit at police headquartters, even if it is headed by a Superintendent who reports directly to the Inspector-General of Police (which I was told is the present practice) is simply not enough to ensure public confidence in the impartiality of such investigations - especially when they produce as few results as they have in recent years. The best solution would be a statutory body with powers wide enough to conduct full and impartial inquiries, perhaps composed of retired members of the judiciary and other persons of acknowledged integrity. Indeed, such a proposal was reported as imminent on 2 October 1983 by a Sri Lankan newspaper, which attributed it to "highly placed government sources": unfortunately, that report was officially denied on the following day.

4. PAST, PRESENT AND FUTURE

Having described the current situation, tried to give some account of how it has been reached, and expressed my own views on some of its aspects, it remains to consider what steps are now best calculated to lead to a reduction of tension and violence on all sides, and to the continued preservation of the Rule of Law and respect for human rights in Sri Lanka. Here, the main accent must be on the future. But there are still some matters from the recent past which must be cleared up first.

4.1 Responsibility for Loss of Life

During the communal violence in the summer of 1983 many lives were lost, but so far no one seems to have been able to say exactly how many, and estimates vary widely up to around 400

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or even more. It is probable that all of them were Tamils, but again no one seems to be sure. It is not in dispute that 53 political prisoners, all Tamils, were murdered in Welikada jail at that time on two separate occasions spaced two days apart; but although a Magistrate held a formal inquest after each of these events and returned verdicts of homicide, no one is yet able to give an authoritative account of how they came about.

In the course of my mission, I met several survivors of these events, both Tamil and Sinhalese, who gave me their own accounts as eye-witnesses, and many more such accounts have been published in the press, both in Sri Lanka and abroad. There is general agreement that, once the riots had started, all sorts of ill-motivated people used them to fish in the troubled waters for their own profit: looting, stealing, paying off old scores, or just running wild in an orgy of violence and vandalism. Regrettably, such conduct has to be expected once the normal barriers to it have fallen; on this occasion, unfortunately, the later perpetrators included members not only of unruly mobs, but also of the State's own security forces. At the same time, there were acts of creditable compassion, altruism and even heroism. I have been told several first-hand stories of Sinhalese coming to the rescue of Tamil friends, and giving them shelter, at great risk to themselves; likewise, when at one stage a call went out for blood donors to save the lives of Tamil victims, many of the volunteers who came forward were Sinhalese. Once they start, such events are apt to bring out both the best and the worst in people.

But the greatest mystery surrounds the question of how these events in fact started. One thing is quite clear: they did not start spontaneously. On the morning of 24 July, many people apparently went about their ordinary business in Colombo, with no forebodings and no expectations of anything untoward. And then, suddenly, the streets were full of goondas, Tamil houses and shops were on fire, Tamil possessions were being destroyed, and Tamils were being killed. Nor was this merely the observation of a few individuals: it is vouched for by the government itself. In a speech made in the immediate aftermath,

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on 29 July, Dr. Anandatissa de Alwis, the Minister of State for Information and Broadcasting, said this:-

> "Look at some of the facts that you know yourself ... There was a pattern about this, wherever the rioting took place ... The similarity of the action of those who took part in it. How can there be a pattern if there was no leadership ? Pre-planning, instruction about what each group was to do. You saw for yourself, for example, that although riots took place, burnings of houses and shops took place in widely different parts of the city and its suburbs, there was a distinct method in every case. The rioters came along, took out the people from their homes, or the employees and proprietors from the shops, put them on the road, then carried some of the goods on to the road and set fire to them. Then they proceeded inside the workshop, or factory or house, to set fire to the rest. Now, if this happened in Borella and didn't happen in Nugegoda, then there is no pattern. Then there is no unity of design. There was no instruction. But wherever it happened, it was exactly in the same way. This was the pattern. Of course there was looting, but there were - according to information now in the hands of the Government - definite instructions not to loot. This instruction was given apparently in order not to attract public disapproval and resistance to what they were doing, or the people doing it. Further, the looting that took place was an activity in which the locals took part. (As you know, the thugs and hooligans you find in every street junction were happy to do the looting once the job had been done).
>
> So, to that degree, there was a pattern. Another thing that everybody noticed, or most people noticed if they were looking, was that the looters, or the people who came to burn and pillage, carried lists of names and addresses. They knew exactly where to go. They didn't search. They looked at a piece of paper, looked at a number and there they were. Therefore, there was a pre-planning. We now understand from the information in the hands of the Government that these names and addresses were taken from the Register of Electors, from the Parliamentary Voters' Lists, and were prepared very much in advance for an occasion such as this, the timing of which was left for various events which might or might not have happened, or might or might not have been engineered."

