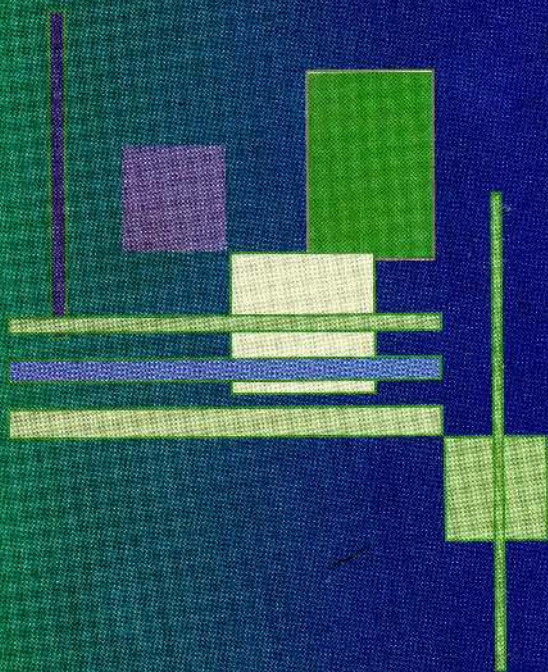


# TRANSCENDING THE BITTER LEGACY

## SELECTED PARLIAMENTARY SPEECHES

NEELAN TIRUCHELVAM



EDITED BY LISA M. KOIS

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*M. C. M. Iqbal.*

# **TRANSCENDING THE BITTER LEGACY**

## **Selected Parliamentary Speeches**

**Neelan Tiruchelvam**

**Edited by**  
**Lisa M. Kois**



**International Centre for Ethnic Studies, Colombo**

**International Centre for Ethnic Studies**  
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## Preface

What follows is a compilation of Neelan Tiruchelvam's parliamentary speeches. By no means is this book a complete collection. Rather, it is a carefully selected collection of speeches, which have been edited to ensure Neelan's meaning is fully captured in the printed word. I have endeavoured to select speeches that represent the breadth and diversity of topics upon which Neelan spoke in Parliament. From the emergency regulations, to the detention of Aung San Suu Kyi, from ragging to the crisis of governance – Neelan's voice in Parliament was strong and his demands, unequivocal. While there was indeed a diversity of issues addressed by Neelan in Parliament, there were nonetheless unequivocal thematic threads that wove his speeches together into a unified whole. Neelan's quest for peace, justice and dignity for all people was not empty rhetoric. As you will read, Neelan spoke not only as a politician, but also as a scholar, as a legal practitioner, as an activist and, most importantly, as a humanist. You will find that Neelan's parliamentary speeches convey profound grief and, over time, increasing frustration about the state of the country. Speaking out against the extension of the emergency, for the rights of the internally displaced, for peace and reconciliation, and for a more humane government, Neelan sought to build bridges that others sought to destroy. He sought to negotiate, when others would only turn their backs. He spoke of collective responsibility, when others apportioned blame. He read, studied and discussed, while others offered only empty platitudes. His were the politics of peace. And for that, he was brutally killed.

*Neelan Tiruchelvam was first nominated by the Tamil United Liberation Front (TULF) to represent the Vaddukoddai seat in Parliament in March, 1983, subsequent to the death of the elected representative, Mr. Thirunavakarasu. He was again nominated to the Parliament by the TULF as a National List MP in the 1994 general election. He served as a member of Parliament until his assassination on July 29, 1999*





## **Emergency Debate**

### **September 6, 1994**

It is a sad commentary on the contemporary history of Sri Lanka that for a good part of the post-independence years, the country has been under emergency rule. The present emergency was proclaimed on June 20, 1989, and except for breaks during elections, it has been renewed monthly. The proclamation of a state of emergency has serious implications for democratic governance, the rule of law and human rights. Emergency regulations bypass normal legislative processes and government safeguards for public scrutiny of ordinary legislation. These regulations also have an adverse impact on human rights, as they derogate from constitutional safeguards relating to freedom from arbitrary arrest and detention and from indiscriminate search and seizure operations. States of emergency have facilitated serious and gross violations of human rights such as torture, extra-judicial killings, and disappearances. In Sri Lanka emergency powers have been abused. In many cases, they have been invoked for reasons of expediency, to circumvent the normal legislative process for purposes that are extraneous to public security. Quite often the nexus between the emergency and the regulations is quite dubious. Emergency powers have been invoked to establish school development boards and provincial education boards and to provide for the validation of driving licenses. It is very difficult to keep track of the emergency regulations. They may be changed or amended speedily, without notice, and they come into force when made, even before they are published.

Emergency regulations remain as inaccessible as ever. The Sri Lankan Government, at a meeting of the UN Commission on Human Rights in March 1993, undertook to publish a consolidated version of all Emergency Regulations.

This promise, which was intended to promote public awareness, remains unfulfilled.

Although in February and in June 1993 changes were effected in the Emergency (Miscellaneous Provisions and Powers) Regulations, these changes were an inadequate response to criticism by domestic and international human rights groups, and were regarded as small and grudging concessions. There are several important concerns with regard to these regulations. First, there is an obligation to publish the places of detention. There is concern that secret places of detention could still exist. There is a disturbing uncertainty on this issue. Although there is an obligation to report arrests made under Article 18 to the Human Rights Task Force, this obligation is sometimes honoured in the breach. There is, however, no obligation to make such a report in respect of preventive detentions under Article 17. Receipts are not often issued to relatives of persons in detention despite the legal obligation to do so. The 60-day period of detention, which is permitted by the regulations for purposes of investigation and interrogation, is unconscionably excessive. These are matters that need to be looked into. There is a need to appoint a committee to periodically review regulations which are too broadly framed, disproportionately harsh or do not contain sufficient safeguards. Regulations made obsolete due to changing circumstances should be deleted. The veil of secrecy surrounding emergency regulations should be removed by giving wide publicity to such regulations and by providing a compilation and an index.

The proclamation of a state of emergency also raises wider questions relating to the protection of human rights. We welcome the decision to appoint a National Human Rights Commission, and we understand that legislation has already been framed. There are certain consequential constitutional amendments that are required. The recent Human Rights Task Force Report highlighted several problems relating to torture, disappearances, and arbitrary and indefinite detention. It has



also focussed on large-scale disappearances in Embilipitiya, Eastern University, the Vannathi Aru incident, Mailanthanai, and Sooriyakanda. We also raise the problem of impunity, which must be dealt with. The Task Force, in its report, referred to the arrest and disappearance of 160 villagers at Boys Town Army Camp in Saturukondan in Batticaloa, including 68 children, 36 of who were under fifteen years of age. The Task Force has stated, "It was a veritable massacre of innocents. How can we claim to be a civilised society and allow this incident to pass without a credible investigation?" These are strong words by persons of judicial training, which express their moral outrage not only at the incident, but also at the failure to hold the perpetrators of this crime accountable. The Government also needs to become a signatory to the Optional Protocol to the International Civil and Political Covenant. The partial withdrawal of the Emergency must be viewed in context of a broader process of reconciliation. We cannot accept the imposition of emergency in the North-East or any other part of the country. We call for the withdrawal of the emergency in its entirety, and the dismantling of repressive legislation. We are encouraged by the bipartisan support within the House for this process of reconciliation. This moment in history must be grasped. We can bring an end to bloodshed and human suffering. We can transcend the bitter legacy of distrust and destruction and frame a future that is positive and ennobling. The journey will be a difficult one, and there would be inevitable setbacks. But if one's resolve is firm, we can ensure that "the spirit of man can transcend the flaws of human nature".

## **Vote on the Ministry of Media, Tourism and Aviation**

**March 17, 1995**

The Ministry on Media, Tourism and Aviation covers three important areas. I would like to limit my intervention to the media, as the freedom and responsibility of the media has assumed some importance in the contemporary political debate. Article 19 is one of the best known articles in the International Covenant on Civil and Political Rights. It guarantees freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds. Article 19 is also an international non-governmental organisation based in London, which has published in 1994 and more recently in 1995, two important reports on how this important right could be more effectively secured in Sri Lanka. Similar concerns have been raised in the Status of Human Rights Report of 1993. These concerns include more effective protection of the freedom of expression, media and information in the Constitution, and the further rationalisation and liberalisation of the limitations on these rights. These are matters that are being actively considered by the Select Committee on the Constitution. There are other laws that permit wide restrictions on freedom of speech. They include the Parliament (Powers and Privileges) Act no. 21 of 1953 and the Press Council law. There has also been concern that public security laws, the Public Security Ordinance and the emergency regulations framed thereunder, and the Prevention of Terrorism Act impose unreasonable restrictions on the right to free expression. The Minister has appointed a committee on law and the media, and a further committee to examine issues relating to the liberalisation of Lake House. Similar concerns have been expressed with regard



to the state's control of the electronic media. I do hope that these committees would be given a limited time frame, and that their recommendations would fall within the framework of the media policy statement issued by the Minister. This is an admirable document, and I do not think any member of this House would disagree with the spirit or the substance of this document.

The problems relating to the media do not end there. The issue of balanced reporting continues to pose difficulties. These are not issues specific to Sri Lanka. The orchestrated vilification campaign of Bill and Hillary Clinton by the ideological right in the United States, has led to an outpouring of books on the power and accountability of the media. I would commend an article in the *New Yorker* of December 12, 1994, by Adam Gopnik, which reviews nine recent books on the subject. There are two broad areas of concern. The first relates to the role of extreme ideologues, who are accused of twisting any fact or willing to tarnish any reputation to advance a political agenda. The second relates to the claim that the media has almost unlimited power to probe into the private lives of individuals, turn up old stories, taunt the subjects of such stories, and become self-righteously judgmental on almost everyone who holds public positions. The author points out that the issue is more complex than the simple dichotomy between the scandal and sensation culture of tabloid journalism and the forces of serious journalism. He believes that the American press has undergone a transformation into an aggression culture, where a journalist's success depends on his willingness to "stage visible, ritualised displays of aggression". He adds, "the media now relish aggression, while still being prevented by their own self-enforced codes, from letting that aggression have any relation to serious political argument, let alone grown-up ideas about conduct and morality. Aggression has become a kind of abstract form, practiced in a void of ideas or of even ordinary sympathy".

There are similar concerns with regard to the culture of scandal, sensation and social voyeurism that has overtaken some sections of our weekend press. No doubt those of us who are in public life must inevitably submit to a certain measure of journalistic scrutiny of our conduct. We must ask, however, what are the legitimate limits of such scrutiny. One clear concern relates to columns that continue to engage in the trivialisation of woman politicians, an area in which women are denied equality with men. Such trivialisation takes the form of an obsessive focus on women's dress, eating habits, and social lives. As Neloufer de Mel has pointed out in her editorial in the November 1994 issue of *Options*, men are never attacked for similar behaviour. De Mel has summed up:

This not only shows how patriarchy uses women to instill a particular image, a certain 'non-western' and therefore 'national' identity from which men are excused, but also how, because of this, she alone bears the burden of having to mind her behaviour and clothing. She is thus in a straightjacket and a symbol or icon rather than an individual who has the freedom to choose.

Another concern is that such columns become unwittingly, and sometimes more consciously, the instruments of personal malice. There have been also instances of gossip columns being used to plant stories that were totally false, thereby recklessly causing pain of mind and injury. It is difficult to take the high moral ground of serious journalism, when you lower your journalistic standards in so reckless a manner.

This does not, however, mean that journalists should be subjected to any form of harassment because they have transgressed the standards outlined above. The Sri Lanka Status of Human Rights Report for 1993 refers to several



incidents of harassment of journalists of *The Sunday Times*, *Yukthiya*, *Ravaya*, *Aththa*, *Lakdiva*, and *Lankadeepa*. During 1993, the Municipality, Water Board, Electricity Board and the Inland Revenue Department were involved in a partisan manner, and criminal prosecutions were filed against these newspapers, which published fully the affidavit of former DIG Udugampola. The rule of law must be upheld, and even columnists who engage in the most scurrilous attacks must be entitled to the fullest protection of law.

There is a serious lacuna in our law in that those who complain of newspaper reports that are untrue, distorted, improper, defamatory or cause injury are denied an effective remedy. The choice is to either institute legal action under Section 9 of the Sri Lanka Press Council Law or to institute civil proceedings for defamation. Neither complainants nor the media have any confidence in the Sri Lanka Press Council. Judicial proceedings are costly and timely, with many years lapsing before the cases are finally disposed. We, therefore, need to have a legal framework for redress in which both complainants and the media can place confidence.

There is a final theme that is of considerable importance relating to the role of the media in conflict resolution. Several recent studies have shown that the media in Serbia, Croatia, and Bosnia-Herzegovina have been one of the most important instruments in the incitement of national hatred and fear. I would commend to this House an excellent study by Mark Thompson, entitled *Forging War*, published in 1994 by Article 19, International Center Against Censorship. I wish to quote from an earlier report of the International Commission to inquire into the conduct of the Balkan Wars of 1912 and 1913:

The real culprits in this long list of executions, assassinations, drownings, burnings, massacres and atrocities furnished by our report, are not, we

repeat, the Balkan people... The true culprits are those who mislead public opinion and take advantage of the people's ignorance to raise disquieting rumours and sound the alarm bell, inkling their country and consequently other courtesies into enmity. The real culprits are those who by interest or inclination, declaring constantly that it was inevitable, end by making it so.... And who held up to their country a sterile policy of conflict and reprisals.

These are strong words and I call upon the media to work constructively to heal the scars of our tragic conflict and to rebuild a new future for all those who inhabit this troubled island.



## **Ministry of Finance, Planning, Ethnic Affairs & National Integration**

**March 22, 1995**

The President and the Government need to be congratulated on establishing a new Ministry of Ethnic Affairs and National Integration. Although it has taken some time for the Ministry to be activated, it could develop into an important institution, which frames policies and coordinates projects and programs designed to strengthen the pluralistic character of Sri Lankan society. Initially, the Ministry served as a focal point for the reconstruction program in the North and the progressive liberalisation of the economic embargo. A number of humanitarian organisations have pointed to the problems that are being encountered in ensuring an adequate flow of essential goods, medicines, and other items no longer on the prohibited list. These are problems that need to be urgently addressed. The failure to resolve them contributes to an atmosphere of distrust and misunderstanding. The Ministry must also develop the framework for a North-East Development Authority, with the participation of the Government and representatives of the LTTE. If a meaningful reconstruction program is to be implemented, not only does there need to be consultation, but also there needs to be direct involvement by the people affected throughout the decision-making process in terms of the priorities and modalities of reconstruction. Apart from the immediate issues relating to humanitarian relief in the North-East, the Ministry must also address the long-term problems of building a multi-ethnic and plural society. A plural society must be firmly grounded on the bedrock of equality and of equal opportunity. There has been an alarming decline over the years in the recruitment of Tamils, Estate Tamils and Muslims. The current position is that the representation of each

of these communities in the public service is well below their national ethnic proportions. The situation is that the Sri Lankan Tamils, who constitute 12.7 per cent of the population, presently have only 5.9 per cent of the representation in state services, 7.1 per cent in the provincial services and 8.2 per cent in the semi-government services. The corresponding figures for Up-country Tamils, who constitute 5.5 per cent of the population, is that they have 0.1 per cent of the positions in state services, 0.2 per cent in the provincial services, and 0.5 per cent in semi-government services. The Muslims, who constitute 7 per cent of the population, hold only 2 per cent of the positions in the state services, 4.6 per cent in the provincial services, and 1 per cent in the semi-government services. These statistics relate to 1990, as reflected in the Census of Government and Public Sector Employees, issued by the Department of Census & Statistics in 1992. The Ministry of Public Administration issued a circular with regard to public sector recruitment on the basis of ethnic proportions. This policy now needs to be carefully reviewed to assess its effectiveness. Inter-group equity with regard to access to state sector employment, credit, land and other resources is at the crux of most ethnic conflicts. It is not always easy to work out a uniform and fair principle with regard to such issues. With regard to employment, we have so far settled on the principle of proportionality as the most equitable principle, with regard to severe imbalances in public sector recruitment.

The Ministry must also frame new and innovative policies of multi-culturalism, which are intended to promote inter-ethnic harmony. In the field of education, we must address both the structure of education, which seeks to compartmentalise students on the basis of language and religions, and the content of education. There have been several studies that have pointed to the need to review and revise school textbooks. I would also urge the Ministry to



review the recent UN Declaration on Linguistic, Ethnic and National Minorities, which has been unanimously adopted. There are many concepts and ideas in the Declaration relating to the protection of the identities of minorities that need to be implemented. I would like particularly to refer to the provisions that encourage the state to take adequate measures in the field of education to encourage knowledge of the history, tradition, culture and language of different ethnic groups. The media also has an important role to play in promoting the values of tolerance and respect for diversity and ensuring that equal value and dignity is accorded to the cultures of all communities.

There is also a need to focus on the problems of Estate Tamils and to establish a unit within the Ministry for this purpose. There is no focal point for coordinating the several projects relating to the living conditions of the plantation workers. These include projects implemented by the Plantation, Housing and Social Welfare Trust, Plantation Sector Education Development Project, the Sri Pada College of Education and the Vocational Training Centre in Hatton. These are projects that have been externally funded, in respect of which there are various problems with implementation. It is important that the Ministry monitors the implementation of these projects and submits monthly progress reports to the President. Failure to do so will aggravate the sense of despair and alienation that is rapidly overtaking the youth of the plantations.

## **Vote of Condolence for**

**Dr. M.C.M. Kaleel**

**June 7, 1995**

The death of Dr. M.C.M. Kaleel in his mid-nineties brings to an end a political career that has spanned the entire post-independence history of Sri Lanka. Dr. Kaleel was no ordinary politician. He was a man of strong integrity, compassion and devotion to the public cause. It is remarkable that a person of so gentle and kind a temperament should have achieved success in the rough and tumble of politics. He has been a Member of the State Council, a Member of Parliament, and a Minister. He ended his career as the Chairman of the United National Party, with which he had been associated as one of its founding members since its inauguration.