Clearly, this was not a spontaneous upsurge of communal hatred among the Sinhala people - nor was it, as has been suggested in some quarters, a popular response to the killing of 13 soldiers in an ambush by Tamil Tigers on the previous day, which was not even reported in the newspapers until after the riots began. It was a series of deliberate acts, executed in accordance with a concerted plan, conceived and organised well

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in advance. But who were the planners and organisers, responsible for what they began, and for all its foreseeable consequences in killings, maimings, and loss of property, necessarily followed by a major setback for Sri Lanka's economy?

On that question, there is a wealth of theory, and a remarkable shortage of fact. In his speech at the time, Dr. de Alwis saw in the master plan "the minds of certain foreign elements". (He had previously said much the same about the 1981 outbreak.) In a Press interview published in December 1983,[34] he identified those foreign elements as the KGB. In parallel Press interviews, his colleague Mr. Cyril Mathew, Minister of Industries and Scientific Affairs, saw behind it all "the dirty hand of India"; another colleague, Mr. S. Thondaman, Minister of Rural Industrial Development and himself a Tamil, saw "the racist elements" in "our own people", led by "important people ... part of this government, just as I am."

To those three theories I could add several more, all of them put to me with sincere conviction by different people in and out of Sri Lanka. The proscribed JVP party is frequently mentioned, and that theory finds support in some high governmental quarters. Others say that it was all a devious plot by the Tamil Tigers themselves, to demonstrate how the Tamils are being persecuted by the Sinhalese. Some say it was a plan jointly hatched by the Tigers and the JVP. Many point their fingers at different politicians in the current administration as the central culprits. Some hold the view that behind it all was the Sinhalese merchant community; for some puzzling reason, the Tamil merchant community also comes under suspicion in yet other quarters.

I should make it clear that these theories are not put forward by ignorant people with little understanding of public affairs: I have heard them all from the mouths of highly educated individuals, well versed in Sri Lankan politics. Odder still, all of them claim that incontrovertible evidence exists to support their theory, if only someone were to dig deep enough

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for it.

For simpler-minded Tamils, the answer is only too obvious: the entire blame must fall on "the Government", which either planned or at least encouraged or allowed it all - but, interestingly and encouragingly, they do not blame the Sinhalese people as such, nor have they attempted any reprisals against them.

Obviously, I have no means for evaluating the credibility of any of these theories: from what I myself know of Sri Lankan conditions, they all seem rather far-fetched, and it is not immediately clear what any of those suspects would have had to gain from starting such a conflagration. Least credible to me is the accusation against "the Government": I find it inconceivable that the Cabinet of Ministers (which includes three Tamils) could have collectively authorised such a plan, or that the senior public servants in the Sri Lankan administration could have had any part in devising it or carrying it out.

But what I find most extraordinary is that, to this day, <u>there has been no attempt to find out the truth through an official, public and impartial enquiry</u>, when the situation in the country cries out for nothing less.[35] After the communal violence of 1977, the present administration appointed Mr. M.C Sansoni, a former Chief Justice, to conduct a wide-ranging enquiry. When an incomparably smaller riot broke out in the London area of Brixton in April 1981, in which much property was damaged and some blood was drawn, but not a single life was lost, the British government immediately appointed a distinguished Law Lord to conduct an exhaustive enquiry into its causes, a task which he accomplished with immense care and punctilious impartiality, taking a mass of evidence, fully analysing all the causes and events, and making many valuable recommendations for their avoidance in the future.[36] So long as no such enquiry is appointed in Sri Lanka, rumours will continue to circulate, suspicion will point to many individuals and groups who cannot all be guilty, divisions between the communities can only be exacerbated, and the Government's task

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in preserving order, peace and harmony can only be made more difficult.

Precisely the same considerations apply to the horrific events that took place at the same time within the secure precincts of Colombo's Welikada jail, in which 53 people in the State's custody lost their lives. Here too, there are theories galore, and many individuals and interests are under suspicion. A special team of police officers, under a Superintendent of Police, was appointed many months ago to investigate these events. At the time of my visit, it had still not completed its enquiries, nor did the Attorney-General's office even know how far they had proceeded. I have now been told that it has not been possible to find enough evidence to enable anyone to be prosecuted - a proposition which must stretch credulity.

When I saw President Jayewardene in Colombo in January, I understood that he was about to appoint a Judge of the Supreme Court to carry out an independent judicial inquiry into the significant and relevant incidents and events surrounding that tragedy, to establish whether any of the prison officers were to blame, and to recommend what steps should be taken to prevent the recurrence of such incidents. As this report goes to press, that inquiry has not yet been officially announced, and I can only hope that it will not be much longer before it is.

That would be a welcome development. But what is possible for the confined events in Welikada jail must surely also be possible for the more widespread events elsewhere in Sri Lanka in that unhappy few days. True, evidence may not be easy to come by, and some people may be reluctant to give it unless their safety can be guaranteed - and it would be a bold President who could venture such a guarantee with any confidence. But that need not be fatal. Provided the persons appointed to conduct such an enquiry are high judicial officers, or others who are above suspicion, there is no reason why they cannot be trusted to take evidence <u>in camera</u> or even in private, and they should certainly have the power to take evidence outside Sri Lanka, where many of the survivors of last summer's

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events are now to be found, and where they are only too willing to make their depositions. And if, at the very worst, the enquiry cannot apportion guilt beyond any reasonable doubt, it will at least be able to exonerate many individuals and groups who will remain under undeserved suspicion until that is done, to the detriment of personal and group relations in Sri Lanka, and of the performance of the Government's essential tasks.

I regard the appointment of such an inquiry as one of the most important steps for the Government to take in the immediate future. I made that point to the President when I met him and he promised that he would consider it, though perhaps only after he had seen the outcome of the judicial Welikada enquiry. For myself, I can see no cause for such a delay, either in logic or in practice. The difficulties and the opportunities are the same for the one as they are for the other, and there is a strong case for conducting them in parallel, both for the sake of public confidence, and also because each can benefit from the other's work.

There is another matter which I have already mentioned more than once, and to which I must return in this section. From time to time over the last few years, people have died in custody, or have been killed by the security forces while still at large, and a formal Coroner's inquest by a Magistrate has returned a verdict of homicide. Such a verdict, as I understand it, does not distinguish between culpable and justifiable homicide, and it may therefore well be that the finding merely reflects an act of actual or perceived self-defence by a member of the security forces. Both the Secretary of Defence and the Minister of Internal Security assured me that on every such occasion there was a full internal inquiry to ascertain whether any member of the security forces was to blame, and that all appropriate disciplinary action was taken if he was. I am glad to hear it, but if that is indeed the case it seems regrettable that the Sri Lankan public should not be told about it, it being conceded that the results of these enquiries are never published. That policy again gives every scope for rumour, and every advantage to those concerned to attack the good faith of

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the administration. It would be far better if the full details of all such enquiries were to be made public, and both the Secretary of Defence and the Minister of Internal Security told me that they would consider this proposal. Meanwhile, the Assistant Solicitor-General undertook to let me know whether any formal proceedings had in fact been taken against any member of the security forces in any of these cases, but by the time that this report goes to press I have not yet heard from him.

I also enquired about whether anything had been done to comply with the recommendations of the Parliamentary Select Committee chaired by Mr. Lalith Athulathmudale MP, whose report in July 1982 called for further investigations into the fate of the six Tamil youths three years before. The Additional Solicitor-General told me that, although he functioned in effect as Director of Public Prosecutions, that report was not addressed to his Department, but to the Ministry of Defence. The Secretary of Defence was unable to enlighten me; nor was his Minister (of Internal Security), who was only able to say that he could not personally keep track of every case.

That story continues to exemplify, for the Tamil community at large, what they see as the Government's connivance with the murderers of their sons. It is high time it was cleared up, not least in the Government's own interests.

4.2 Tunnel Visions

To an outside observer, the current problems of Sri Lanka present themselves as a mounting tragedy of misperceptions, for which it is difficult to blame anyone in particular. Among the 12 million or so Sinhalese, there are some who see themselves faced by 50-odd million Tamils, of whom the 2.7 million on their own Island are only the advance guard of a vast faceless mass which confronts them just across the water, spearheaded by the Tiger terrorists, and supported by the divisive call for a separate State of Tamil Eelam. Tamils, in their turn, see themselves outnumbered in the Island by four to one: they see

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the elected government as representing only the Sinhalese people, oppressing and persecuting the Tamil people by using its overwhelming dominance of an artificially extended Parliament (from which even the few TULF representatives have now been expelled) to deploy against them the Prevention of Terrorism Act, Emergency Regulations, the army camp at Elephant Pass, and harrassment and murder by the security forces with which the Government secretly connives.

As for the Government, politicians and public servants alike, they are conscious only of the burden which their responsibility for the governance of the entire nation puts upon them, and can only see their critics as their enemies - whether they are TULF leaders advocating a separate state, SLFP leaders seeking to pave the way to their own success at the next general election, Buddhist monks resisting attempts at an accommodation with the Tamil community, or non-governmental organisations like the CRM uncovering vulnerable spots at inconvenient times.