Dr. Kaleel was intimately linked to the All Ceylon Muslim League, of which he remained President until his death. He was deeply concerned with issues relating to the educational and social advancement of the Muslim community in Sri Lanka. He advocated that Tamil should also be recognised as one of the official languages of this country, and should enjoy equality of status and use.

Dr. Kaleel's family originally came from a village near Alutgama. They lived on Messenger Street, and subsequently moved to Mutwal. His father, having been trained as a Moulavi in a Madrassa in Vellore, South India, provided him with an early education and instruction in Islam. He joined St. Thomas' College, which was then at Mutwal, and completed the Senior Cambridge examination on which he secured several distinctions. Warden Stone encouraged him to proceed to Edinburgh for his medical studies, where he obtained a medical degree, after which he went on to obtain a post-graduate diploma in midwifery in Dublin.



Upon his return to Sri Lanka, Dr. Kaleel took an interest in establishing a hospital to serve the needs of Muslims in Maradana. He founded the Kaleel Nursing Home, which caters to the needs of all communities. He was a highly competent medical practitioner, respected by his colleagues, and is said to have introduced penicillin to Sri Lanka. Dr. Kaleel cared deeply about the welfare of his patients and viewed medicine as a calling rather than as a mere vocation.

As a member of the State Council, he frequently spoke of the need for a social security scheme for the working class. As Minister of Labour and Social Services, he believed that the edifice of industrial relations rested on three pillars: the wages boards, which determined free wages; the Industrial Relations Act, which provided for collective bargaining; and the Shop and Office Workers and Employees Act, which regulated hours of work and leave. Dr. Kaleel was progressive and liberal in his outlook. On his return from the United Kingdom, he championed the cause of education for Muslim women.

Dr. Kaleel's extended family, which now includes four generations, have distinguished themselves in all aspects of public life, including medicine, accountancy, the creative arts and education. I have known several of Dr. Kaleel's children - Ashlan, a mechanical engineer, was with us at Royal College; Einul, a gifted film director, was at the University of Peradeniya and later at Cambridge; and Rizvi, a social scientist, was with the International Centre for Ethnic Studies. Mrs. Kaleel was at the centre of this family and sustained it with her extraordinary charm, intelligence and warmth.

Dr. Kaleel was no remote and distant political figure. He touched the lives of so many leaders in the House.

## **Private Members Motion: The Violation of Human Rights in Myanmar**

**July 6, 1995**

Private Member Motions are not necessarily binding resolutions. They, however, provide this House with the opportunity to express its concern with regard to international events and developments that impact the development of democratic values, the advancement of human rights and the strengthening of civil society. Many years ago, a motion was tabled in this House calling for the release of a political prisoner, who was incarcerated in Robbins Island, Mr. Nelson Mandela, who is now the President of South Africa. This House has always believed that injustice anywhere is a call to the just everywhere. The motion on Myanmar is one more example of the bipartisan spirit in which Members on both sides of the House have approached political developments within Myanmar.

This motion is a modest effort to give expression to the growing global consensus with regard to Myanmar and to express our concern with regard to the continuing detention of the Mandela of the East, Aung San Suu Kyi, who this month will complete the seventh year of her detention without trial. In view of the strong historical and religious links between our respective countries, which have extended from the eleventh and twelfth centuries, Sri Lanka and this House have special reasons to express concern with regard to developments in Myanmar.

The Polonnaruwa Kings, Parakramabahu I and Vijayabahu I, forged close political links with Burma, then known as Ramanna. These links were further consolidated by the close affinity between the Theravada Buddhist traditions in Burma and Ceylon. Vijayabahu I turned for assistance to Burma in reorganising the Sangha in Ceylon.



These religious and cultural links have endured through the centuries and, most particularly, during Burma's struggle for independence under the leadership of Aung San. This motion symbolises continuing respect and affection of the people of Sri Lanka for the indomitable spirit and courage of the people of Burma, who have overcome many setbacks in their long and troubled history. It was in this spirit that an appeal was made by a group of human rights activists on Vesak day in 1992 to all concerned groups in Myanmar to respect the verdict of the people as expressed in the elections of July 1990, and to work towards an immediate transition to democracy.

The mere tabling of this motion triggered a chain of events in the sub-continent. In April, at a conference jointly sponsored by UNESCO and the Human Rights Commission of Pakistan, reference was made in the final resolution of that conference to this initiative in this House. Prime Minister Benazir Bhutto, who inaugurated this meeting, courageously added her own personal appeal for the immediate release of Aung San Suu Kyi. A few days later in India, the prestigious Nehru Memorial Award for International Understanding was awarded to Aung San Suu Kyi. In the struggle for human values, even the smallest initiative can create ripples that become waves that reach beyond the shores of our island.

The recent troubled chapter in Myanmar's history commenced with the assumption of power by the Burmese army on September 18, 1988. General Saw Waung, the chief of staff of the armed forces, announced that the military had assumed power and abolished all civilian government institutions. The military established a 19-member military ruling body, the State Law and Order Restoration Council (SLORC). On the SLORC's orders the armed forces forcibly crushed the pro-democracy demonstrations that had engulfed Burma in the previous months. In the days that followed, hundreds and perhaps thousands of people were

shot and killed in the streets of Rangoon and elsewhere. Public demonstrations were banned, and there were mass arrests of students, political activists, opposition party members and Buddhist monks. A second crackdown in July 1989 resulted in the detention of opposition leaders, including the leader of the National League for Democracy (NLD), Aung San Suu Kyi. Despite the continuing political repression, the national election held on May 27, 1990 was a stunning victory for the political opposition to the SLORC's rule. The NLD took 392 out of the 485 contested seats in the National Assembly versus only ten for the military-backed National Unity Party. The results of this election are yet to be honoured, and there has been no transfer of power to civilian rule.



## **Law and Sexuality: Amendments to the Penal Code September 19, 1995**

Our Penal Code is modeled on the Indian Penal Code, which was introduced in the Legislative Council in 1836. The author of this legislation was Thomas Babington Macaulay, who was the first Law Member of the Legislative Council who believed that law reform in general, and codification in particular, should be animated by the principle: "uniformity where you can have it; diversity where you must have it; but in all cases certainty". Vasudha Dhagamvar has pointed out, "the Indian Penal Code is an astonishing piece of work, even more so when one realises that it was drafted in two years by a young man without prior experience of drafting, and virtually single-handedly".

The Penal Code embodied the moral standards and social perspectives of an early Victorian age. There are several profound changes in contemporary mores and values relating to gender equality, which must be reflected in the law. The first development relates to the growing global consciousness with regard to the phenomenon of violence against women and the need for concerted international and domestic action to address the causes and consequence of such violence. These concerns are reflected in the Vienna Declaration of 1994, the Beijing Platform for Action of 1995, and the decision of the U.N. to appoint a Special Rapporteur with a global mandate on this issue, Sri Lankan lawyer Radhika Coomaraswamy. The second development relates to the growing sensitivity to the reproductive health rights of women and the right of an individual to have control over and to decide freely on matters related to her body and to her sexuality. A related concern relates to the health risks to which women are subjected as a result of unsafe abortions, which threaten the lives,

particularly, of the poorest and youngest women. A third development relates to the need to be responsive to the alarming incidence of sexual exploitation of children, including the phenomenon of child pornography. Finally, there is a need for the law not to discriminate and punitively deal with persons with different sexual preferences, and to move away from puritanical attempts by the law to legislate morality.

Our law relating to abortion is in urgent need of reform. There is no other aspect of our criminal law that is so discriminatory in its impact on different social classes. The more affluent social classes are able to have recourse to a simple surgical procedure performed by an experienced practitioner to terminate an unwanted pregnancy. The predicament of the poor and the unmarried, who must turn to illegal abortion clinics or quacks, is deplorable. One gynaecologist has concluded that illegal abortions are one of the major causes of maternal morbidity and mortality in Sri Lanka. One estimate is that at least 20 percent of the hospital beds in gynaecology wards are occupied by women who have developed complications as a result of unsafe abortions.

I, therefore, strongly favour the liberalisation of the law on abortion, and would go much further than the proposed amendments. I would, in this regard, commend the approach of the United States Supreme Court in *Roe v. Wade*, where the majority ruled that, prior to the end of the first trimester of pregnancy, the attending physician is free to determine, without regulation by the state, whether in his medical judgment the pregnancy should be terminated. From and after the end of the first trimester, the state may regulate abortion procedures to the extent that the regulation reasonably relates to the preservation and protection of maternal health. I would support the decision to decriminalise abortion and to repeal the existing provisions in the penal code. We need assurances that a more humane and realistic regulatory framework, with



a focus on reproductive rights and maternal health, will be introduced very shortly by the government.

One of the important changes introduced by the law is the creation of the new offence of sexual harassment. Sexual harassment in the workplace and elsewhere has become an increasingly important issue on the agenda of the women's movement. Several legal scholars have struggled to frame an adequate definition of sexual harassment, having regard to the diverse behaviour for which regulation is ordinarily sought. Radhika Coomaraswamy has emphasised two important ingredients. First, it is conduct that is unwanted by the recipient - in other words, unwelcome sexual attention. Second, it is conduct that, from the recipient's point of view, is offensive or threatening. The German Penal Code and the Penal Code of Denmark have focused on contexts of subordination or financial dependence where authority is abused to extract sexual favours. The present amendment is not so limited, which is important as women walking in public places and travelling in public transportation are often subjected to a great deal of harassment. Several foreign researchers and tourists have written to the press on this issue. In Canada employers are encouraged to issue a sexual harassment policy, which includes procedures to investigate complaints and to discipline transgressors. Clearly, this problem cannot be dealt with only by recourse to legal strategies. The community needs to be sensitised through public education programs. The Australian Human Rights and Equal Opportunities Commission engaged in a poster, magazine and radio advertising campaign entitled SHOUT (Sexual Harassment is OUT). We need to engage in similar public education programs.

One of the key provisions in the amendments relates to the reform of the law relating to rape. Feminist writers have rightly pointed out that rape is an instrument of control in a patriarchal society, and that women's vulnerability to rape is one of the main factors that constrains her empowerment.

"Rape occurs in the family as a form of marital rape or incest, rape occurs in the community, and rape occurs in situations of armed conflict and in refugee camps." Nonetheless, the law relating to rape has been inadequate, the prosecution of offenders lax, and the response of the police to victims callous and indifferent. The present amendment endeavours to more precisely define what constitutes "sexual intercourse" and the circumstances in which "consent" cannot be presumed. It further defines circumstances in which enhanced punishments would be applicable, such as custodial violence, rape of a pregnant woman, rape of a woman under 18 years of age, rape of a disabled woman, and gang rape. While there can be no objection to increasing the maximum penalty for such heinous offences, one remains concerned as to whether, in these and other circumstances, judicial discretion should be curtailed by the imposition of a mandatory minimum sentence. A new element is that which enables the court to order that compensation be paid to the rape victim.

The conceptual recognition accorded to marital rape represents a significant breakdown in the public/private distinction, which has hitherto constrained an effective response to domestic violence. However, the importance of this change is negated by its limitation to judicial separations. I would urge that this limitation be removed in an acknowledgment of the seriousness of marital rape. To do so would be to fall in line with several Commonwealth countries. In 1991 the Court of Appeal in the United Kingdom ruled that marital immunity is an anachronistic and offensive common law fiction, which no longer represents the position of a wife in present day society. In many jurisdictions rape has been redefined to emphasise the demeaning and violent aspects of rape rather than its sexual character. The present amendment adopts a more sound approach by creating, in section 365B, a new offence, "grave sexual abuse".



The present amendment relating to rape closely follows the progressive report of the Law Commission of India in 1980, which subsequently resulted in the Criminal Law (Amendment) Act of 1983. The Law Commission of India in its report referred to the "radical and revolutionary change in the approach to the offence of rape; its enormity is frequently brought into prominence and heightened by the revolting and gruesome circumstances in which the crime is committed" The Commission's report dealt, in detail, with matters of procedure - such as arrest, detention, medical examinations, interrogation, and trials in camera - and evidentiary rules.

In many jurisdictions, the reform of the law has been accompanied by the creation of gender-sensitive support networks. These have included mandatory examination of victims by women doctors and the enlisting of units of policewomen in each station to deal with rape cases. In other countries, rape crisis centres have provided integrated services to women victims of violence, including legal services, counselling and support.

The offence of gross indecency between persons still renders homosexual and lesbian acts between consenting adults unlawful. The law should not seek to penalise adults for their sexual preferences. As such, section 365A should be amended accordingly.

Section 286A deals with the problem of child pornography, while section 360B deals with the problem of sexual exploitation of children. Here again we do not seem to have reliable statistics, although the problem has clearly reached alarming proportions. Some official estimates place the figure at 30,000 children who are exploited as sex workers in resort areas. A non-governmental organisation, PEACE, has estimated that the number of children between the ages of eight and fourteen who are sexually exploited is 10,000. There is an urgent need for a more systematic study of child abuse.

Only a small fraction of these cases are reported and followed up. In 1990/91, only 421 cases of child abuse were reported, of which 327 complaints were filed and 76 resulted in convictions.

## **Human Rights Commission Bill**

**February 22, 1996**

This bill has been long awaited. The All-Party Conference (APC) debated seven different drafts of a bill to establish a Human Rights Commission during 1993 and 1994. That exercise did not bear fruition, but worked out in fair detail a model for the Commission that was quite bold in conception. The present draft has made little or no attempt to draw on the concepts and ideas that formed part of the APC exercise.

There are two documents that provide guidance on how national human rights commissions should be structured. The first is the Principles relating to the status of national institutions, adopted by the UN Commission on Human Rights in March 1992. The second is a document entitled the Amnesty International Proposed Standards for National Human Rights Commissions. Both these documents enunciate minimum principles and standards with regard to the mandate, composition and methodology of Human Rights Commissions. In addition, several respected human rights groups, including Amnesty International, the Civil Rights Movement, and a group of academics from the University of Colombo, have made very thoughtful comments on the proposed legislation.

Amnesty International has made two general comments, which need to be reiterated. The first is that this initiative should be accompanied by a determined government policy aimed at holding the perpetrators of human rights violations fully accountable, thereby ensuring that those who violate human rights cannot do so with impunity. The Government has appointed three commissions to investigate disappearances. The Government needs to demonstrate the same resolve in investigating the recent allegations of extra-judicial killings in Muttur, and the disturbing reports of unprovoked attacks on several detainees in Welikada prison.



The second broad concern relates to the need for a thorough review of existing security legislation and legal remedies, such as fundamental rights petitions and habeas corpus applications, in order to make them more effective instruments of human rights protection.

Another general concern relates to the relationship of the Commission to existing bodies, such as the Human Rights Task Force and the Commission on the Elimination of Discrimination, and the monitoring of human rights. Although these institutions have not realised their initial expectations, there are experienced personnel and other resources that could be utilised by the new Commission. One of the lessons of legal and institutional reform is that you do not necessarily resolve a problem by creating a new institution or by passing a new law. The real challenge is to appoint to these institutions persons with the vision, commitment, energy and administrative will to ensure that these institutions fulfil the powers and responsibilities that have been entrusted to them. The United Nations Centre for Human Rights has identified several factors that are relevant to the effective functioning of national human rights commissions. The first consideration is independence. This independence should be ensured through legal, operational and financial autonomy, clear appointment and dismissal procedures, and the composition of the commission. In this regard, it has been suggested that the criteria for appointments to the Commission be strengthened by ensuring that members have "proven expertise and competence in the field of protecting and promoting human rights".

The second consideration relates to a clearly defined jurisdiction and adequate powers. With regard to jurisdiction, Amnesty International and other commentators have expressed concern with regard to the Commission's powers, under section 13(b), to investigate complaints of human rights abuses

by non-state actors as a result of an act which may constitute an offence under the PTA. There are both conceptual and practical concerns that need to be considered. First, human rights violations must be conceptually distinguished from crimes and must primarily relate to state action. Abuses by armed opposition groups may constitute human rights abuses if such groups may otherwise be equated to states. The practical experience of other human rights commissions, such as the Philippines Commission, is that expanding the mandate to include non-state actors distorts the work of the Commission and limits its effectiveness and efficiency. The Commission should also have the power to investigate systemic abuses, hold public hearings, conduct fact-finding missions, provide technical assistance and publish annual or periodic reports on the status of human rights.

The third consideration is accessibility. This includes awareness of the institution, physical accessibility, and accessibility by ensuring that the Commission, through its composition, represents all components of civil society. In this regard, consideration should be given to the establishment of regional sub-commissions, and regional and district offices of the Commission. Victims should also be entitled to access all relevant documents and information relating to an investigation, and should be provided with assistance and facilities to travel to and present their evidence before the Commission.

The fourth consideration is the requirement of cooperation. The Commission should develop cooperative relationships with intergovernmental organisations, other national human rights commissions and related institutions, and with non-governmental organisations directly concerned with the promotion and protection of human rights.

The fifth issue is that of operational efficiency. This includes the provision of adequate finances and the ability to

recruit impartial and efficient staff. The Commission must also adopt its own working methods and rules of procedure to maximise operational efficiency.

The final issue is the question of accountability. The Commission must develop reporting obligations that are linked to its mandate and its goals. In addition to the annual report envisaged by section 29, the Commission should be willing to submit its work to public scrutiny and to submit to external and internal evaluation of its procedures and methods.



## **Resolution on Mrs. Bandaranaike's Civic Rights April 8, 1996**

This House is today endeavouring to correct a resolution of Parliament that deprived a Member of this House of her civil rights, which included the right to vote, the right to contest an election, and the right to hold public office, including Membership of Parliament. As a consequence, Mrs. Bandaranaike was deprived of her seat in Parliament from October 1980 until her pardon on January 1, 1986. She could not contest the presidential elections held in 1982 or any other elective office until she received an executive pardon. No political leader could suffer a crueller fate, which sought to obliterate her very identity as a political person.

Mrs. Bandaranaike was no ordinary Member of Parliament. She had twice become Prime Minister of this country: from 1960 to 1965 and again from 1970 to 1977. She was the leader of the Sri Lanka Freedom Party and, as the Head of the Non-Aligned Movement, she had international visibility and recognition, which no other Sri Lankan of our time has been able to rival.