The picture is familiar enough, and by no means unique to Sri Lanka. Whatever job one has to do must necessarily colour, and limit, one's perceptions. What is potentially tragic about the Sri Lankan situation is that every misperception by any of these groups must necessarily reinforce a corresponding misperception in at least one of the others, so that the system is inherently unstable, and has an in-built bias towards deterioration rather than improvement.

Of all the people with whom I have talked about these matters, I have not found one who was palpably insincere in the position that he or she held, or put forward to me. Plainly, everyone is trying to do his or her best by their own lights. But, equally plainly, almost everyone is in some degree prejudiced about how that best is to be achieved, and almost everyone is tempted to pursue policies which, however attractive they may appear in the short run, can only make matters worse in the long one.

The besetting faults of current Sri Lankan politics and policies are a tendency to exaggerate what others are thought to

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be doing, to impute to them motives far more malign and devious that they actually have, and to over-react - sometimes grossly - in the counter-measures to be adopted. Again, none of these things is peculiar to Sri Lanka: they are the besetting faults of many other nations, and their political and governmental systems. What is peculiar to Sri Lanka is that, despite these faults and despite many temporary setbacks, it has yet succeeded, over 36 years as an independent nation, in preserving a substantial measure of freedom, democracy, and respect for the Rule of Law, as well as scoring remarkable successes in longevity, health, education, and freedom from the worst economic scourges, despite its relative poverty.

Taken together, all these things constitute a most creditable achievement. But the preservation of these gains is now in peril, and in my own perception I see the country metaphorically trembling on a knife-edge. Persistent short-sightedness, yet more over-reaction to perceived threats, and further attempts to derive short-term political advantages from tension and trouble could quite readily tip it into chaos, revolution or tyranny. By the same token, wise statemanship from its leaders could preserve its achievements permanently for the benefit of all its people.

4.3 Education for Tolerance and Human Rights

In the long run, the confrontational positions which some Tamils and some Sinhalese - though, happily, not too many on either side so far - adopt towards each other can only be dismantled by the encouragement of rationality, moderation, and mutual understanding. That is easy - indeed trite - to say, but it takes much time and dedication to achieve. There are many myths, legends and preconceptions to be dismantled - and, though the long-term benefits for the nation are clear, the short-term advantages for the political parties may not be immediately obvious.

This is therefore a task which cannot safely be left to political parties: it is pre-eminently the concern of the entire

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nation's government. Even a government cannot achieve it alone, but at least it can give a vital lead, especially by encouraging and facilitating the work done by universities and other educational institutions, and by non-governmental organisations committed to the teaching and observance of human rights, and to inter-communal harmony.

The first task is to begin to dismantle some of the major - and dangerous - misperceptions which have so long bedevilled community relations in Sri Lanka. Both Tamils and Sinhalese must gradually be disabused of the notions that either of them has a better title to any part of the Island because legend (or even verifiable history) establishes that they got there first; that either of them is racially (rather than culturally) different from the other; that either Buddhism or Hinduism supports intolerance towards believers in other religions; that Sinhala is a better language because it is Aryan, or Tamil because it is not; that either community is more privileged or more deprived; and, above all, that it suits either of them to dominate or oppress the other, when geography alone dictates that they must continue to live together in a single and exceptionally blessed Island, in which they must perforce co-operate if they are to survive. There is also still great need for explaining that such survival is possible only by the profound respect for the dignity of all individuals which is deeply rooted in both Buddhism and Hinduism, and by an equal respect for human rights, fundamental freedoms and the Rule of Law which are subscribed to by the general consensus that is reflected in Part III of the Constitution. This point cannot be made better than in President Jayewardene's own words, in his Independence Day message to the nation on 4 February 1984, soon after my departure:-

> "We have to establish peace, friendship and brotherhood among all communities; we must not allow nationalism to be perverted into a fascistic belief in racial superiority; we must not allow religion to be subverted to mean the ridiculing of other religions. We must believe that the entire Island is the homeland of all of us. We must realise that we are a multi-racial, multi-religious and multi-lingual nation, and that we must forge lasting links of brotherhood among all of us."

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But that message must come more often that once a year: it needs to be consistently reinforced by a sustained educational effort. For that, the necessary institutions already exist. In particular, the Sri Lanka Foundation and its associated Centre for Human Rights, already funded by the Government, could play a leading role in this field. Their past work has already brought them into close contact with the Sri Lankan school system, and with the religious bodies which they have brought together to co-operate in their work. There is much more that can be done in those fields, and these two institutions appear to me to be exceptionally well-placed to do it - given the necessary lead and support from the Government.

4.4 Amending the Constitution

The function of a constitution is to enshrine in a single hallowed text those lasting values of a society on which the great majority of its rational and peaceful members can at a given time agree, at a level which will then be immune from cynical change for short-term party-political advantage, and which will survive temporary changes of government and provide the agreed framework under which those governments can carry out their functions, legitimated by the text itself and the values it enshrines. For that reason, it is customary to make it more difficult to amend constitutions that it is to amend ordinary laws, by subjecting such amendments to special procedures such as qualified majorities in Parliament, with or without additional legitimation by referendum. But these are not merely technical devices: they reflect the underlying principle that constitutions should never be amended for mere party-political advantage by a party that happens to wield enough power, and that it is vital to avoid the dangers of what de Tocqueville long ago called "the tyranny of the majority".

For it must always be remembered that democracy is not only government of the people by the people, or a numerical majority of them, but above all government <u>for</u> the people - that is, all of them. Democracy indeed entails majority rule, but it entails

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even more the concept that those who happen at any given moment to be a majority cannot ride roughshod over the legitimate expectations of any minority - legitimate expectations being today reflected in the catalogue of human rights and fundamental freedoms enumerated and protected "<u>without distinction of any kind</u>" by the recently-established code of international law in this field.

Regrettably, both the major political parties in Sri Lanka appear to have failed to observe that important principle. Mrs. Bandaranaike's 1972 Constitution was not free from features designed to produce political advantages for the SLFP, and neither was the 1978 Constitution in respect of the UNP. But, since then, the situation has deteriorated even further. In order to go prematurely to the country for his re-election as President, Mr. Jayewardene was compelled to put forward the Third Amendment to the Constitution. In order to maintain his overwhelming Parliamentary majority at a time when he may have had reason to think that its popular support was beginning to wane, he put forward the Fourth Amendment and called a referendum (while maintaining emergency rule) to extend the life of the existing Parliament without a general election - a manoeuvre for which the best-known precedent was the 17th-century "Long Parliament" in England, rightly condemned at the time as a piece of inexcusable political opportunism, and never repeated there since except in times of war. Worst of all, the Sixth Amendment was rushed through Parliament at a time of high tension and violence, with the effect of removing from it the major remaining opposition to President Jayewardene's administration, depriving the Tamil community of the full part in the democratic process to which it is entitled, and so driving it straight into the arms of a minute group of political terrorists.

Taken together with the successful attempt, through the device of a Special Presidential Commission of Inquiry, to decapitate the SLFP opposition by depriving its popular leader, Mrs. Bandaranaike, of all opportunities for campaigning for public office (see section 2.4 above), these manoeuvres bear

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every appearance of being designed to keep Mr. Jayewardene and his UNP in power at all costs, regardless of the wishes of any section of the electorate. That is an understandable motive for any political party, whose leaders may well be genuinely convinced that only chaos and national disaster would follow their fall from power. But what is quite illegitimate is to use the device of constitutional amendments for that purpose, merely because the accident of electoral counting happens to have produced a sufficient majority in Parliament to achieve that end. To amend constitutions in those circumstances is to degrade their status to that of ordinary laws, subject to adventitious Parliamentary majorities, when the whole purpose of such an instrument is that it should be immune to such manoeuvres. One painful lesson that has had to be learnt by the few nations that have succeeded in maintaining free democracies for any length of time is that constitutions must never be amended except by a wide consensus among political interests which may legitimately disagree on many things, but can come together on constitutional changes when these are really essential. That is a lesson which both the major parties in Sri Lankan politics have so far failed to learn while they were in power; that failure has often rebounded on them when they have found themselves out of power; and it has also been the cause of some of Sri Lanka's current troubles, and may yet prove to be the cause of even worse troubles hereafter.

If there is one consideration that should be urged on all existing or aspiring statesmen in Sri Lanka, it is that they should establish among themselves a convention, written or unwritten, that they will not amend the nation's Constitution hastily, or without a full and open debate that gives time for all points of view to be expressed, considered and understood; and then only if there is a general consensus among all the major political parties and interests that the change is really needed, and is in the interests of the nation as a whole. Without such a convention, the political oscillations between parties can only become more extreme, leading ultimately to the loss of democracy, freedom, and the Rule of Law for the entire nation.

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4.5 The Art of the Possible

One objection that will doubtless be felt (though perhaps not publicly voiced) to some of the recommendations in this report is that, desirable though they might seem in an ideal world, the constraints of politics are such that any attempt to carry them out in the real one would be seen by others as a concession, and so as a sign of weakness, unless some commensurate price was exacted in return. Simply to repeal the PTA, for example, however useless and counter-productive it has proved to be, might just be seen as "giving in to the Tamils" - or, worse still, to the Tamil Tigers.