Sri Lanka has been described as one of the few countries in South Asia that has had an effective two-party system where political power alternated periodically between the United National Party and the Sri Lankan Freedom Party. This two-party system was critical to Sri Lankan democracy in presenting a genuine alternative to the electors through a clash of ideologies, programmes and political ideas. This two-party system came under a cloud, particularly during the period of 1977 to 1988, when the Sri Lankan Freedom Party's Parliamentary strength was reduced to a mere eight seats. In my view Mrs. Bandaranaike's enduring contribution to the

political history of this country is that she and she alone ensured the survival of the two-party system when every effort was made to demoralise and even to co-opt political opponents. Her stubborn refusal to compromise even when she was subjected to political humiliation and intrigue, her fierce loyalty to her party, and her refusal to be co-opted has ensured the survival and the revival of the Sri Lanka Freedom Party. This in turn ensured that the two-party system survived.

In recalling Mrs. Bandaranaike's political record, I do not wish to imply that it was entirely without blemish. To do so would be to falsify history, and none in this House would want to deny history on a day when we seek to uphold the principles of truth and justice. Opportunities for ethnic accommodation were sadly missed. I recall as a schoolboy in the early sixties accompanying my mother to visit Mr. M. Tiruchelvam and other Federal Party leaders, who had been unjustly incarcerated in Panagoda for democratic agitations for equality. No charges were ever framed against these political prisoners. Similarly, in the seventies, there was a failure to frame a consensual constitution that would genuinely address the demands for equality, fundamental rights and the sharing of power. I recall these events without any bitterness or acrimony, as the pain and discomfiture of our family was minuscule compared to the subsequent sufferings of others. However, we need to come to grips with the reality of our troubled history if we are to find the strength to frame an ennobling future.

We are here to support this resolution not merely because it concerns an important and eminent citizen of this country. This House views with concern that a legislative scheme was devised to subvert the democratic will of the Attanagalla electorate. Mrs. Bandaranaike was duly elected by an overwhelming majority of electors. In our system of representative democracy, it is the will and expectation of the electors that their representatives will serve their full terms without impediment.



The first step in this legislative scheme was the Special Presidential Commissions of Inquiry Law, which was enacted in 1978. Human rights activists and concerned lawyers were critical of several features of this law.

First, the law empowers the Special Presidential Commission to inquire into "any act of victimization, misuse or abuse of power, corruption or any fraudulent act, in relation to any court or tribunal or any public body, or in relation to the administration of any law or the administration of justice". There was concern that terms such as "abuse of power" had no precise legal meaning and were vague and nebulous. Second, the law was made retroactive. The Commission was not a mere fact-finding body, but one that could make recommendations that had punitive consequences. Third, the law provided no procedural guidelines, and thus the Commission was free to devise its own procedures. Fourth, section 7(1) of the law permitted the Commission to ignore the rules of evidence. It was considered particularly disturbing that there was no right of appeal. The seal of finality would be conferred on a recommendation based upon testimony that could be in contravention of the evidentiary safeguards applicable to ordinary cases. Fifth, even though the Commission was composed of sitting judges, this provided no safeguard as to their judicial outlook, which was often transformed when they sat as Commissioners.

In evaluating the fairness of the proceedings that were instituted against Mrs. Bandaranaike, it is important to recall the words of Lord Diplock in *Reg v. Commission for Racial Equality*, Ex p. Hillingdon L.B.C. (1982) A.C. 779 at p787 F-G, that a Commission which is a public authority must exercise its powers in accordance with well-known principles of legality, rationality, and procedural propriety. We do not believe, as Amnesty International pointed out in its statement on the Criminal Justice Commission, that these principles are safeguarded when the judicial process is "diluted to serve political purposes". As the Civil Rights Movement pointed



out, "the mere fact that judges of a superior court are appointed to a tribunal is no guarantee that its functioning will be fair and correct or command public confidence".

There were other aspects of this matter that offend our sense of fairness and of procedural justice. The Court of Appeal issued a writ of prohibition on the Commission on the ground that it had not been expressly conferred power to investigate matters relating to the period prior to February 10, 1978. On November 20, 1978, the Government introduced an amendment to the Constitution that retrospectively negated the effect of the Court of Appeal, and transferred its writ jurisdiction, in respect of these matters, to the Supreme Court. Further, the day after Mrs. Bandaranaike had been expelled from the House, amendments were introduced to the Parliamentary Elections and Presidential Elections laws prohibiting persons deprived of civic rights from speaking or canvassing at elections. The Civil Rights Movement again protested against these bills on the ground that they sought to limit an effective opposition campaign at the next parliamentary and presidential elections.

Much has already been said of the eloquent speeches made in defence of Mrs. Bandaranaike by the then Leader of the Opposition, Mr. Amirthalingam, and by Mr. M. Sivasithambaram. During the vote, there were 139 votes in favour of the motion and 19 votes against it. This included 14 members of the TULF who, within three years of this event, were to suffer a similar fate when the Sixth Amendment was introduced in the aftermath of the July 1983 pogrom. The Sixth Amendment, by requiring Members of Parliament to subscribe to a new oath of allegiance, effectively disenfranchised the North-East and deprived most of this region of its parliamentary representation. No doubt the TULF had opposed the referendum and the extension of Parliament, but the Sixth Amendment was a supervening event that had immediate impact on their representation. Many political scientists have written on the disastrous political consequences

of the Sixth Amendment, but I wish to briefly recall the terrible personal tragedies that followed. Of the fourteen members who forfeited their Parliamentary seats, four were brutally murdered, while two others died in exile in Canada. Two faded out of politics and had more peaceful deaths, while a third died of a heart attack on the eve of a visit abroad. I recall these sad developments to make the point that no act of regret or apology for past wrongs can help us recover the lost lives or regain the wasted years. Similarly, neither the pardon of January 1, 1986 nor this Resolution can give back to Mrs. Bandaranaike those painful and wasted years. In passing this Resolution we do not confer any benefit on Mrs. Bandaranaike, but in humility acknowledge the fallibility of this representative body.

If this debate has any meaning we must do everything within our power to restore public confidence in the judicial process. If the Government introduces a bill to abolish the Special Presidential Commissions Act and the related provisions in the Constitution, we will support such a measure.

## **Adjournment Motion Moved by Neelan Tiruchelvam on Recent Developments in Myanmar**

**June 21, 1996**

I am grateful to this House for having granted us permission to raise certain matters relating to urgent developments in Myanmar. As you know, the Chairman of the National League for Democracy has written to the Chairman of the State Law and Order Restoration Council (SLORC) to complain about several unlawful methods that are being used to harass the members and supporters of the National League for Democracy. These attempts have included efforts to arrest 44 members of the National League for Democracy and to block the Opposition from holding a congress at the residence of Aung San Suu Kyi.

There have also been recent reports of statements made by the representatives of SLORC threatening to proscribe the National League for Democracy and to prohibit exercise of democratic rights by its members and supporters. The International Network of Political Leaders Promoting Democracy in Burma have also drawn our attention to disturbing reports that SLORC may be planning to arrest Aung San Suu Kyi. Aung San Suu Kyi, in a statement issued on April 17, 1996, pointed out that these cases are merely the tip of the iceberg of harassment and repression that was going on throughout the whole country.

This House, in 1995, passed a Resolution calling upon the Government of Myanmar to release Aung San Suu Kyi and to take steps to transfer political power to the democratically elected National League for Democracy. Aung



San Suu Kyi was in fact freed, as you know, a few days after the resolution was passed. But there have been, since then, no significant improvements in the situation in Myanmar with regard to human rights and fundamental freedoms.

Several Members of Parliament drawn from all the political parties represented in this House reviewed this situation yesterday and expressed concern with regard to developments in Myanmar. They took several decisions, to which I would like to respectfully refer. Firstly, they proposed that we hold an Adjournment Debate to enable the Members of this House to fully discuss and express themselves on the current situation. Secondly, it was proposed that a delegation from Parliament meet with the Ambassador for Myanmar in Colombo, and urge the SLORC to commence a constructive dialogue with Aung San Suu Kyi towards the restoration of democracy. Thirdly, it was decided to request all governments who are Members of SAARC to use their good offices to facilitate a democratic transition in Myanmar. And finally, it was decided that this group of Parliamentarians will convene a meeting of non-governmental organizations, trade unions, and other groups in Colombo to focus on the current situation in Myanmar.

Aung San Suu Kyi pointed out that, at the moment in Myanmar, there is no rule of law, and unless there is rule of law there can be no peace or justice in this country. She said that the international community can assist in two important respects, first to protest against unlawful activities, and second to do everything possible to implement the United Nations General Assembly Resolution, to which Sri Lanka is also a party, with regard to the Human Rights situation in Myanmar. The people of Sri Lanka have strong historic and cultural links with the people of Myanmar. We have a moral and political duty to respond to this call by the democratically elected leader of Myanmar. Therefore, I commend this statement to the House

and I seek your permission to table both the statement made by Members of the Sri Lanka Parliament and the statement by Aung San Suu Kyi, and suggest that they be included in Hansard.

## Industrial Disputes (Amendment) Bill

July 23, 1996

Sri Lanka has a long tradition of trade unionism and of progressive legislation on industrial relations. The two pioneers of the trade union movement were A.E. Goonesinghe, who gave leadership to the urban working class in the city of Colombo, and K. Natesa Iyer, the founder of trade unionism within the plantations. The first collective agreement was signed in 1928 and the first collective agreement in the plantations was concluded in 1942. The Trade Union Ordinance, which was initially enacted in 1935, provided for the compulsory registration of such unions. Subsequent amendments were made to this statute in 1946, 1948, 1958 and 1970. In 1989, there were more than 1,000 trade unions, with a total membership of 1.49 million. By 1992, the number of trade unions increased to 1,039, but the total membership declined to 884,226. The total number of trade unions registered in 1993 was 1,151. The Department of Labour, however, has not been able to produce accurate figures of the membership. (See Kumari Jayawardene's study, *The Rise of the Labour Movement*.)

Despite this long and progressive history, the trade union movement itself had to undergo a period of decline over the last two decades. Invocation of the Essential Public Services Act to dismiss what the Government estimated to be 40,000 and the trade union sources estimated to be 80,000 to 100,000, was a demoralising blow to the trade union movement. Another constraint has been the close identification of certain prominent unions with the governments in power, thereby politicising and compromising the independence of the trade union movement.

In August 1994, the present Government promised to formulate and implement a comprehensive Workers Charter



with regard to trade union rights. In July 1995, the Government took a major step by ratifying the International Labour Organisation Convention No. 87 on the freedom of association and protection of the right to organise. In September 1995, the Government presented a new Workers Charter. Although not legally binding, it expressed the Government's intention with regard to labour policy. The preamble to the Workers Charter reiterated the ideals contained in the Declaration of Philadelphia, adopted by the International Labour Organisation in 1944, and included the right to form and join trade unions. Sri Lanka's second Republican Constitution guarantees the right to form and join trade unions subject to certain specified grounds for restricting this right. Labour Tribunals further have held that the termination of a worker, purely on the basis of his union activities, constitutes an unfair practice. The Charter further clarifies that discrimination against a worker on the ground of his union activities will constitute, per se, an unfair labour practice. The present legislation therefore seeks to give effect to this aspect of the Workers Charter and to further advance the Government's ratification of ILO Convention No. 87.

Although there have been advances in the legal framework and the policy relating to the rights of workers, there has been, regrettably, a marked decline in industrial relations. By mid-December 1994, there were 60 strikes going on in different parts of the country, both in the public and private sectors. These included strikes in the hitherto non-unionised Free Trade Zone industries. There also has been, both in 1994 and 1995, industrial unrest affecting doctors, registered medical officers and engineers holding the National Diploma in Technology. Protest movements and demonstrations against the privatisation plans of the Government have also been witnessed.

An unfortunate aspect of this industrial unrest has been the recourse to violence and other unlawful activities. These

activities have included forcible detention of top management personnel and other acts of intimidation. In the privatised graphite mine in Bogala, workers kidnapped their superiors and kept them inside their mines under extremely dangerous conditions for over 24 hours. Members of the supervisory staff were similarly kidnapped at several other places. There have also been other acts of sabotage committed by workers, which have resulted in severe loss to enterprises. As a result, several factories and workplaces were closed down and a number of workers have lost their employment. There is, therefore, a critical need to address the continuing decline in industrial relations and to create a framework in which both workers and employers have confidence. There are two principles on which such a framework must be constructed. First, there must be respect for our constitutional and international obligations to protect the rights of workers and their freedom of association and unionisation. Second, there is a need to draw a clear line between legitimate trade union activity and illegitimate criminal activity. The state must protect workers who engage in the former, and uphold strictly the rule of law in the case of the latter. The third principle is to establish a meaningful dialogue between private and public sector labour on the contours of the national policy relating to privatisation and private sector development. Several times we have referred to the importance of such a dialogue, but neither the Public Enterprise Reform Commission nor the National Development Council appears, as yet, to have taken meaningful steps in this regard.

The Minister of Labour needs to be commended for this important initiative in amending our law to ensure that interference with the right of a worker to join a trade union is an unfair labour practice. He needs, however, to also address critical interrelationships between good industrial relations and the revival of the national economy.



## **Bill for the Protection of Disabled Persons September 17, 1996**

The denial of equal rights for disabled people is an issue of international and national importance. The United Nations in 1975 adopted a Declaration on the Rights of Disabled Persons. This Declaration articulated the inherent right of disabled persons to respect for their human dignity and to have the same fundamental rights as their fellow citizens. The United Nations adopted a World Program of Action concerning disabled people in 1982. In addition, the General Assembly proclaimed a UN Decade for Disabled Persons from 1983 to 1992. The UN Program outlined a global disability strategy aimed at preventing disability and realising the full potential of disabled persons. It explicitly recognises the right of all human beings to equal opportunity. The European Community and the Council of Europe have made similar recommendations, and a number of countries, such as the United States, Canada, Australia and New Zealand, have adopted legislation proscribing discrimination against disabled persons.

Several scholars have pointed out that there is a paradoxical situation with regard to the importance accorded to principles of equality and non-discrimination with regard to human rights. Although the notion of equal rights for women and ethnic minorities is receiving progressive recognition, in contrast the principle of equality for disabled persons has received only limited recognition in the law. The Sri Lankan Constitution, in Article 12(2), states that no person shall be discriminated against on the grounds of race, religion, caste, sex, political opinion, place of birth or of any such grounds. Disabled persons are not explicitly recognised as a category in this clause and thus there is a need to invoke the more



general category, "any such grounds", to seek redress against discrimination. On the other hand, Article 12(4) explicitly recognises disabled persons as a category for which affirmative action programmes may be instituted to provide protection to such persons. However, Section 23(1) of the Protection of the Rights of Persons with Disabilities Bill states that no person with a disability shall be discriminated against on the ground of such disability in recruitment for any employment, office or admission to any educational institution. Section 23(2) further states that no person with a disability shall be subject to any liability, restriction or condition with regard to access to or use of any building or place. In the event of a contravention of Section 23, the High Court has been empowered to grant relief and to issue directions which are just and equitable.

The preamble of the Bill states that it has two broad objectives. The first objective is to give legal effect to the national policy on the rehabilitation, welfare and relief of persons with disabilities. The second objective is to make provision for the establishment of a National Council for persons with disabilities. Important questions relate to the definition of disabilities set out in Section 37. It states that a person with disability means "any person who as a result of any deficiency in his physical or mental capabilities, whether congenital or not, is unable by himself to ensure for himself, wholly or partly, the necessities of life".

The terminology that we use is important, as disabled persons are becoming increasingly conscious of the role language plays in perpetuating discriminatory attitudes and practices. Historically, the term "handicapped" is associated with "cap in hand" and begging. Such a term implies that impairment is permanent and that disabled persons will remain dependent throughout their lives. Such attitudes are no longer acceptable. Accordingly, Disabled Peoples International, in 1981, endeavoured to draw a distinction between impairment and disability. According to this definition, "impairment is

the functional limitation within the individual caused by physical, mental or sensory impairment", while disability "is the loss or limitation of opportunities to take part in a normal life of the community on an equal level with others due to physical and social barriers". It thus appears that the term, disabled people, is used to refer to all those with impairment, regardless of the cause, who experience disability as a social restriction. Social restriction can take place as a consequence of buildings which are inaccessible, the inability of public officials or other members of the public to communicate in sign language, or the lack of available reading material. (See in this regard, Colin Barnes, "Disabled People in Britain and Discrimination; A Case for Anti-Discrimination Legislation", 1991.) The legislation however needs to address not only individual discrimination of disabled persons but the discrimination which is institutionalised within the very fabric of our society. Such discrimination is not only pervasive and comprehensive, but also supported by history and culture. It incorporates extreme forms of prejudice and intolerance, as well as more covert attitudes as reflected in the way the educational system is organised and the labour market operates.

The Department of Social Services formally established a separate unit for the service of the physically handicapped in 1956. The main activities of this Department have been the registration of disabled persons, training and employment promotions, coordination of NGOs and the creation of public awareness of the rights of the disabled. J.V. Thamber, formerly of the Department of Social Services, has estimated that prior to 1980, there were 500,000 disabled persons. The civil war in the North-East has significantly added to those who have been permanently maimed and incapacitated. Present estimates are that there are nearly 1 million people who are disabled. Although there are non-governmental organisations who have addressed the problem of the blind, those who have hearing disabilities, and those who are mentally impaired, there is no



umbrella organisation which is responsible for addressing the problems of all disabled persons. In this regard, the decision to establish a National Council for Disabled Persons is to be welcomed. At the official level, such a Council should facilitate inter-departmental coordination and yet serve as a focal point for dialogue between officials and non-governmental organisations. The supervisory powers envisaged in Section 31-34 are likely to be viewed with apprehension by NGOs, who resent encroachment by the state into the independence of these organisations. The Minister may need to reconsider these provisions or to provide for redress where these powers are arbitrarily or capriciously exercised. There are two other aspects of this legislation which need to be mentioned. First, the UN Declaration on the Rights of Disabled Persons places emphasis on the concept of self-reliance. In this regard, the Declaration states that disabled persons have the right to medical, psychological and functional treatment, medical and social rehabilitation, education, vocational training, rehabilitation, aid, counselling, and placement services. This is an important concern, which could have been explicitly incorporated into the legislation. Second, the Declaration states that disabled persons should be entitled to qualified legal aid when such aid proves indispensable for the protection of their rights. The redress envisaged by the legislation, which enables a disabled person to have recourse to the High Court, would be ineffectual without access to legal aid.