That may well be so, but one of the essential skills of statesmanship is to use the realities of politics for the furtherance of idealistic ends. All party leaders are constrained by the disparate interests of their followers, and they owe their leadership to a special skill in reconciling these, and to the charisma which they present to the electorate at large, and not only to their own party members. Currently, Sri Lanka has only two leaders in that category: President Jayewardene and Mrs. Bandaranaike. Each of them has every interest in trying to obtain advantages over the other. But both of them have an even greater interest in working together for the peace and prosperity of their nation in matters that need not in fact divide them, and in not tarnishing either of their national (or international) images by petty squabbles or unworthy manoeuvres designed to further the personal or party interests of either at the expense of the other - let alone by seeming to court, or even just to placate, a small extremist vote for fear that it might otherwise be courted or placated by the other.

Given a sufficient level of statesmanship on both their parts in matters of real national interest that transcend their lower-level differences, and on which they ought to be able to agree at least informally, there remains a good prospect that Sri Lanka can survive its current problems. But without that, it well might not.

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5. SUMMARY

Finally, I must summarise my conclusions and recommendations. Some of these have been made before - by Professor Leary, Mr. Moore, Amnesty International, and others - but some are new. I have arranged them here by subject-matter, rather than in any order of priority. Figures in brackets indicate the section numbers earlier in this report where the supporting material is to be found.

General. Despite its problems and difficulties, Sri Lanka by and large still remains a free and open plural democracy, enjoying a centuries-old tradition of tolerance, substantial freedom of expression, vigilant non-governmental organisations, and a widespread desire to maintain respect for human rights and fundamental freedoms, the Rule of Law, and the independence of the judiciary. But all these things are becoming increasingly threatened by a number of factors. Both the Tamil and the Sinhalese communities are apt to see themselves as deprived and endangered minorities, and to see the other as enjoying undeserved advantages. Though the perceptions and attitudes of both are genuinely and sincerely held, many of them are based on myths and irrational fears rather than facts (2.5). The result has been a mutual escalation of divisive actions and reactions: mounting tensions between the communities; mounting support for the establishment of an independent Tamil State in the Island; mounting resort to violence for the achievement of political ends; the deployment of mounting counter-measures by the Government (2.6); and - despite the best intentions of many people - misperceptions, misunderstandings, exaggerated suspicions, short-sightedness, and over-reaction on all sides (4.2). That process has led to a situation which is now steadily deteriorating; if it is not to end by imperilling all Sri Lanka's creditable achievements since Independence, the Government must above all ensure that Sri Lankans of all communities will continue to accept its legitimacy, which they will only do if they have reason to expect that their legitimate claims will be met. Those claims are the human rights and fundamental freedoms recognised and protected without

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discrimination of any kind by the human rights treaties - and particularly the two International Covenants - to which Sri Lanka has adhered, and by which it is now bound in international law.

The Constitution. The 1978 Constitution enshrines many of these rights, but the mechanisms for their effective protection are still inadequate. At the international level, Sri Lanka should therefore accede to the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) (3.1.1); at the domestic level, the very brief time limits for the Supreme Court's scrutiny of Bills for their conformity with the Constitution should be substantially enlarged (3.1.2), and questions arising out of the time limits for recourse to the Supreme Court in cases of alleged infringement of fundamental rights should be clarified (3.1.3). Under the Constitution, the President's powers are very wide, and his exercise of them is not subject to any legal challenge: it is therefore exceptionally important that he should maintain the highest standards of responsibility in exercising them (3.3).

Independence of the Judiciary. Sri Lanka has long enjoyed a respected, independent and courageous judiciary. But some recent events have been quite clearly designed to bring pressure to bear on the Judges to make them more pliant to the wishes of the Executive: these have included two quite improper interventions by the President himself (3.4).

Communal Violence. If there is to be any hope of reducing the tensions between Sri Lanka's two main ethnic communities, some essential steps must be taken as quickly as possible: full and independent judicial inquiries into the origins and sequence of the tragic events of July/August 1983, and in particular the two massacres in Welikada prison which cost 53 lives; the publication of the results of all internal inquiries into killings by members of the security forces, the urgent completion of police enquiries into all such cases, and the institution of appropriate proceedings where the evidence warrants this (4.1); and a sustained effort by the Government in

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support of education for tolerance and the dismantling of the prevalent myths, for which the Sri Lanka Foundation and its associated Centre for Human Rights are especially well placed (4.3).