This legislation is an important milestone in the quest for equality by disabled persons. We hope that it will provide a new impetus for the integration of disabled persons into the social, economic and political life of the country.



## **Adjournment Debate on the Displacements in Vavuniya**

**November 14, 1996**

I wish to express the concern of this House with regard to the serious situation that is developing in Vavuniya as the result of the entrapment of a large number of persons displaced by the recent hostilities. I wish to state that many of my colleagues in the House, including the UNP, DPLF, CWC and EPDP, associate themselves with this statement. The University Teachers for Human Rights (Jaffna) have described the predicament of the displaced as a people crushed between cycles of violence. This predicament has been compounded by the sudden influx of almost 13,257 persons from the North into Vavuniya after the restrictions were eased on October 22, 1996. These persons are accommodated at 11 welfare centres. Many of them were previously unable to come into Thandikulam. We welcome the decision to ease the restrictions on movement into Thandikulam, but this movement has created a serious humanitarian problem which is not being adequately or sensitively addressed. These persons have been confined to 11 camps in Vavuniya and are subjected to immense hardship, indignity and humiliation due to the lack of adequate facilities and the inability of the authorities to respond to their need for relocation in a humane and considerate manner. Mr. M. Sivasithamparam, the President of the TULF, has written a letter to Her Excellency the President dated November 6, 1996. I also personally visited Vavuniya recently and was thereby able to acquire a more direct understanding of the problems of the displaced persons.

One of the immediate difficulties in coping with a sudden influx of displaced persons is the need to reconcile their immediate needs for accommodation with the needs of

the permanent inhabitants of Vavuniya. The need to accommodate persons has resulted in the closure of seven schools in Vavuniya and the conversion of these schools into camps. As a consequence, the education of almost 8,500 children, including 2,500 who are required to sit for the G.C.E. Ordinary Level and Advanced Level examinations in December, has been affected. Vavuniya Tamil Maha Vidyalayam, a national school, has been closed, affecting almost 3,000 students. We therefore need to address urgently the educational needs of students, particularly those who are reading for public examinations, and endeavour to ensure that the displaced persons are provided alternative accommodation which does not result in so severe an impact on education in Vavuniya. I understand that 100 shelters are being constructed and that the construction would be completed by the end of November. Even prior to this influx, displaced persons faced many frustrations, inconveniences and trauma due to the conditions of the camps and the security restrictions to which they were subjected.

Many of the persons to come to Thandikulam are those who have, in a short period of time, experienced multiple displacements from Jaffna to Chavakachcheri, from Chavakachcheri to Kilinochchi, from Kilinochchi to Omanthai and from Omanthai to Thandikulam. When they reached Thandikulam, they were in a state of physical and mental exhaustion, which was compounded by the uncertainty that awaited them upon arrival. Even the resources of the civil administration have been stretched to the limit, and are on the verge of breakdown, with some officials working for 18 hours a day.

I wish to briefly summarise some of the problems faced by the displaced persons. Firstly, the categorisation of displaced persons and their transfer to specific welfare centres is being done in accordance with the directive issued by



Mr. N. Mallawarachchi, Coordinating Officer, Vavuniya, on October 26, 1996. Displaced persons broadly fall into five categories. The first category is comprised of displaced persons who desire to be transferred to Jaffna. Up to November 13, 1996, 6,702 persons have been sent to Jaffna by ship through Trincomalee. There is, however, a growing reluctance amongst such persons to proceed to Jaffna because of the deteriorating environment for civilians. The second category consists of permanent residents of the districts of Batticaloa, Trincomalee and Puttalam. The third category consists of persons who require medical treatment, those who have confirmed arrangements for air travel, and public servants who need to travel to the south of Vavuniya. The fourth category consists of traders who temporarily trade in Vavuniya town, after which they return to Omanthai and Kilinochchi. The fifth category consists of youth between the ages of 14 to 15 who are segregated from their family and are subjected to intense interrogation and processing.

Each of these categories of persons face special problems and difficulties. First, the bureaucratic delays, frustrations and inequities in the process of categorisation, which initially takes place at the Thandikulam camp, is further compounded by difficulties of communication. There is an inadequate number of security personnel assigned to this task, and most of them are unfamiliar with the language spoken by the majority of displaced persons. This leads to arbitrary decisions and other abuses. Second, the facilities for accommodation are woefully inadequate. There are serious problems of sanitation arising from the lack of adequate toilets, inaccessible water supplies and the unavailability of basic necessities. The facilities for recreation are minimal, although some camps have been provided with a television set and some reading material. With regard to government assistance, 48,831 persons in Vavuniya and 388,580 persons in Vanni, as a whole,



receive dry rations. However, since March 1996, 18,433 persons in Vavuniya and 200,548 persons in Vanni, as a whole, have been denied dry rations and are undergoing immense hardships. Despite the severe drought and the crop failure, the Department of Social Services has failed to provide assistance to 81,503 persons in Vavuniya, and 248,147 persons in Vanni. Third, the predicament of children was particularly disturbing. They seemed demoralised and dispirited and their eyes were filled with unspeakable sadness. There are no special facilities for these children. Fourth, health facilities in these camps are inadequate. Some mobile clinics were operative, but the facilities in the base hospital in Vavuniya are inadequate to meet the increased inflow of patients. This base hospital needs to look after the needs of four districts consisting of a population of 900,000 persons. The facilities for preventive health are inadequate. It also lacks a psychiatrist, pediatrician, eye surgeon and an ENT surgeon. It should also be noted that there are considerable delays in the supply of medicines to the uncleared areas in the Vanni. The Government Agents of Kilinochchi and Mullaitivu have expressed concern that there is a severe shortage of drugs such as ARV injections, anti-venom for snake bites, toxide, and antibiotic drugs. There are also no qualified medical officers in the Vavuniya North area.

The objective of this statement is to focus on the need for urgent and concerted humanitarian action to address the needs of the displaced persons and the consequential impact of displacement on other civilians. We would like the Government to give urgent consideration to the following matters.

First, there is an immediate need for a focal point within the Government to coordinate relief operations between the Rehabilitation and Reconstruction Authority North, the Commissioner-General of Essential Services, the Government

Agent, the Rehabilitation Ministry, Defence officials, and local and international relief agencies. In the absence of such a mechanism, relief agencies experience considerable difficulties in securing responses to routine requests; letters remain unanswered, thereby impeding the effectiveness of the relief operation. Second, highest importance should be accorded to ensuring that displaced persons have access to satisfactory conditions of shelter, health, safety and nutrition. Special protection should be accorded to women, children and the elderly. Third, local and foreign non-governmental organisations should have full and free access to the displaced population. The delivery of food and non-food items by these organisations should be facilitated. Presently, they are being subjected to restrictions and constraints, which are incompatible with the humanitarian needs of the displaced population. Fourth, the freedom of movement guaranteed by international human rights law and our Constitution should be upheld. Several of the so-called relief centres are barbed-wired and look more like detention centres. Almost 200 young persons who have received security clearance have nonetheless not been permitted to travel, and have been confined to the railway goods shed camp. Fifth, there needs to be a significant improvement in the processing of displaced persons. More officers who are capable of speaking Tamil should be sent to Thandikulam, and liaison officers should be appointed to assist persons with documentation. We have received representations that 90 percent of the persons presently in relief centres would be willing to join their relatives and their friends if the restriction on their movement could be lifted. The present policy appears to discourage persons who are not permanent residents of Vavuniya from even temporarily relocating themselves with friends and relatives. Finally, the Government should invite Frances Deng, the Special Representative of the UN Secretary-General on internally displaced persons, to make a follow-up visit to the visit he made in 1993.

As of November 13, 1996, already 170 persons have crossed back due to the frustrations and the deprivations to which they have been subjected. Many members of the House join me in urging the Government to take immediate note of the serious humanitarian situation in the Vanni, and to take remedial measures. We need to confront the anguish and despair of the displaced with a sense of urgency and of purpose.



## **Condolence Vote for Mr. J.R. Jayewardene**

**November 19, 1996**

Almost twenty years ago Mr. J.R. Jayewardene, Leader of the Opposition, speaking on the vote of condolence in this House on Mr. M. Tiruchelvam said, "I am not speaking as if I am surveying some distant scene and commentary on the life of a person I did not know. I am speaking of a person who was known to me for over 50 years". My own association with President Jayewardene was much more modest. I was appointed by the President on the recommendation of the then Leader of the Opposition, Mr. Appapilai Amirthalingam, in 1980 to serve on the Presidential Commission on Devolution. I had not known him then, but I was later engaged in a series of complex negotiations between the then Government and the principal opposition party, the TULF, on issues that divided the two major communities. These negotiations initially focussed on the implementation of the District Council scheme, and in the aftermath of the trauma of July 1983, focussed on the document known as Annexure C, which ultimately resulted in the provincial devolution under the Thirteenth Amendment to the Constitution.

After the July 1977 elections, Parliament convened at the old Parliamentary building at the centre of Colombo to listen to the Statement of Government Policy delivered by the then President William Gopawala. In accordance with tradition, the first three seats were occupied by the Prime Minister, Junius Richard Jayewardene, the Leader of the Opposition, Appapillai Amirthalingam, and the Finance Minister, Ronnie de Mel. Minutes before the commencement of the sessions Jayewardene, who was seventy-one years old, turned to Amirthalingam, and said, "Amir, it has taken me thirty

years to move from the third to the first chair". This terse observation captured the vicissitudes, disappointments and high achievements of one of the more enigmatic political careers in the sub-continent.

Junius Jayewardene was the scion of a legal family - both his father, E.W. Jayewardene, and his grandfather, A. St.V. Jayewardene, were eminent lawyers who were elevated to the highest court in the Island. Jayewardene was educated at Royal College, the public school of the Ceylonese establishment, but did not excel in studies. He represented the school in cricket, rugby and boxing. In fact, he once equated politics to boxing - you aim at the heart and hit at the head. He was a finalist at the best speaker's contest in an extraordinary contest - the incomparable Trotskyite lawyer-historian Colvin R. de Silva, the former President of the International Commission of Jurists, T.S. Fernando, the Finance Minister, Stanley de Zoysa, and a leading civil lawyer and Queen's Counsel, D.S. Jayawickrema. Jayewardene captured the prize, showing early signs of his tenacity of purpose and determination to succeed. Unlike his contemporaries - Bandaranaike, Christ Church, Oxford; Dudley Senanayake, Cambridge; and N.M Perera, London School of Economics - Jayewardene's tertiary education was limited to the Ceylon Law College. He was admitted to the bar, where family contacts and his inherent ability would have assured him early success. However, he became restless and entered the hustings through municipal politics, the State Council and the first Parliament in independent Ceylon. He was made Finance Minister in 1947, but the coveted position of leadership of his party continued to elude him until he was made the Leader of the Opposition in 1970. It was during this period that he rebuilt a demoralised and dispirited party and led it, in 1977, to secure a four-fifths majority - an achievement without precedent in the electoral history of the Republic.



To both friends and foes of JR, he remained a complex, enigmatic and contradictory personality. He tenaciously clung to power, initiated a process that resulted in the expulsion of his principal political opponent, and extended the life of Parliament by a referendum that lacked political legitimacy. Nonetheless, JR facilitated an orderly political transition when he left the choice of his political successor to a meeting of his party's parliamentary candidates at the end of 1976. JR Jayewardene exited from the political arena in 1988 quietly, with little or no fanfare or ceremony. He seemed to many a cold and calculating political strategist, while others who worked with him found him to be gracious, witty and unfailing in his courtesy. He extolled Gandhian ideals, admired Asoka, and revealed an extraordinary grasp of British political history and its Parliamentary traditions. He has been faulted for being intolerant of political dissent, taking harsh measures against trade union agitation, and for the political struggles of ethnic groups. Although he enacted a Constitution that acknowledged the primacy of fundamental rights and made them justiciable, he was critiqued for consolidating political authoritarianism and, at times, failing to uphold the rule of law.

JR's biographers, K.M de Silva and Howard Wriggins, point out that "he brought major changes in Sri Lanka's economy and political system which give every appearance of being irreversible, at least into the early twenty-first century. This is especially so of the changes in the economy. He set the agenda for the times and the future". Others have fiercely contested this view of his political legacy and have emphasised his failures rather than his accomplishments. This is not a debate that I wish to enter on this solemn occasion. There is however one matter that JR himself recognised as his biggest disappointment - his failure to move more decisively towards the resolution of the national question. His biographers refer to a letter that he wrote to the Singapore Prime Minister Lee Kwan Yew in 1987. He said, "It is a pity,



of course, that the realism and pragmatism that contributed to the evolution of the constitutional setting for national political life in a plural society did not come earlier. But my sorrow is tempered by the realisation that the very bitterness of the fruit has taught us the lesson." In another context, immediately after signing the Indo-Lanka Accord, reporters asked him why he had not moved more rapidly. He replied candidly, "It is a lack of courage on my part, a lack of intelligence on my part, a lack of foresight on my part."

The clearest articulation of the underlying grievances of the Tamils and the consequent failure to address them is found in the UNP manifesto of 1977. JR secured an unprecedented political majority; it puzzles many as to why he did not seize the opportunity to frame an enduring solution.

One of the early setbacks from which his administration never quite recovered was the collective violence that was perpetrated against the Tamils within three weeks of the dramatic electoral victory. It originated in a clash between a small group of policemen and the local population in Jaffna, and triggered attacks on Tamils in all parts of the country, which subsided only one week later. JR's biographers point out that the ferocity of the riots disturbed him by reminding him of the political forces that had driven him out of office in 1956. These events cast a dark shadow over the early years of his administration, and ethnic distrust intensified. There was a fatal shift in strategy. There was no more talk of an All-Party Conference and, instead, emphasis shifted to a much broader process of constitutional reform, with a more ambiguous link to the immediate ethnic grievances.

The UNP manifesto revealed an understanding of the nature of the accumulated grievances of the Tamils, but there was, on the part of the Government, a failure to comprehend the contours and the intensity of the nationalism that had been fuelled by these grievances. JR also had difficulty adjusting to generational changes within the Tamil political leadership. His personal contacts were with three prominent

leaders - G.G. Ponnambalam, M. Tiruchelvam and S.J.V. Chelvanayakam - all of whom died within a short span of six months prior to the elections. He had even greater difficulty in comprehending the nature and the origins of Tamil militancy and misjudged its continuing resilience. On the other hand, he had an immediate empathy and understanding of the problems of the Estate Tamils, in which he recognised a coincidence of class and ethnicity. The most dramatic developments relating to citizenship - civil and political rights, wage demands and trade union rights - took place during his tenure.

We remember JR Jayewardene as a consummate parliamentarian, a brilliant tactician and a debater with a commanding presence and a powerful and compelling voice. He was one of the most literate heads of government, with a wide range of intellectual interests, and an abiding interest in books and political biographies. He will be remembered for the modernisation of the party system and the organisational energy and skill that was devoted to rebuilding a party that was dispirited by electoral defeat.

## **Committee Stage of the Budget on the Votes of the President**

**November 20, 1996**

The Committee stage of the budget is the stage at which we consider appropriations, and review the estimates of current and capital expenditure of departments and agencies of the government. It is an important aspect of the parliamentary control of finance and of the legislative scrutiny of executive action. However, today we are asked to review, within a few minutes, the estimates of 19 institutions - some of which, including the President, the Cabinet of Ministers, and Parliament, are some of the most important institutions under our system of government. Further, the votes for the President include 12 Commissions of Inquiry and important institutions such as the Human Rights Task Force, the Sri Lanka Foundation, the Institute for Fundamental Studies, and the Task Force on the Rehabilitation of the North. This is not a realistic or meaningful exercise. We may make some observations which may satisfy our local constituencies, but we will have no impact on the way estimates are constructed or on how institutions function. We need to seriously review the Committee stage of the budget, and consider alternative procedures for the scrutiny of estimates. In the UK, there is a committee on estimates, which has considerable influence and impact. We may also consider debating estimates within respective consultative committees within a more informal atmosphere, where the estimates of each department and institution can be considered adequately.

In South Asia, we have a serious crisis of governance, with widespread public disillusionment with politics and with political institutions. We see this crisis of confidence in India, where public figures are being subject to judicial scrutiny.



Bangladesh was paralysed by strikes and public protests arising out of the Opposition's boycott of Parliament. The recent elections revived hopes for political stability, but anxiety remains about the relationship between the major parties. In Pakistan, Parliament was dissolved before the completion of its term, and there is a legal challenge to its dissolution. We have a similar crisis of confidence with all of our public institutions.

We expect the state to perform three important functions - to improve the quality of life of all persons, to remove disparities and inequality, and to protect human rights and democratic values. Whereas South-East Asia followed a more authoritarian developmental model, in South Asia, we have a special challenge to transform our economies and our societies while adhering to democratic values. South Asia is not, however, adequately responding to this challenge.

We need to reinvent government to respond more imaginatively to the needs and aspirations of ordinary people. We need to re-evaluate all of our institutions - the Presidential Secretariat, the Cabinet of Ministers, and the Cabinet Committee system - to evaluate their effectiveness in fulfilling the roles assigned to them. We need to reform Parliament - to improve the committee system, the budgetary process, public participation in the legislative process, and the review of subsidiary legislation. Most of us entered public life in the hope that we could contribute towards the alleviation of human suffering. We, however, confront so much suffering and cruelty and seem helpless to provide individual redress. This is critical when it comes to human rights and humanitarian issues.

Within the Presidential Secretariat we need a focal point to coordinate human rights and humanitarian issues between the civil administration, defence officials, local officials and relief agencies. In the past, Bradman Weerakoon performed such a task with acceptance.

The second reading of the Human Rights Commission Bill took place on February 23, 1996 and the third reading on July 9, 1996. Almost four months have lapsed and the Commission has not yet been constituted. This creates a great deal of uncertainty to other human rights institutions such as the Human Rights Task Force. The Sri Lanka Foundation has a Commission on the Elimination of Discrimination, which was discontinued, and there is a large backlog of complaints. The Commission, therefore, must be constituted soon. The Task Force is in the process of establishing an office in Jaffna and needs all the necessary resources to operate independently. With regard to missing persons, there are several lists of persons that are circulating. Urgent action needs to be taken to ascertain whether such persons are in custody and to take necessary steps to trace them.

## **Votes on the Ministry of Justice and Constitutional Affairs**

**December 12, 1996**

The Minister of Justice, despite the heavy demands on his time, has engaged in two important tasks. The first is a program of law reform, which has already surpassed, in ambition and scope, all efforts by his predecessors. We have had legislation amending the Bribery Act, the Ombudsmen Law, the law relating to accountancy standards, the National Human Rights Commission Law, the arbitration law, and the law relating to the establishment of a commercial high court. The second task, a challenge which has eluded the administration since the Colebrook-Cameron reforms, has been the efforts to address law delays. Several committees have been constituted, and several prominent lawyers and former judges have been engaged in this daunting task. Other countries have made significant strides in this direction. Singapore reformed its judicial system through three main phases. It was able to reduce the number of cases awaiting trial in the Supreme Court by more than 90 per cent in less than two years. They also cut the average waiting period for cases from five years to four months. This was achieved by the computerisation of records, a thorough stocktaking of pending cases, enhanced management of cases and appeals, and improved training. Similar changes have been effected in England and Wales through computerisation and appointment of a chief executive to professionally manage the High Court. New business management systems were introduced with the introduction of new technologies. We must have a better system of instilling user confidence in the administration of justice, including the commercial justice system. The system must have regard to factors such as disposal rates, sitting hours of judges and the equity and fairness of judicial processes.



I want to focus on a matter that I initially raised with the Minister almost two years ago. This relates to the question of preventive detention without trial. Since we have continued for most of this period to operate under a state of emergency, the powers of detention, both under special powers such as the Prevention of Terrorism Act and under the Emergency Regulations, assumes importance. The Minister appointed a committee under the chairmanship of Justice Anton Soza which made recommendations, resulting in relief being granted to several detainees. Since then, the situation has continued to deteriorate. There is frustration amongst detainees; they feel that they are the forgotten people in the system of the administration of justice. They are incarcerated some times for as long as five years without trial or without any charges being filed. Such detentions and incarcerations would be cruel and inhumane. Incarceration without trial is contrary to international human rights standards. There have been several hunger strikes at the Kalutara, Magazine and, more recently, Batticaloa prisons.

The Attorney General, Mr. Sarath Silva, has taken a positive initiative by establishing a special unit in his Department with a view to addressing this problem in a systematic manner. In the Kalutara prison, there are 197 detainees. The Attorney General's unit appears to have made significant progress in processing their papers, except in the case of about 16 persons. They have, however, been less successful with regard to the large number of detainees, including 18 women, in Magazine prison, in respect of whom no charges have been filed. The second difficulty with regard to these cases is that there are more than 200 cases pending before the High Court relating to PTA detainees. There have been considerable delays in the processing of these cases. Suitable arrangements have to be made in this regard. One possibility would be to designate a special high court so that the disposal of these cases can be accelerated. The third problem relates to the considerable delay in securing the

concurrence of the Defence Ministry for cases in which the Attorney General has recommended persons for release. Here again, the creation of a committee, which would liaise between the Ministry of Justice and the Defence Ministry and work towards overcoming bureaucratic bottlenecks, has been proposed. The fourth problem relates to the difficulties the detainees face in meeting with their families, many of who are extremely poor and need to travel long distances from different parts of the North-East. The frustration of the detainees is further compounded by the difficulties they face in securing access to basic necessities such as soap and toothpaste.

Another concern, which has been articulated by human rights groups and the Civil Rights Movement (CRM) of Sri Lanka, relates to both places of detention and conditions of detention. Under the Emergency Regulations, persons should be held only in officially authorised places of detention, a list of which must be published in the gazette. However, CRM has expressed its concern that there is a cavalier attitude towards these Emergency Regulations, which are often disregarded. It has also been emphasised that there is an imperative need for legal provisions, laying down minimum conditions of detention for persons held under the Emergency Regulations and under the PTA. Since both the Human Rights Task Force and the new National Human Rights Commission have been empowered to monitor the welfare of detainees, it is important that the law should lay down a minimum standard. Another issue relates to the problem of missing persons and the allegations of misconduct by the armed forces in the North. There are several serious incidents that have caused concern, about which the Minister himself has made a statement. Most recently, the Human Rights Task Force visited Jaffna and received a list of more than 500 persons who are reportedly missing. Local officials have prepared this list, and I understand that only 20 persons in this list have in fact been traced. I would urge the Hon. Minister to view this problem

with seriousness. Sri Lanka has had a bleak record with regard to disappearances. The UN Working Group on Disappearances documented, in 1991, that we have had the largest number of cases of documented disappearances of 54 countries surveyed. This is a critical issue affecting the civil liberties and the right to life of all Sri Lankans. Urgent efforts need to be made to investigate these disappearances and to hold responsible persons accountable.

The Legal Draftsman Department handles a large number of requests for new legislation and subsidiary legislation, which needs to be drafted in all three languages. Because the scales of remuneration and the conditions of service are not attractive, the Department is in danger of losing extremely competent and experienced draftsmen. If this trend is not arrested, the Department would have to close down. The Judges Training Institute is also a very important institution, and the Director needs to be given adequate financial resources and technical support to undertake a comprehensive programme of training for judicial officers.

There is also a need to establish a High Court in Vavuniya and to ensure that Labour Tribunals begin to function in the North. The official languages policy in the administration of justice is not effectively implemented. As such, Tamil litigants experience considerable difficulties in different parts of the country.



## Emergency Debate

March 6, 1997

Every Emergency debate is a sad occasion on which we recall the cycle of mounting tragedies that seem to be an inextricable part of our troubled history. The last month has been a particularly cruel month, which has claimed so many lives across the ethnic divide. The death of the youthful, exuberant and progressive Parliamentarian Nalanda Ellewela was a terrible shock. Our party shares the loss of the inconsolable mother, near relatives and the people of Ratnapura with whom Nalanda had forged a special bond. We have been also saddened by the subsequent incidents of political violence, which seemed to place in jeopardy the prospects for a peaceful and orderly election. We are pleased that political parties have in a joint statement reiterated their faith in democratic values, practices and processes. But to carry conviction, we need to manifest this faith in action and not only in elegant words.

We have also had other tragedies that were equally disturbing. We had two boat disasters, which have claimed almost two hundred lives. The first was a vessel that sunk while proceeding from Greece to Italy, in which more than eighty persons from Sri Lanka were drowned. An air crash in Cameroon claimed the lives of nine persons from Sri Lanka. A similar tragedy took place off the coast of Mannar. Almost seventy persons, who were displaced by the present hostilities in Mannar, lost their lives when the boat on which they were travelling to India was overturned, allegedly due to the extreme negligence of the boatmen. The Sri Lanka Human Rights report of the US State Department estimated that 6,000 refugees had fled the theatre of conflict to Tamil Nadu in Southern India. This House must express its shock and outrage at the very

cruel fate of these unfortunate persons, who are the victims of the intensification of the military confrontation in the North-East.

It is almost five months since I raised concern with regard to the predicament of the displaced persons from Kilinochchi, who remain confined to camps and relief centres in Vavuniya. We have raised several humanitarian issues relating to the conditions of these camps and the human rights issues relating to the restrictions placed on the freedom of movement for people in these camps. A delegation of Parliamentarians visited these camps in Vavuniya and was able to directly observe the frustrations and the hardships encountered by these people. At a recent meeting convened by the Secretary to the President, which was attended by several Members of Parliament and officials, we endeavoured to make certain practical recommendations with regard to easing the hardships encountered by these people. There are almost two thousand persons who have opted to go back to Jaffna and are awaiting transportation to Trincomalee and, by vessel, to Jaffna. The Commissioner of Essential Services undertook to hire additional vessels to accelerate the transportation of these people. In addition, the displaced persons reports in the *Virakesari* of February 17, 1997 suggest that there are almost nine thousand persons in Trincomalee awaiting transportation to Jaffna, many of whom are in desperate conditions. The second category of persons was those who had relatives and others in Vavuniya and could therefore be allowed to leave the camps. We recommended that this request be conceded. There were also several complaints of insensitivity and instances of corrupt practices and abuse of powers in the processing of the persons in these camps. We need to know what follow-up steps were taken following this meeting. A decision was taken to review the situation within two weeks, but no such review meeting has taken place. We, however, understand that a four-member committee of officials has been appointed for the purpose of

addressing this problem. The 1996 report made the following statement about Vavuniya: "10,000 persons were effectively detained under sub-standard conditions in camps in Vavuniya pending security clearances which had not been granted at year's end".

We have also frequently raised our concerns with regard to the alarming number of disappearances, particularly in Jaffna. The US State Department Report on Sri Lanka stated:

Disappearances at the hands of security forces increased alarmingly, especially in the east and north, though some occurred in Colombo. Most of these were associated with the arrest of suspected LTTE insurgents. In excess of 300 individuals are believed to have disappeared in the Jaffna Peninsula in the second half of the year and more than 50 elsewhere in the country throughout the year. As with extra-judicial killings, the exact number was impossible to ascertain due to censorship of news about security force operations, and lack of access to the north and east.

The records of the Human Rights Task Force seem to suggest that they have received credible complaints of more than 500 cases of disappearances. The response of the State to this problem has been weak and ineffectual. During the first week of November, the Chairman of the Human Rights Task Force visited Jaffna, and the Government announced that the Task Force would open an office in Jaffna. Up to date, the Task Force has been denied the necessary facilities and approvals to give effect to this decision. The future of the Task Force has also been rendered uncertain, as a result of the long delayed constitution of the National Human Rights Commission. In November, the Ministry of Defence established a Board of Investigation composed of security officials and Defence Ministry officials. This was not the kind



of inquiry which had been urged by civil rights groups. Almost four months have lapsed, and no further steps appear to have been taken to identify and hold accountable persons responsible for these disappearances.

With regard to extra-judicial killings in October 1995, 22 members of the STF were arrested and detained under the ER on suspicion of murdering 23 Tamil youths, whose bodies were found floating in Bolgoda lake. The US State Department's 1996 report makes the startling statement that "the suspects were released on bail and resumed their police functions in February". The Ministry of Defence must clarify the position as to whether these personnel, who have been accused of having committed murder, have been restored to police functions.

## Emergency Debate

June 5, 1997

From the very inception of this government, the TULF, while being supportive of efforts to reach a just political solution to the national question, has consistently distanced itself from the declaration of the state of emergency and subsequently voted against the resolution to extend the state of emergency. For years we have been concerned with the invocation of emergency powers in arbitrary arrests and detentions, wrongful search and seizure and the alarming incidents of extra-judicial killings and disappearances. These concerns assume much more serious proportions when there is an escalation and intensification of military confrontation. The recent offensive in the North, Operation Jayasikuru, in this context must cause serious alarm and concern to all those who desire a peaceful resolution of this conflict. On May 15, 1997, the Vice-President of the TULF, Mr. Anandasangari, issued a statement wherein he expressed alarm and distress at the large-scale displacement of civilians as a consequence of the recent offensive in the Vanni area. We have also pointed out that the sudden influx of additional displaced persons into Vavuniya will compound the existing problems and add to the humanitarian crisis in that area. We have also expressed alarm at the scale of military operations and the intensive bombardment and shelling by air, land and sea and the consequences for civilian habitation and lives.

In this regard, we have expressed particular concern with regard to the decision of the local co-ordinating officer in Mannar on the suspension of the transportation of food and other items to uncleared areas in the district. This decision, made in May 1997, required people to go to Madhu Road junction to collect their daily rations. At that time, there were 19,195 families, consisting of 78,949 persons, who were

living in the uncleared areas. Many of the villagers were located 46 to 52 kilometres away from the Madhu Road junction. The Bishop of Mannar, in a recent report, has highlighted the magnitude of the crisis that has resulted from this decision. He has stated that "the government and the MPCS store are empty. Hardly any food item is available in the private shops. The suffering of innocent people, especially those of children, elderly and the sickly, cannot be expressed, moving towards the worst in this 15 year miserable war period". This statement was made after a visit by the Bishop to the mainland on May 28, 1997. Since then, on June 2, 1997, the GA Vavuniya and the GA Mannar have organised a food convoy to Madhu. Although 17,000 families have been receiving dry rations, the Ministry of Rehabilitation has decided to despatch dry rations to only 5,000 families, depriving the balance of families of any relief. There are increasing pressures in the transit camps in Mannar, and accommodation is a serious problem. The allocation for cooked meals is Rs. 25 per adult and Rs. 15 per child, which is significantly less than the allocation in Vavuniya district, and is not adequate to feed these persons.

As of May 22, 1997, there were 13,738 families, amounting to nearly 55,000 persons, who have been displaced from the Omanthai, Puliyankulam and Nedunkerny areas. Of these, 5,099 families are in the Mullaitivu district and 8,139 families are in uncleared areas in Vavuniya district. The lack of buses and lorries has made it difficult for government officials to provide transportation from checkpoints to transit camps to those who are coming from uncleared areas. The recent report by the US Committee on Refugees on internally displaced persons in Vanni needs to be reiterated. First, both sides to the conflict should desist from military activities that would put civilians at risk. Second, the Sri Lankan Government must provide food rations to all displaced and



war-affected persons in Vanni who require assistance. If the Government will not assist these persons, it should allow the international community to do so. Third, the Government should provide adequate assistance in a timely manner. Besides food, displaced persons in the Vanni require additional medicine and medical supplies, shelter materials, water, better sanitation facilities, and educational materials. The assistance of international organisations and of NGOs should be secured for these purposes. Fourth, the Sri Lankan Government and the military should permit NGO personnel, supplies and relief goods easier movement in and out of the Vanni. In addition to the humanitarian issues and the exposure of civilians to the escalating military confrontation in Vanni, there are human rights issues relating to the Amparai district.

In particular, this relates to the case of Murugesupillai Koneswari, a resident of a small village in the Sammanthurai division, who was allegedly raped and killed at Central Camp, at the border of Amparai and Batticaloa districts. According to reports filed by human rights groups, Mrs. Koneswari had numerous problems with the police at the Central Camp checkpoint. On May 17, 1997, there was an incident at the checkpoint during which Mrs. Koneswari was allegedly verbally abused by four police officers who were on duty. She, in turn, entered into a heated argument with them. At 11:00 that night, the perpetrators entered her home and at 11:30 p.m., she died instantly when a hand grenade was exploded on her abdomen. The sole witness appears to be her four-year-old daughter. Neighbours who discovered Koneswari's badly mutilated body transferred her to Kalmunai hospital, where a post-mortem was undertaken. The community in Kalmunai is deeply disturbed by this incident, and I would urge the Human Rights Commission to undertake an immediate inquiry into the circumstances surrounding this murder and to hold the responsible persons accountable for this cruel crime.

In conclusion, I wish to quote from the report of the US Committee on Refugees, which stated that:

genuine negotiations aimed at achieving a political solution to the conflict, including its root causes, must be pursued. Until both parties accept that and co-operate to bring about a solution, there will be no peace, normalacy or end to displacement in Sri Lanka.

## **Condolence Vote for Mr. A. Thangathurai July 23, 1997**

Mr. Arunachalam Thangathurai was one of the most senior members of the Tamil United Liberation Front and was, until his untimely death, its Administrative Secretary. He entered Parliament in 1970, when he was merely 32-years old, and represented the multi-ethnic constituency of Mutur. Mutur has been a constituency in which both the Tamil and Muslim communities have co-existed for centuries. It was a predominantly agricultural community.

I have read recently that Mr. Thangathurai was the first person from Mutur to be admitted to the Sri Lankan bar as an Attorney-at-Law. With the delimitation that came into effect in 1977, Mr. Thangathurai did not contest the 1977 election and remained outside formal representative institutions until the District Development Council elections took place in 1981. This was one of the most fiercely contested elections, and I recall addressing a number of meetings and campaigning actively for Mr. Thangathurai in all parts of the Trincomalee district. He was elected as the Chairman of the District Development Council and had the difficult task of establishing this Council, given the complexities of demographic balance in Trincomalee. With the cooperation of the then District Minister, Mr. H.G.P. Nelson, he succeeded admirably in administering the Council to the complete satisfaction of all communities in Trincomalee. The events of July 1983, however, superseded and Mr. Thangathurai was not able to complete his term. He returned to Parliament in 1994, where he served on several important Committees of the House, including the Public Accounts Committee, where his experience and understanding of public administration was valued by other members of the Committee.



He worked tirelessly for the betterment of his constituents and he was easily accessible to the poorest and the most disadvantaged. He was modest, unassuming and unfailing in his courtesy. He devoted a great deal of time and energy to resolving individual problems of his constituents and to improving the educational, social and welfare opportunities of the people of Mutur, in particular, and the district of Trincomalee, in general.

Arunasalam Thangathurai was deeply concerned with issues relating to human rights, although he made no effort to publicly project himself on this issue. Human rights organisations abroad used to frequently consult with him on the ground situation and found that he was well informed, and that he was conscientious and reliable. He never attempted to over-dramatise a situation, as he was committed to ensuring that the facts surfaced, and that appropriate steps were taken to ensure accountability and compensation for victims and their families. He was particularly active with regard to the Kumarapuram incident, and played a significant role in ensuring that those responsible were dealt with in accordance with the law. His loss creates a void with regard to this work which will be difficult to fill.