Terrorism, and Measures to Prevent it. There can be no excuse for wanton acts of politically-motivated violence, and the Government bears the primary responsibility for the security of all its citizens. But the scale and size of terrorism in Sri Lanka is not such as to constitute a "public emergency threatening the life of the nation" within the meaning of Article 4 of the ICCPR, and so does not justify measures permanently derogating from the rights guaranteed by that Covenant (3.2.3). Even if it did, the actual measures taken far exceed what are "strictly required by the exigencies of the situation". In particular, the Prevention of Terrorism Act 1979 infringes many of Sri Lanka's obligations under the ICCPR while no emergency has been officially proclaimed; besides being counter-productive by evoking greater support for terrorists, it has also proved manifestly useless as a measure for catching them (3.2.3); and some of its provisions would be an ugly blot on the statute book of any civilised country (3.2.1). The responsible authorities do not exercise sufficiently stringent control over the application of the Act. The orders now given by the Secretary to the Ministry of Defence about the conditions of custody of detainees under the Act are welcome, even though they are long overdue: in addition, the detainees should be given access to relatives and lawyers at the earliest opportunity (3.2.1). Emergency Regulation 15A is a dangerous and obnoxious measure, and should be revoked as soon as possible (3.2.2); if the Secretary of Defence conducts any more inquiries into deaths at the hands of members of the security forces under it, he should publish his findings and the material on which he makes them (3.2.2). No further legislation which would place the security forces beyond the reach of the ordinary law should be introduced (3.2.4). If terrorism is to be contained or eliminated, the legitimate expectations of the Tamil community must be met; meanwhile, the overriding priority should be a radical improvement in the standards of recruitment, training,

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command, control and operation of the police as a civilian force concerned to protect the citizen under the Rule of Law, and so earn the confidence and cooperation of <u>all</u> the law-abiding population of Sri Lanka. At the same time, an independent element should be introduced into the investigation of complaints against the police (3.8). In the measure that this is achieved, the army should be withdrawn from its internal security role; meanwhile, all steps designed to improve discipline within its ranks must be welcome (3.7).

<u>Separatism</u>. Support for a separate Tamil State is a consequence of the perception by the Tamil community of discrimination against them, reinforced by extravagant counter-measures against terrorism (2.6). But to outlaw that support, even if it is expressed peacefully and within the framework of an open democratic system, plays directly into the hands of the terrorists. The Sixth Amendment to the Constitution, by which that was done, is a clear breach of Sri Lanka's obligations under Article 25 of the ICCPR (3.5).

<u>Party Politics</u>. The future of Sri Lanka as a free and peaceful democracy under the Rule of Law ultimately depends on its political leaders being able to restrain themselves from seeking to achieve short-term advantages over each other, and on agreement betwen them (express or tacit) to make common cause on matters of national importance which transcend their party or personal differences. In particular, they should establish a convention to amend the Constitution only if there is a widespread consensus on the need for the amendment, and not merely because one of their parties happens to enjoy a sufficiently large majority in Parliament (4.4). They should also reach an understanding that whichever of them is in power at any time may safely take steps that will promote the national interest, even if these might appear to others as concessions, without having to fear that this would afford their opponents an opportunity to court or placate the votes of extremist sections of the electorate (4.5).

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NOTES AND REFERENCES

1. World Development Report 1983.

2. In a proclamation of 23 September 1799, the British Governor had already declared that "it was His Majesty's will and pleasure" to abolish torture, "which humanity condemns and experience has shown to be less efficacious in the prevention of Crimes than more lenient and equitable proceedings."

3. In a broadcast to the nation on 28 July 1983, President Jayewardene spoke of Sri Lanka as having been a united nation for 2500 years. That statement may start a new legend, but it owes little to history.

4. Hansard, 21 October 1977, col. 1925.

5. Similar procedures were followed at more local levels.

6. "Inter-Racial Equity and National Unity in Sri Lanka".

7. Bandaranaike-Chelvanayakam Pact (1957); Sirima-Shastri Pact (1964); Senanayake-Chelvanayakam Pact (1965); Sirima-Gandhi Pact (1974).

8. I was given closely corresponding accounts of that event by two of the surviving prisoners, and by General Attygala.

9. It is the function of the Attorney-General to scrutinise proposed legislation for its conformity with the Constitution, but the Constitution differs in several respects from the Covenants.

10. CCPR/C/14/Add.4; 27.4.83

11. CCPR/C/14/Add.6; 27.9.83

12. Application Nos. 47/83 and 53/83.

13. Application No. 20/83.

14. Application Nos. 10/81, 11/81 and 13/81.

15. The pamphlet "Sinhala People: Awake, Arise, and Safeguard Buddhism" by Mr. Cyril Matthew, the Sri Lankan Minister for Industries and Scientific Affairs (described in section 2.6 above) would seem to fall into this category, though no proceedings have been taken against him under the Act.