On the national question and its resolution, Thangathurai displayed all the characteristics of a mature and constructive politician who felt deeply about the suffering of ordinary people. It is easy for even an idealistic person in public life to be overcome by the enormity of our problems and to feel tired and exhausted. Thangathurai never surrendered to despair or to cynicism. He remained positive and optimistic, and never abandoned his abiding faith in human nature. He followed events closely, studied problems and was always willing to engage in endless and time-consuming discussions in the relentless pursuit of a political consensus. He was always willing to engage in debate and discussion, and had infinite

patience and would devote hours to persuading the most obstinate and obdurate of persons. He was a kindly and warm person who moved easily with even the humblest of people. He was deeply devoted to his family - his wife, his son and two daughters - and his brothers. Although he could be a very private person, his concern and affection for his family was always visible. They must feel a terrible sense of loss. We have no words to comfort them, except to say that we share this sense of loss of a valued and respected colleague.

## Emergency Debate

### August 7, 1997

The Emergency Regulations and Presidential Directive set out important guidelines that are intended to provide humanitarian safeguards. These safeguards continue to be violated with impunity. The Supreme Court, in an important judgement by Justice Amerasinghe in the case of Vijayam Wimalendran, dated December 20, 1996, set out several important principles relating to arrest and detention under the Public Security Act. Firstly, in this judgement, the Court held that arresting a person at a check point without evidence, on the assumption that some evidence may eventually arise which may support the suspicions of the arresting officer, would be a violation of the law. It is clearly stated that a person, at the time of arrest, must be engaged in the commission of an offence or that there must be reasonable grounds to suspect that the person is connected with an offence. Secondly, it was pointed out that detention orders are routinely issued on standard forms that have been previously prepared, into which other information - whether true or false, appropriate or inappropriate - is often inserted. Thirdly, the Secretary to the Ministry of Defence must himself form the opinion that a detention order should be issued. The Secretary of Defence cannot mechanically act as a rubber stamp at the behest of the police. Fourthly, the person arrested, whether under regulation 17 or regulation 18, is entitled to be informed of the grounds for his arrest - the material facts and particulars relating to his arrest and detention. In addition, the Human Rights Task Force (now the Human Rights Commission) should be informed within 24 hours of an arrest, and a receipt should be issued by the issuing officer. Further, officers in charge of places of detention should furnish a magistrate with a list of detainees. It is important that the Attorney General and the Inspector General



of Police summarise this judgement and make it available to all officers in charge of police stations and security personnel.

The Nadesan Centre, in a recent report, also referred to the Emergency Regulation relating to the confiscation of property. The report pointed out that the determination that property would be forfeited could be made by the Inspector General of Police, without the need for any decision by a court of law. The Emergency Regulations are replete with anomalies and inconsistencies. Access to these regulations are difficult, with no official system of sequential numbering, listing or indexing. Further, there is a need to create a mechanism for parliamentary scrutiny of the legislation itself.

It is clear from the debate that many members of Parliament are deeply disturbed by the continued escalation of armed confrontation, unacceptable levels of death, and enormous human suffering that continues unabated. We share this anguish, and are alarmed by the growth of the national security state and the prevailing mindset of distrust and suspicion, which is so inimical to ethnic harmony. We need to escape this trap and to engage in an agonising reappraisal of the strategies that are being employed and their terrible consequences. In both South Africa and Northern Ireland, it required a leap of faith to move away from climates of confrontation and distrust, to create processes in which both parties to the conflict could have confidence. We have, in this month, faced the terrible and cruel tragedies of the assassinations of two of our colleagues. All of our institutions, political and social, and our sense of moral purpose are grounded in one value, i.e. the respect for the sanctity of human life. We must all resolve to restore respect for this value if we are to reconstruct a society and a future of which we can all be proud.

## **Parliamentary Powers and Privileges (Amendment) Bill September 11, 1997**

English law maintained a distinction between breaches of privilege and acts of contempt. Breaches of privilege involve an infringement of the specific privileges of the House, while contempt is an offence against this House's authority or dignity. Colin Munro has pointed out that the "underlying purpose of privileges is the protection of Parliament's independence". Erskine May defined privileges of Parliament as the sum of the political rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, without which they cannot discharge their functions. While the House cannot enlarge the already large scope of privileges, the categories of contempt are not closed. In Parliamentary usage, however, the distinction between breaches of privilege and contempt tends to get blurred. In Sri Lankan law, the distinction is also not clearly maintained. The bill to amend the Parliamentary Powers and Privileges Act of 1953, as amended, is an important piece of legislation. Its immediate effect would be to repeal the amendment of 1978, which vested in Parliament the power to fine and punish concurrently with the Supreme Court. It has been pointed out that this amendment was rushed through as urgent in the public interest and, unlike the main Act, did not receive opposition support. The legislation itself triggered off a bizarre sequence of events, which resulted in Parliament exercising judicial powers in response to a complaint made by Mr. A.C.S. Hameed in respect of a wrong caption in the *Observer*. This action was, in turn, criticised by Mr. S. Nadesan, QC in a four-part article in the *Sun*, for which he was himself charged, in the Supreme Court, with breach of privilege.

The history of parliamentary privilege in this country is brilliantly set out in the article by Mr. Nadesan, QC, in which

he has pointed out that the Parliament Powers and Privileges Act of 1953 represented an all-party consensus and was a carefully drafted piece of legislation. A joint Select Committee of the Senate and the House of Representatives deliberated and then unanimously adopted a report. The Cabinet, in turn, adopted this report, and the bill was unanimously passed by the House and the Senate. This is a remarkable example of consensual politics, which I fervently hope we can emulate in our struggle to resolve pressing issues relating to the national question.

One of the critical concerns of civil rights groups in Sri Lanka is that the doctrine of parliamentary privileges should not limit freedom of expression. The Media Committee, chaired by R.K.W. Goonesekere, pointed out that "the journalists and others who have from time to time been summoned before Parliament on allegations of breach of privilege have protested 'that it is manifestly unsatisfactory for Parliament to act as a judge in its own cause'". The International Covenant on Civil and Political Rights provides that:

in the determination of any criminal charge against him, or his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The inquiry by Parliament into a complaint of a breach of privilege would not satisfy the requirement of "an independent and impartial tribunal". The Media Committee has drawn attention to several other aspects of the law relating to privileges that require amendment, including the Amendment of 1980, which created a new offence of wilfully publishing words or statements after the speaker has ordered them to be expunged from the Hansard. A further issue arose out of a ruling of the courts that the publication of a statement relating to allegations of judicial misconduct in a resolution in the



order paper amounted to contempt of court. The 1984 amendment reversed this decision. The Media Committee had recommended that the protection of the independence of the judiciary must prevail over the privileges of Parliament. I am, however, of the view that if we are to review the doctrine of parliamentary privilege, we must also review the doctrine of judicial contempt from the perspectives of both freedom of expression and media freedom.

The Committee has also recommended the repeal of the 1987 amendment, which provided for enhanced punishments to be imposed by Parliament for offences of breach of privilege. In view of the present Bill, this provision may also need to be repealed. They have also recommended that paragraphs 7 and 8 of the schedule be repealed.

## **Votes on the Ministry of Justice**

### **December 4, 1997**

The Ministry of Justice has an important legislative record and has introduced several substantive and procedural changes to the law. Of particular significance is the reform of the law relating to unfair contract terms and to bail. We are also pleased to note that the Ministry has appointed several committees to reduce law delays. This has proved to be an elusive objective since the Colebrook-Cameron reform. There are structural issues relating to the organisation of the court system that also need to be systematically addressed. In this regard, while the Law Commission plays an important part in framing proposals for legal reform, it is equally important to have an institution that will assess the effectiveness of the reform process, with a view to bridging the gap between the law in action and the law in the books. We also need to take a new look at the legislation relating to law reforms and consider whether alternative models of Law Commission legislation can be adopted with a view to modernising and enhancing the responsiveness of the law reform process to contemporary socio-legal needs.

With regard to the administration of justice in Jaffna, it has been noted that the district and magistrate courts of Jaffna have recommenced formal sittings in 1996 and that the magistrate courts in Mannar have commenced formal sittings in 1997. The facilities, however, for these courts are woefully inadequate and, in some cases, lawyers do not have even chairs to sit on. There is also a lack of access to the consolidated legislative enactments and to law reports. We have also drawn attention to the need to establish a Labour Tribunal in Jaffna and, until such a tribunal is established, there should be an officer designated to receive applications under the Industrial Disputes Act.

The condition of prisoners and detainees is a matter that continues to cause concern. The Bail Reform Act would relieve congestion in remand prisons, and the appointment of two new High Courts should expedite the disposal of PTA cases. However, according to statistics provided by the Minister in the House during the adjournment debate, there are still about 400 cases to be processed. I would be grateful if a time frame could be fixed of no more than six months for either indictments to be framed or the concerned detainees to be released. Allegations of custodial violence within the prison require serious action on the part of prison authorities, and I would urge the Minister to ensure that all such allegations are impartially investigated. We need to take a comprehensive look at the conditions within the prison department and to examine prison rules, so that we can make a concerted effort to improve the conditions of all remand and convicted prisoners. According to the performance report for 1997, the capacity of prisons has remained almost static for approximately 100 years. The problem of overcrowding is of serious magnitude and the overcrowding of remandees is extremely serious. Prison reform therefore should be very high on the priority list of the Ministry.

The Ministry is also responsible for the implementation of the official language policy of the Government in relation to the courts. Although recognition has been accorded by the Constitution to Tamil as a language of the courts since 1977, litigants and lawyers face many problems in instituting litigation, filing pleadings and conducting legal proceedings in the Tamil language, particularly outside the North and East. It is very distressing for us, and most demoralising to be continuously told after 20 years, that there is a shortage of translators, interpreters and typewriters. The administration of justice in the Tamil language is seriously handicapped by the long delays in ensuring that legislation is also printed in the Tamil language. This deficiency, and the general difficulties of accessing statutes and subsidiary legislation,



should be overcome by ensuring that all legislation is available online in all three languages. This is a facility that can be developed within Parliament or within the Legal Draftsman Department. The Legal Draftsman has been vested with the responsibility of simultaneous revisions of enactments. In addition, both the Law Commission and the Official Languages Commission should be requested to urgently examine and report to the Minister on the practical constraints with regard to the use of Tamil as a language of the courts.

The Legal Draftsman Department and the Attorney General's Department play an important role in the administration of justice. Officials in these departments do not enjoy the remuneration which would otherwise be available to them if they engaged in private practice under the circumstances. We in the Opposition strongly support all measures to strengthen the morale and professionalism of the members of these departments, particularly by providing them with opportunities for training abroad. The Judges Institute needs to be significantly strengthened to provide judicial officers with training in areas of modern commercial law and in the administration of courts.

## **Defence Vote**

### **December 5, 1997**

This is the second occasion upon which we are holding an adjournment debate on the situation of the displaced persons in Vanni. During the debate on the previous occasion, I made a statement in the House, which was subsequently followed by a visit of a group of twenty Members of Parliament to the camps in which displaced persons were detained. Subsequently, a high-level Committee was appointed by the Government, headed by the Secretary to the President, to inquire into the conditions of persons detained in these camps and to provide relief to those affected. Progress has been slow. Although there were considerable improvements in the facilities made available to persons who wish to travel to Jaffna, there were again bottlenecks in the transportation from Trincomalee to Jaffna due to the deteriorating security environment. Hundreds of returnees were stranded for weeks and months in Trincomalee, living under appalling conditions.

This debate raises issues relating to certain fundamental values with regard to humanitarian relief and the protection of civilians from the consequences of a cruel and debilitating conflict. We have not been able to respond to the humanitarian crisis in the Vanni due to the inadequate flow of relief, medicine and food to the areas affected by the current offensive. A delegation of Christian clergy who visited these areas have provided us with an extremely grim and disturbing picture of malnutrition amongst children, elderly persons and women, who have also been psychologically traumatised by war and displacement, and of families huddled under trees without adequate shelter.

The UN Secretary-General's Special Representative on displaced persons, who visited the country in 1993, acknowledged the scale of displacement in Sri Lanka. Two

years later, in 1995, the figure reached a record one million persons, which included displaced persons from all three communities. The parties to the conflict have continuously restricted the freedom of movement of these persons, contrary to law and humanitarian principles. Of the 5,000 persons in the transit camps in Vavuniya, almost 3,000 have no place to go. Many have been exposed to the agony of multiple displacements. The process of screening is complicated, slow, at times arbitrary, and contributes to frequent complaints of abuse and corruption. According to an Amnesty International study on refugees, issued in October 1997, "conditions in the camps remained appalling in early 1997 and there were several reports of ill-treatment and torture of young men entering the government-controlled areas by armed Tamil groups working alongside the security forces". Amnesty has further urged governments to ensure that internally displaced persons are treated in accordance with the full range of existing human rights and humanitarian standards.



## **Votes on Public Administration**

**December 15, 1997**

Public administration is one of the most critical ministries in relation to questions of governance and development. There is no doubt that throughout the sub-continent we are experiencing a crisis of governance, which arises from a combination of factors. These factors relate to growing disillusionment with the institutions of representative democracy and the failure of the developmental state to respond effectively to the needs of the people with regard to the delivery of basic services, the development of infrastructure, and the alleviation of poverty and social inequality. The emerging phenomenon of the failed state and the explosion of humanitarian emergencies in several parts of the world provide us with a grim warning of the dire consequences that await us if we do not reverse this decline. In our context, we have had to undergo a radical rethinking about the nature of the state and its role in economic and social development. The dramatic changes in the global economy have changed the environment in which states operate. Domestic policies must be ever more responsive to the parameters of the globalised world economy. Recent technological changes have also qualitatively transformed the world that we inhabit. These changes have compelled a radical reappraisal of the role of the state, with an increased emphasis on its importance as facilitator and as regulator. The Ministry of Public Administration must take note of this clamour for governmental effectiveness and frame an imaginative strategy.

The World Development Report for 1997 has focussed on five fundamentals. First, establishing a foundation on law; second, maintaining a non-distortionary policy environment, which includes macro-economic stability; third, investing in basic social services and infrastructure; fourth, protecting the

vulnerable; and fifth, protecting the environment. Critical to these tasks is the reinvigoration of state institutions. This means civil service reform, which must involve improving the incentive structure, morale and professionalism of the civil service. It also means ensuring that the state is more responsive to the needs and concerns of citizens and that it works in partnership with business, labour, and civil society institutions in framing and implementing policy. This process must be institutionalised when we are discussing expenditure priorities, social assistance programs, relief and rehabilitation projects and management of environmental resources.

The National Development Council was intended to provide a framework for such a dialogue. The Sri Lanka Institute for Developmental Administration has not measured up to its potential in enhancing the professionalism, accountability and effectiveness of public administration. There is an outstanding study on public administration prepared by some of the most experienced public servants and social scientists, which is both a diagnostic and prescriptive study.

In addition to reinvigorating the state, it is critical to the future of a multi-ethnic and plural society that we decommunalise the institutions of the state. In recruitment for the public service, there must be an emphasis both on merit and on the need to ensure that the public service adequately reflects the diversity of our society. On the contrary, we have noticed the continuing decline in the recruitment of Tamils and Muslims over the last few decades, which has reached alarming disproportions within the public service. I pointed out in a memorandum, submitted to the Consultative Committee on Ethnic Affairs in 1996, that although Sri Lankan Tamils are 12.7 per cent of the population, they are only 5.9 per cent of those employed in the state services. This represents a drop of more than 4 per cent between 1985 and 1990. Upcountry Tamils are 5.5 per cent of the population and they are 0.1 per cent of the state services. With regard to

Muslims, although they are 7 per cent of the general population, they are only 2 per cent of the state services. This represents a decline of 3.44 per cent to 2 per cent between 1985 and 1990. These figures are based on the census of public sector and corporate sector employment in 1990. A comparison with the 1995 figures will show an equally dismal picture. The Consultative Committee urged the government to strictly implement Public Administration circular no.15/90 with regard to recruitment. The Committee further recommended that the Attorney General resist, as a matter of policy, any legal challenges to the implementation of that circular. We are dismayed that these recommendations continue to be disregarded and that the recent recruitment of 31 officers to the Sri Lanka Administrative Service failed to include any Tamils, although there were 72 vacancies in the North-East province. The draft constitution has sought to remove any ambiguity with regard to the constitutionality of affirmative action programmes. This is another sad example of the discrepancy between promise and fulfilment.



## Emergency Debate

### April 7, 1998

This has been a traumatic month in the troubled history of our island. The mass arrests, detentions and indiscriminate and arbitrary treatment of Tamils within the city of Colombo has caused unprecedented anger and pain of mind. It has been estimated that, within the last few days, there were about 5,000 lawful residents of the city who were rounded up in the early hours of the morning and apprehended and detained, despite their production of valid documents to authenticate their legitimate presence within the city. We have received innumerable complaints of cruel, callous and insensitive treatment of persons of all age groups, including women. Women were ordered out of their homes scantily clad and kept for hours and even days in appalling conditions in police stations, remand prisons, and, in some instances, in public areas. We are particularly concerned about the mass arrests in Kotahena and Colombo North. One incident which has caused particular concern has been the arrest of the family of one of the priests in the Captain's Garden Temple, and, up to date, no adequate explanation has been offered as to why these religious functionaries have been taken into custody. Tamil residents, and organisations representing their interests, are deeply convinced that there is a deliberate policy of harassment directed against them.

First, the whole operation seems to have been clumsily and crudely put together with no proper planning or co-ordination of the security apparatus to cope with the processing of such large numbers of people. Concerned police officers expressed helplessness at the situation of overcrowded police cells and remand prison facilities. The NIB is unable to cope with the heavy demands made on its capacity to verify the records of those investigated.

Second, Tamils are dealt with in a way that lacks consistency and is arbitrary and discriminatory with regard to the production of documents. The law requires you to carry an identification card or a passport. Security personnel arbitrarily demand householders' lists and police clearances. The lack of clarity with regard to these procedures is causing confusion and anxiety. Similar uncertainty exists with regard to the proper procedures for staying at the lodges within the city.