16. This is in fact often done in the context of communal hostility.

17. See, for example, Investigation into Acts of Terrorism, Sri Lanka Ministry of Foreign Affairs, 25 June 1981; and the statement issued by the Sri Lanka High Commission in London in response to the publication of the report by Amnesty International on 6 July 1983.

18. See Professor Leary's clear and concise discussion of the reasons for this at pp. 56-58 of her report.

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19. See reference 14 above.

20. State Parties cannot derogate from this Article, even in times of public emergency: see Article 4(2).

21. CCPR/C/SR.477, paras. 26 and 27.

22. According to a press statement issued by the Sri Lanka Department of Information and quoted in the Sun and the Saturday Review for 4 June 1983, that reason was in fact the one given officially when the Regulation was first promulgated.

23. See the Summary Record of the Human Rights Committee's hearings, CCPR/C/SR.477, para. 31.

24. The Government does not dispute that the PTA constitutes emergency legislation: see ibid., para. 40.

25. Report of the Committee to the 37th Session of the UN General Assembly, November 1981 (A/37/40).

26. Lawless v. Ireland, 1 EHRR 15.

27. Ibid.; see also Ireland v. United Kingdom, 2 EHRR 25, and other cases cited in Sieghart, The International Law of Human Rights, pp. 99-102.

28. Summary Statement of Amnesty International Current Human Rights Concerns in Sri Lanka, January 1984.

29. Guardian, 8 July 1983.

30. This question is now sub judice, in proceedings instituted by the police officer concerned.

31. He added that he had recently read in The Times that the Lord Chancellor of Great Britain had publicly admonished a judge.

32. Governments of Sri Lanka, including the present one, have in their time also accused the ICJ of partiality, but I was glad to receive assurances during my visit that this view was not now held.

33. There are some excellent and detailed recommendations in this area in a report, dated 20 November 1978, of a Special Committee appointed in 1976 by the Bar Association of Sri Lanka to examine the implementation of the UN Declaration against Torture.

34. The Illustrated Weekly of India, 18 December 1983.

35. All that has happened so far, as I understand it, is that after prolonged police enquiries some 400 cases are being processed in the Attorney-General's Department, with a view to launching prosecutions for individual killings and lootings.

36. Report of the Inquiry into the Brixton Disorders (Chairman: Lord Scarman), Cmnd. 8427.

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APPENDIX

Holders of Public Office interviewed during the Mission

His Excellency Mr. J.R. Jayewardene	President of the Republic, Head of the State, Head of the Executive and of the Government, Commander-in-Chief of the Armed Forces, Minister of Defence
Mr. A.C. Shahul Hameed	Minister of Foreign Affairs
Mr. T.B. Werapitiya	Minister of Internal Security
The Hon. N.D.M. Samarakoon, QC	Chief Justice
The Hon. P. Colin-Thomé	Judge of the Supreme Court
General Sepala Attygala	Secretary, Ministry of Defence
Dr. A.R.B. Amerasinghe	Secretary, Ministry of Justice
Mr. P. Sunil C. de Silva	Additional Solicitor-General
Mr. H.W. Jayewardene, QC	Special Advisor to the President, Chairman, Sri Lanka Foundation
Mr. D. Nesiah	Government Agent, Jaffna

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* * *

Ethnic Conflict and Violence in Sri Lanka

Report of an ICJ mission to Sri Lanka by Prof. V.A. Leary in July/August 1981 with a supplement by the ICJ staff for the period 1981-83
Available in English (ISBN 92 9037 0211). SFr 10, plus postage

Prof. Leary's report both analyses the ethnic conflict which is tearing the fabric of Sri Lankan society and provides the necessary background to understanding the recent grave outbursts between Sinhalese and Tamil communities. The supplement by the ICJ staff brings up to date the relevant legislation and traces the incidence of terrorist violence and counter-violence since Prof. Leary's mission.

* * *

Development, Human Rights and the Rule of Law

Report of a Conference held in The Hague, 27 April - 1 May 1981, convened by the ICJ
Published by Pergamon Press, Oxford (ISBN 008 028951 7), 244 pp. Available in English. SFr 15 or US$ 7.50, plus postage

Increasing awareness that development policies which ignore the need for greater social justice will ultimately fail was the keynote of the discussions at this conference. It brought together economists, political scientists, and other development experts, together with members of the International Commission of Jurists and its national sections. Included in the report are the opening address by Shridath Ramphal, Secretary-General of the Commonwealth and member of the Brandt Commission, a basic working paper by Philip Alston reviewing the whole field, shorter working papers by leading development experts, and a summary of the discussions and conclusions, which focussed on the emerging concept of the right to development.

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