Third, there is a lack of sensitivity in the interrogation of persons, and no consideration or latitude extended to women, older persons, religious functionaries or persons subject to physical or mental incapacity.

Fourth, the procedural and humanitarian safeguards set out in the law - including the Presidential Directives and Emergency Regulations - are violated with impunity. Police personnel continue to be unaware of these directives. Even the provisions of the Human Rights Commission law relating to notifications by the arresting officer are apparently disregarded.

Fifth, the guidelines with regard to arrest and detention clearly set out by Justice A.R.B. Amerasinghe in Wimalendran's case are being disregarded. There is little evidence to suggest that security personnel have been informed of this judgement.

Emergency rule compromises the rule of law. We are alarmed and disturbed that even the minimum safeguards contained in the law are being violated with impunity. Tamils are being subjected, within the city of Colombo, not to the rule of law, but to the arbitrary and sometimes capricious rule of men.

## **Prohibition of Ragging and Other Forms of Violence in Educational Institutions Bill**

**April 22, 1998**

The phenomenon of ragging in universities and other educational institutions has reached alarming and disturbing proportions. There is agitation amongst parents on the need for effective action. The Supreme Court, in the unreported judgement in *Navaratne v. Chandasena* (1997), accurately summed up our concerns with regard to the phenomenon of ragging. There are several reasons why ragging needs to be distinguished from other forms of student misbehaviour. First, ragging invariably causes pain, suffering, or physical or emotional distress to the victims. Second, it often takes the form of cruel, degrading and humiliating treatment or even the torture of the victim. Third, it often takes place in open and in full defiance of persons in authority, who are afraid to intervene. Fourth, like torture, it is difficult to prove. Victims are afraid to complain, senior students protect the perpetrators, however heinous the offence, and the authorities are reluctant to get involved. Fifth, even where disciplinary proceedings are instituted, the authorities are intimidated into mitigating or cancelling punishment.

The recent death of Peradeniya student Varapragash, and other highly publicised incidents where ragging has resulted in loss of life, have triggered public opinion to demand that the State intervenes. This legislation is a clear response to this demand.

We, however, need to ask ourselves whether the legislation would be effective in deterring the recurrence of widespread and severe incidents of ragging. There has always been a lively debate about the proper role of criminal law and



criminal process. The utilitarian view is that the "proper role of the criminal process is the prevention of anti-social behaviour". The opposing view is the theory of retribution. According to this position, it is legitimate for society to demand authority to punish those who are morally derelict or who unjustifiably inflict injury on others. The Victorian jurist Fitzjames Stephen colourfully summed up the retributive position stating that "the sentence of the law is to the moral sentiment of the public in relation to any offence what a seal is to hot wax." However, we need to justify this legislation not merely on the theory of retribution, but also on pragmatic considerations of its effectiveness.

The legislation not only is directed towards the phenomenon of ragging, but also seeks to cover other forms of violence in educational institutions, including acts of criminal intimidation, hostage-taking, wrongful restraint, unlawful confinement, forcible occupation and damage to property. All of the latter forms of violence are, in any event, offences under the Penal Code. The present law seeks to impose minimum punishments in respect of such offences. We would have been more comfortable if the legislation was more narrowly focused on the more immediate issues relating to ragging.

With regard to the definition of ragging, civil rights groups have been concerned that the definition of ragging is over-broad and that it may interfere with the freedom of expression and otherwise legitimate interactions between students. Some of these concerns have been also examined by the Supreme Court in relation to the permissible grounds of limitations on fundamental rights. Our concerns are as follows. First, whether "causing embarrassment to a student" can include hostile and abusive language as well as gratuitous compliments and expressions of admiration. The Court has ruled that the word "embarrassment" be excluded from the definition. Second, the definition of ragging includes verbal

abuse, which in turn has been defined to include words that are in contempt of the dignity and personality of a student. It has been argued that students, who are new entrants to educational institutions, are entitled to have their dignity and personality respected. The Supreme Court has been apparently influenced by the consideration that such acts could, in any event, be actionable under the civil law as an *actio injuriarum*. However, this is no reason for such actions to be punishable as criminal offences. There should be some added element, such as the use of obscene or degrading language, for verbal abuse to be subject to criminal penalties. I would, therefore, go beyond the Supreme Court and urge a more restrictive definition. Third, the inclusion of members of staff in the definition of ragging is inappropriate. The evil that this legislation is intended to cure is ragging by students. Fourth, the definition of educational institutions seems over-broad and includes not only tertiary institutions, but also schools and "any other institution established for the purpose of providing education, instruction or training". No doubt there have been incidents of ragging in schools, but this has been the exception rather than the norm. Given the scepticism with regard to the enforceability of this legislation, and the practical problems that need to be overcome, I would urge that the legislation should be limited initially to institutions of higher education.

In addition, the punishments contemplated by the Bill for ragging, sexual harassment, and other forms of violence seem problematic. Firstly, the removal of judicial discretion and the imposition of mandatory minimum sentences are per se objectionable. Secondly, the Supreme Court has also commented adversely on the disparities in sentences in respect of offences under this law and under the Penal Code. There is a need for greater internal consistency in respect of sentences if there is to be a coherent sentencing policy. Thirdly, section 9, which imposes mandatory expulsion of the

student, and further bars the student from entering any other educational institution, is excessive as it fails to consider varying forms and degrees of ragging, as well as degrees of complicity of individual offenders.

The Supreme Court has ruled, "mandatory minimum sentences should not be prescribed, and that the imposition of different disabilities and penalties should be left to the trial judge".

With regard to section 10 and the mandatory remand provisions, the courts have again frowned on the erosion of judicial discretion. The Court held that section 10 is inconsistent with the Constitution. The discretion to remand or bail subject to reasonable restrictions should be vested with a judicial officer.

Section 8, which renders liable an administrative staff member who fails to investigate, appears to be drawn from anti-ragging legislation passed in Kerala. If this principle is to be accepted, the definition of administrative staff should include marshals, proctors and others directly concerned with student welfare and discipline. Further, there is no reason why liability should not also be extended to the academic staff, who are in a better position to detect and prevent ragging.



## Condolence Vote for Pieter Keuneman

May 21, 1998

The life and career of Pieter Keuneman, who was born in 1917, were inextricably linked to the momentous events triggered by the October Revolution. Keuneman was the son of an upper class Dutch Burgher family that had achieved distinction in law and the judiciary. He was cast in the Leninist mould. His father, Arthur Keuneman, was a judge of the Supreme Court who provided his son with all the advantages of an elitist education at Royal College and at the University of Cambridge. At Royal, young Keuneman's career is yet to be equalled. He was the editor of the school magazine, President of the Literary Association and captain of the Rugby team. He was awarded prestigious prizes for Latin, Greek and English literature and the Turnour prize for the most outstanding student in the school.

He entered Cambridge in the mid-thirties, during a time influenced by the turbulent events of the inter-war years. As Kumari Jayawardena recently pointed out:

The university has produced dissidents and famous gurus, Bertrand Russell, Witgenstein and G.E. Moore in philosophy; J.B.S. Haldane in Science and Maurice Dobb and Keynes in Economics. The years of economic depression in the early 1930s, the rise of fascism in Germany, the Spanish Civil War and Musolini's aggression in Abyssinia politicised the students.

Keuneman's fellow students in Cambridge included Hedi Simon and Eric Hobswam, Jewish refugees from Vienna, Mohan Kumaramangalam, P. Kandiah and N. Vaidyalingam. The Marxists were active, and captured the Labour and

Socialist societies in Cambridge and the Majlis, which brought together all of the students from South Asia who were active in the struggle against imperialism. Both Pieter Keuneman and Mohan Kumaramangalam were elected, in quick succession, President of the Cambridge Union. Pieter was only the second Sri Lankan to have achieved such a distinction. He became a barrister in 1939, and married Hedi Simon in Ascona, Switzerland in September of that year.

Upon his return to Sri Lanka, he joined the United Socialist Party and, upon its dissolution on July 3, 1943, became a founding member of the Ceylon Communist Party. He worked briefly in the *Ceylon Daily News* as a lead writer, but soon became drawn into active party work and into organising and politicising the harbour workers in Colombo. His wife, Hedi, has provided us with insight into the nature of the political work that engaged Pieter and herself.

Many of those interested in our work were middle-class and English-educated students, teachers and clerks and I was therefore able to address meetings in English. I worked in the reading room and library of the Friends of the Soviet Union, helping with the publication of journals and leaflets and travelling outside Colombo to other centres in order to widen membership. (cited by Kumari Jayawardena, 'Remembering Hedi', volume 4, *Pravada*, 27)

Pieter Keuneman entered Sri Lanka's Parliament in 1947, representing a multi-member constituency in Colombo Central, which he continued to represent, for an unbroken period between 1947 and 1977. He was a refined and thoughtful speaker with a dry sense of humour. He researched a problem thoroughly, and spoke clearly and simply with conviction and effectiveness. His collected speeches and writings were subsequently published by the People's Publishing House. The

Parliamentary correspondent, Ajith Samaranayake, wrote, "while N.M. [Perera] was direct and aggressive, Colvin [R. de Silva] erudite and flamboyant, Pieter was flashy and brilliant in the epigrammatic manner of British university debating".

Keuneman maintained a firm policy on the national question that was based on Leninist principles. He once argued, "From Lenin's teachings on the national question, we are able to evolve correct solutions to our own national question". He added in an article, "it is our opinion that the solution lies in preserving a United Sri Lanka with regional autonomy for the Tamil areas". He made a brilliant contribution to the debate in Parliament on official language legislation in 1956, and boldly and courageously defended the rights of Tamils, who were besieged by violence in 1956.

In the later years of his life, Pieter became more of a bystander than a key political actor. He sustained his interest in books, ideas, music and painting, but was modest, and downplayed his elitist intellectual and cultural upbringing. He also continued to write one of the most informed political columns for the Communist Party magazine, "Forward". Pieter Keuneman died on January 23, 1997 at the age of 80. The last of the generation of left leaders who had a profound intellectual impact on the political evolution of post-independent Sri Lanka, he remained faithful to the cause of the proletariat throughout his life. He was drawn to the left movement not out of a sense of deprivation, but out of genuine intellectual conviction. His remarks on his later leader, S.A. Wickremasinghe, the patriarch of the Communist Party, were equally applicable to him:

He was modest and soft-spoken. His integrity was unassailable and his devotion to his cause inflexible. He never faltered, wavered, deserted or sold out, as some others did. For all his adult life he lived, worked and died under the same red revolutionary hammer and sickle that he first raised in this country at the end of the 1920's.



## **Adjournment Motion on the Report of the Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions**

**June 12, 1998**

Mr. Bacre Waly Ndiaye, Special Rapporteur on extra-judicial, summary and arbitrary executions of the UN Commission on Human Rights visited Sri Lanka from August 24 to September 5, 1997. He submitted a report on this visit to the Commission on March 12, 1998. The purpose of this visit was to assess the situation of the right to life in this country, to investigate allegations of extra-judicial executions and to examine efforts to investigate, prosecute and prevent such occurrences. During this visit, he visited Jaffna, Batticaloa and Ratnapura, and met with a cross-section of the population with wide-ranging opinions, including members of the security forces and representatives of human rights and non-governmental organisations. Mr. Bacre has been recently appointed as the Representative of the High Commissioner for Human Rights in New York.

The sanctity of human life is the most basic of all human values and is the bedrock on which all other civil and political rights are grounded. Sri Lanka has, over the decades, had to experience the flagrant violation of this basic human value through two insurrections and the actions of the State to contain these insurrections. In this House, since 1994, eight Members of Parliament have been cruelly and brutally assassinated. The never-ending cycle of political assassinations has cast a dark shadow on our public life. Most recently, the political assassination of Sarojini Yogeswaran has demoralised us, and we have been overcome with a sense of despair. The on-going

armed confrontation in the North and East has taken a severe toll in terms of the loss of life of both combatants and non-combatants. It was recently conceded that more than four hundred combatants from both sides have died within a few days of the most recent offensive, and that thousands of them have been injured. Even yesterday, reference was made in this House to the death of 25 civilians as a result of aerial bombardment within the theatre of conflict in Vanni. It is in this context that both the report and the recommendations of the Special Rapporteur assume critical importance. It is not clear how the Government of Sri Lanka or the United Nations will follow up on the recommendations made in this report. We wish to express our outrage at the continuing loss of life caused by this cruel and brutal conflict and its consequences. We can no longer surrender to despair. Instead, we must accept that it is within our power to take practical measures to protect the right to life.

The Special Rapporteur has, in his report, acknowledged the cooperation and courtesies that were extended to him by the Government of Sri Lanka. He has, however, noted that neither the President nor the Secretary of Defence was able to meet with him. He has concluded that "extra-judicial and arbitrary executions in Sri Lanka are serious and result from the interaction of multiple factors. The principal cause is the prevailing abuses against the right to life which have taken root in the internal armed conflict". The Special Rapporteur has clearly and boldly drawn attention to the perpetrators, who are both state and non-state actors. He has referred to the armed forces, police, LTTE, armed militant groups and paramilitary organisations with alleged links to the security forces, and home guards, as those responsible for extra-judicial executions. He concludes that "violations have been so numerous, frequent and serious over the years that they could not be dealt with as if they were isolated or individual cases of misbehaviour by middle and low rank officers, without attaching any political responsibility to the civilian and



military hierarchy". He has also concluded, "extra-judicial, summary or arbitrary executions amongst the civilian population have become an almost ubiquitous feature of daily life in Sri Lanka". Amongst the other conclusions that he has reached are the following.

Firstly, certain laws and regulations allow impunity to persist. Secondly, he is concerned by the paralysis of state institutions, particularly the judiciary, in the areas of armed conflict. Thirdly, there is an alarming discrepancy between sensitivity at the top level of the armed forces and practices in the field. Fourthly, without a peaceful resolution of the conflict, there can be no effective and durable answer to the protection of the right to life.

Having regard to these conclusions, the Special Rapporteur has made several specific and general recommendations. First, he urges all the parties to the armed conflict to seriously seek and negotiate a peaceful solution to the conflict. Second, he calls for full implementation of the declarations on the rights of minorities adopted unanimously by the United Nations. Third, the security forces should be reformed and transformed, so that all communities can have equal access to them. Fourth, all elements of the Police who have been involved in summary executions, massacres, or any other violations of human rights should be excluded from the force. Fifth, effective steps should be taken to disarm and dismantle armed groups, especially the home guards. Similarly, there should be strict control of weapons in the possession of civilians. Sixth, impartial investigations into all allegations of extra-judicial, summary or arbitrary executions and torture should be conducted; responsible persons should be prosecuted and victims should be compensated. Seventh, the Government should act in accordance with the Declaration of the Basic Principles of Justice for Victims of Crimes and Abuse of Power. Eighth, "counter insurgency operations" should be carried out with full respect for the rights of civilian populations. Under no circumstances should the army use



heavy weapons against civilian populations, as has been the case on several occasions. Ninth, the death penalty should be abolished, and the Human Rights Commission should be strengthened. Tenth, the Government of Sri Lanka should be urged to sign Protocol II additional to the Geneva Convention of August 12, 1949.

We urge the Government and all groups engaged in the armed conflict to give full effect to these recommendations and to restore respect for the sanctity of human life on this troubled island.

## Emergency Debate

July 8, 1998

The humanitarian issues in the war-affected areas continue to give rise to the most serious concern. The United Nations Committee on Economic, Social and Cultural Rights recently reviewed the country report on Sri Lanka and, on May 13, 1998, made the following observations:

The Committee expresses its grave concerns regarding the situation of an estimated 800,000 displaced persons, many of whom have been living in temporary shelters for the past 15 years, because of the armed conflict and who lack basic sanitation, education, food, clothing and health care. We are alarmed by the results of an independent survey estimating the incidence of under-nourishment of women and children living in these shelters to be as high as 70 per cent, and by reports in this regard that food assistance is being deliberately held back by the government as against Tamil fighters and refugees.

The recommendations of the Committee in this regard are also important. Firstly, the committee recommended the establishment of governmental mechanisms to facilitate the flow of humanitarian assistance, and to strictly monitor and ensure that the intended recipients actually receive the assistance. Secondly, the Committee urged the Government to seek further international assistance in its efforts to provide permanent housing to displaced persons who have been living in temporary shelters. Thirdly, it urged the Government to reassess the food assistance program already in place in affected areas, with a view to improving the nutritional standards of food, particularly to children, pregnant women and nursing mothers.

In this regard, the situation report prepared by the NGO Consortium of Humanitarian Agencies also presents a dismal picture with regard to the conditions in Vavuniya and Mullaitivu. With regard to Mullaitivu, the report refers to the suspension of poor relief stamps and the non-implementation of a drought relief scheme. Displaced families were issued only half rations, which were sufficient for only ten days of a month. There is a shortage of vital drugs such as anti-rabies vaccine, anti-venom serum, chloroquine, premaquite and toxide. There was also a severe shortage of cash in the banks, which affected even routine activities such as the payment of salaries, pensions, and the local purchase of paddy. I have also received representations with regard to the many problems and difficulties faced by the Jaffna Teaching Hospital. The Consortium Situation Report makes it clear that the Hospital has a shortage of medicine and medical accessories such as syringes and x-ray film. In this context, the Defence Ministry continues to place impediments on the work of both local and international relief agencies, who are frustrated by the delays and obstructions in the processing of the most routine requests. These restrictions are morally indefensible.

Within Jaffna the situation relating to landmines is quite alarming. The most recent UTHR(J) Special Report No. 10, issued on April 9, 1998, refers to a report that estimated that there were 10 thousand landmines buried in Jaffna, and that there were 10 mine incidents every month, most of which appear to be treated in the Jaffna Teaching Hospital. I believe that Eduardo Marino is in Colombo to undertake an in-depth study of this problem. We need to give him our full assistance to complete his mission and to share with us his conclusions and recommendations.

Although we differ from the EPDP in respect of our ideology and our basic approach to the national question, we were immensely distressed by the attack on its leader, Douglas Devananda, at Kalutara, as we abhor all forms of politically motivated violence. The cruel cycle of political violence must



end if there is to be minimum political space for competitive democratic politics.

We hope that this incident will not detract from the real problems faced by the detainees in Kalutara, who have been incarcerated for unacceptably long periods without charges and without trial. The restrictions on family visits and the lack of access to basic necessities have compounded the sense of frustration and resentment of these prisoners. No doubt, several measures have been taken by the special unit in the Attorney General's Department to alleviate these problems and to accelerate the process of filing indictments or releasing detainees. But these efforts need to be redoubled and the procedural and bureaucratic hurdles overcome if we are to avert further unrest in the Kalutara prison.

In conclusion, we need to be mindful of the fact that these debates and even this supreme legislative body have no meaning unless we are able to frame solutions to the many problems that confront our society. The humanitarian situation in war-affected areas is one that continues to cause us immense concern. Humanitarian and human rights issues are of the utmost importance because they bring to the surface issues of human suffering and human dignity. These issues are, in turn, inextricably linked to the national question. The continued failure to resolve it would lead to an irretrievable loss of faith in the political process. I would commend the observations of the UN Committee on Economic, Social and Cultural Rights.

The Committee is fully aware of the human and material costs of armed conflict in Sri Lanka and the deleterious effects this has on economic, social and cultural rights of every person living in Sri Lanka. In the hope of a just, speedy, and peaceful solution to the war, the Committee urges the government as a matter of the highest priority to negotiate the acceptance by all concerned of its proposed peace plan involving devolution of authority to regional governments.

## **Adjournment Debate on the Allegations of Mass Graves in Chemmani**

**July 22, 1998**

The Human Rights Commission has received representations from M. Sivasithamparam and others to investigate the possibility of mass graves in Chemmani. News reports indicate that the Commission is considering the possibility of such an investigation. The Commission is empowered by the Act to investigate all fundamental rights violations (Section 10b). Arbitrary and extra-judicial executions violate Article 13(4) of the Constitution, and thus there can be no doubt that the Commission would be acting within its jurisdiction if it undertakes an inquiry into these allegations.

The question arises as to whether the Commission has adequate investigative powers to undertake an exercise of this complexity and importance. Section 18 makes it clear that the Commission can procure and receive all written and oral evidence and examine all persons as the Commission may think necessary. Thus, the Commission is empowered to question and examine Somaratne Rajapakse, the first accused in the Krishanti Kumaraswamy case, in regard to these matters. Section 18(1)(c) also enables the Commission to require any person to produce "any document, or other thing in his possession". These powers seem very wide, and, when read with section 11(H), give the Commission expansive authority with regard to the conduct of any investigation.

The physical investigation and subsequent excavations of sites are matters of such technical importance and complexity that both domestic and inter-governmental organisations have recommended procedures that must be followed in conducting such excavations. The Civil Rights

Movement, in a statement issued on the 2nd July, 1998, by its Secretary Suriya Wickremasinghe, pointed out that:

the excavation of a mass burial site where many bodies may be packed into one place, poses technical problems much greater than the exhumation of individual graves. An enormous amount of information can be revealed about how people died, who they were, and how they came to be there provided the execution is done with the necessary skills, avoiding the dangers of irreversible destruction of vital evidence in the process.

Similar concerns were expressed by the United Nations in its Model Protocol for the disinterment and analysis of skeletal remains. The UN warned that:

A burial recovery should be handled with the same exacting care given to a crime-scene search. Efforts should be co-ordinated between the principal investigator and the consulting physical anthropologist or archaeologist. Human remains are frequently exhumed by law enforcement officers or cemetery workers, unskilled in the techniques of forensic anthropology. Valuable information may be lost in this manner and false information is sometimes generated. Disinterment by untrained persons should be prohibited. The consulting anthropologist should be present to conduct or supervise the disinterment.

There have been significant strides in the field of forensic anthropology, and a large body of knowledge and expertise has developed as a result of the excavations of mass burial



sites in Argentina, El Salvador, Guatemala, Iraq, the former Yugoslavia and Ethiopia. There are also specialist forensic anthropologists who are able to assist in the disinterment procedures and in training local personnel. Organisations that provide special expertise in this regard include Physicians for Human Rights and the Committee of Concerned Scientists and Physicians.

With regard to procedures, there are three phases in an exhumation and investigation. In the present case, immediate steps need to be taken to secure the site, record the statements of the concerned accused in the Krishanthi Kumarasamy case, and solicit their cooperation in identifying the precise sites. In addition, the UN Protocol envisages three steps in the exhumation process. The first involves the collection of antemortem data. This primarily involves interviews with relatives and friends of the victims to obtain information about the last time the victims were seen and the collection of witness accounts from the people who saw the deceased prior to death and people who saw the victims die. The second phase involves the archaeological phase. This consists of finding and excavating the grave site. The protocol includes hints of how to locate the actual grave site. Disinterment by untrained persons should be prohibited, for fear of losing valuable information. Photographs should be taken of the work area from the same perspective each day before work begins and once it is finished, to document any disturbance not related to official procedure. Particular attention must be paid to the spatial evidence. An adequate numbering system must be devised and the site must be mapped. The remains should first be "pedestaled", which is a process of excavating around the remains so as to ensure full exposure of the remains without disturbing them, and then photographed and recorded in writing while they are in situ before being moved. The laboratory phase, which involves the analysis of the skeletal remains, is the third phase. It should include x-rays of all the skeletal

remains and special attention should be paid to fractures, developmental anomalies and the effects of surgery. At this stage it may be possible to determine the age, sex, race and stature of the skeleton. Evidence of pathological change, trauma and developmental anomalies should aid identification. Some laboratories may also test DNA.

We also need to refer to concerns with regard to the investigation of disappearances that have taken place in Jaffna. Relatives of the disappeared were given assurances in December, 1997 that a commission would be appointed. Six months have lapsed and no steps have been taken in this regard. A Board of Inquiry, appointed by the Ministry of Defence, reportedly resolved a small portion of the cases. The report of this Board must be tabled in the House. In any event, such a Board of Inquiry is not a satisfactory alternative. Also, the CRM has argued that it may not be appropriate to expand the terms of reference of the Disappearances Commission chaired by Manouri Muttetuwegama.

The rule of law must be upheld independent of the identity of the perpetrator or victim. The Krishanti Kumaraswamy case is an important watershed in ensuring accountability for gross violations of human rights. The public has the right to a full, impartial and professional investigation into the alleged graves in Chemmani. We urge the Government to provide whatever assistance the Human Rights Commission may require to conduct such an investigation.

## **Adjournment Motion on the Food Situation in the Vanni**

**August 20, 1998**

This adjournment motion assumes critical importance in view of the serious humanitarian and governance crisis that has been posed by the decision to cut back food rations to the war-affected areas in the North-East. This decision impacts more seriously on the Mullaitivu and Kilinochchi districts. In the Mullaitivu districts, there were 39,000 families receiving dry rations. The recent decision to cut rations would, in effect, mean that only 13,000 families would receive relief. The Government officials in the Mullaitivu district are unable to choose between recipients, and therefore the entire distribution system has come to a standstill. Public protests in the Mullaitivu district have resulted in the paralysis of public administration. No officials have been able to function since the beginning of the month. Since the food rations were being purchased from local farmers in the Mullaitivu district, purchase of paddy has also been suspended. This has further compounded the problems and difficulties faced by paddy farmers, as they are unable to transport paddy to any other area. Similar difficulties exist in the Kilinochchi district, where dry rations have been cut by about 50 per cent, the provision of relief has been suspended and public protest has brought the entire administration to a standstill. Mannar district, according to information received, is less affected, due to the settlement of about 5,000 families.

The United Nations Committee on Economic, Social and Cultural Rights, which reviewed the country report on Sri Lanka on May 13, 1998, expressed grave concern with regard to the situation of displaced persons, many of whom have been living under temporary shelters due to the armed conflict and who lack basic sanitation, education, and health care. The



committee referred to an independent survey that estimated that the incidence of under-nourishment of women and children living in those shelters to be as high as 70 per cent. The Committee further expressed concern with regard to reports of the deliberate reduction of food assistance to displaced persons.

The Committee urged the Government to facilitate the free flow of humanitarian assistance and to improve the nutritional standards of food, particularly to children, pregnant women and nursing mothers. Members of this House have repeatedly drawn attention to the dismal conditions of the displaced persons in the Vanni and Mullaitivu with regard to access to food rations, medicine and other basic necessities.

It is a matter of urgent and public importance that this decision be reversed, and that immediate measures are taken to implement the recommendations of the UN Committee so as to ensure full and adequate relief and assistance to displaced persons.

## **Budget Debate**

### **November 16, 1998**

In the Westminster model, Parliamentary control over finance has often been regarded as a principle of the highest constitutional importance. In Sri Lanka, the presentation of expenditure estimates, the Appropriations Act, the new fiscal proposals and the committee stage debate form the elements of what we call the budget debate. It is often regarded as the high point in the annual legislative business of Parliament, and is routinely characterised by drama, the clash of ideologies and competing social and economic visions. Sadly, the budget debate is being progressively stripped of the drama and excitement which ordinarily accompanied this event. It is increasingly becoming a formal ritual akin to the presentation of the annual report at the annual meeting of a large corporation - an event of diminishing political content or of constitutional importance. Budgetary estimates are no longer reliable; inevitably, revenue projections and expenditures have been significantly modified. The continuing recourse to supplementary estimates, often for defence purposes, adds to the loss of credibility of the budget as an exercise in projecting the budgetary deficit and designing fiscal policy measures to bridge this deficit.

One aspect of the budgetary process which remains relevant is that it provides us with an opportunity to reflect on the state of the national economy. I have often, in this regard, consulted and frequently quoted the Annual Report on the State of the Economy published by the Institute of Policy Studies (IPS), headed by the economist, Dr. Saman Kelegama.

The 1998 IPS Report begins with the following paragraph:

Sri Lanka recorded a satisfactory economic performance in 1997 and it seems to have escaped almost unscathed by the collapse in the East Asian economy. Not only did it avoid contagion; there was no panic and no crash; but the growth rate of 6.4% was well above 3.8% of the previously drought affected year. The fiscal deficit narrowed significantly, total public debt (as a share of GDP) fell, inflation and interest rates came down, national savings increased, current account and the external debt situation improved, and a healthy level of foreign reserves was maintained. By and large this good macro-economic performance was sustained in the first half of 1998.

A similar optimistic assessment was made in the budget speech by Prof. G.L. Peiris, when he referred to higher growth, improved fiscal discipline, low inflation and lower unemployment.

Even if the above assessment of the macro-economic fundamentals is sound, the first question that we need to ask ourselves is how realistic the budgetary exercise is in its estimate of revenues and expenditure. One of the most important fiscal policy measures that has been introduced by the Government has been the replacement of the BTT by GST. There were three bands of BTT which were replaced by a single GST rate of 12.5 per cent. Experts estimated that the rate would have to be 16 per cent if the GST was to generate the same revenue that was recovered through the imposition of the BTT. Clearly, as it has been pointed out by the Institute of Policy Studies, there would be a revenue shortfall as a consequence of this fiscal measure. During the last budget, proceeds from privatisation were expected to make a significant contribution towards the reduction of the budgetary



deficit, but during the past four-year period, the amount generated by the divestiture of public enterprises has been significantly less than the projected figures. Nonetheless in 1997, privatisation proceeds enabled the government of Sri Lanka to retire approximately US dollars 170 million of domestic debt. The IPS, in its report, has pointed out that with "the privatisation proceeds waning (with only a further 10 per cent stake in the Sri Lanka Telecom on the pipeline for privatisation this year) the government will be hard pressed to find new sources of revenue". However, declines in the international price of petroleum should result in significant revenues for the Sri Lankan Petroleum Corporation. The international price of crude oil has dropped from a high of US \$27 per barrel to the present price of US \$12 per barrel. It is estimated that the Petroleum Corporation will generate a surplus of approximately eight billion rupees, of which about four billion rupees would need to be utilised to settle the corporate debt of the corporation. The balance would need to be transferred to the Government to mitigate the loss of revenue. It is similarly anticipated that declines in the prices of sugar and wheat will also result in some expenditure reductions. These reductions in revenue are reflected in the cut in capital investment, and consequently the public investment in infrastructure.

One of the criticisms of the budget relates to the specific proposals with regard to new fiscal measures. A critical issue relates to employment generation. A large number of the large infrastructure projects, particularly in the areas of highways, ports, and airport development, which could have resulted in a construction boom and provided additional employment, have not taken off the ground. The problem of unemployed graduates is reaching an acute proportion, with demonstrations and public protests taking place in all parts of the country. The attempt to address the problem of unemployed graduates should be linked to renewed efforts to improve their skills and the marketability of these skills. Those graduates who have

been educated in the Sinhala and Tamil medium, with little or no knowledge of English, appear to have no realistic prospects of being absorbed into the private sector, where the language of commerce remains English. Budgetary proposals that refer to skills development programmes and an infrastructure technology training centre give us little cause for optimism that there would be a significant dent into this problem.

One of the disappointments of economic liberalisation has been the very limited flow of direct foreign investment into the country. In Sri Lanka, the dominant source of foreign direct investment has been East Asia. South Korea constituted 30 per cent of the investment, Hong Kong 12 per cent and Japan 12 per cent. There were also expectations that there would be a further flow of investment from newly industrialised economies such as Malaysia. The East Asian crisis, arising out of the drastic depreciation of exchange rates and the dramatic fall in the stock market, have diminished the prospects of additional flows of foreign capital from these countries. Sri Lanka would have had the opportunity to attract investments from foreign investors who are discouraged by the political and economic trends in East Asia. Here again, our own political conditions, arising out of the continuation and the intensification of the war, make it less likely that there would be an increase in the flow of such investments. Historically, foreign investments have been to low-skill, labour-intensive, assembly-type products. The prospects of attracting investments into more technologically advanced light manufacturing industries does not appear to be strong. In addition to foreign investment, Sri Lanka has been a principal recipient of overseas development assistance (ODA) from Japan. Japanese ODA constituted almost 30 per cent of the total assistance received by Sri Lanka by way of grants and concessionary loans. The recessionary conditions in Japan have resulted in a 10 per cent cut in the ODA budget, which is likely to affect Sri Lanka. Similarly, economic difficulties faced by South Korea make it less likely that South Korea



would, in the near future, be a significant source of bilateral assistance.

With regard to poverty alleviation, the Samurdhi programme replaced Janasaviya as the poverty alleviation programme in 1995. It involves income support, micro-finance programmes and rural work programmes designed to relieve rural unemployment. But there has been genuine and serious concerns with regard to the effectiveness of the Samurdhi programme in meeting the needs of the poor. The original objective was to target the welfare component of the project to 18 districts. This excluded several of the districts in the North-East. We have, on numerous occasions, drawn attention to the discriminatory intent and impact of this aspect of the programme. Even within the 18 districts, it was originally targeted at 1.2 million households, but in fact the programme has been expanded to cover in excess of 2 million households. This, according to the IPS, is more than twice the number of households who are estimated to be poor in Sri Lanka. Further, the IPS report states, "nearly 60 per cent of the population is currently receiving consumption grants while the estimated poverty in the country is around 30 per cent". This consumption grant absorbs nearly 80 per cent of the total expenditure under the Samurdhi programme. On the other hand, while the grant scheme seems to assist people, it is said to have only a marginal impact on consumption levels as the basket of goods that can be bought with it meets roughly 10 per cent of the monthly consumption expenditure. This is said to be insufficient to raise significantly the nutritional standards of beneficiary households. There are also inefficiencies in distribution, poor quality goods, under-weighting and other problems which seem to negate the objective of raising the nutritional standards of the poor.

Similarly, the IPS has pointed out that the insurance programme designed to reduce the vulnerability of the poor



in contingency situations such as sickness and death has not proved to be successful. The report states "that there is little evidence that this scheme achieves this with any degree of success", and it is accordingly urged that such resources should be redirected towards rural electrification and rural irrigation. Similarly, there is criticism that the social development programmes designed to improve the conditions of alcohol and drug addicts are also proving to be ineffective due to the weak training provided to Samurdhi managers. It is therefore urgent and necessary to undertake a fundamental reappraisal of the goals, objectives and effectiveness of the Samurdhi programmes, which continue to absorb a large component of the social welfare and the poverty alleviation budget. In 1996 alone, the programme, according to the IPS, absorbed Rs. 10 billion or nearly 4 per cent of the government revenue. This amounts to about 66 per cent of welfare expenditures. In 1996 the expenditure of health and education amounted to Rs. 12 billion and Rs. 20 billion respectively. The expenditure of Rs. 1 billion on programme administration has also called into question the sustainability of this programme.

Our basic criticism therefore is that the budgetary proposals do not adequately address the political economy fundamentals which constrain capital investment flows, and fail to make any meaningful efforts towards addressing unemployment and poverty. At the end of a fourth year, we expect the Government to firmly come to grips with the basic problems that affect the economy and the political stability of the nation. This clearly must relate to the efforts to bring about an end to the armed confrontation in the North-East and to use whatever means within its command, including the goodwill of the international community, to bring an end to the human suffering and destitution. Neither the budget speech nor the proposals give us a picture of the incalculable suffering that has overtaken the displaced persons and other civilians

in the war-affected areas in the Wanni and other parts of the North-East.

The reality is that we have two economies symbolising the sharp disparities and inequities of our society. The economy of the South is the economy that, despite the indirect impact of the war, has sustained growth of 6.4 per cent in 1997, and is projected to grow by five per cent in 1998. The economy of the North, on the other hand, is the economy of poverty and of devastation facing the direct and immediate consequences of the war. In the economy of the North about 90 per cent of the people in the districts of Kilinochchi, Mannar, and Mullaitivu live below the poverty line, and are almost exclusively dependent on relief. In June of this year, food assistance was cut by 57 per cent by the Commissioner General of Essential Services, which has added to the despair of persons who have encountered multiple displacements. In Jaffna 416,000 persons were receiving food and aid according to figures released in August by the British Refugee Council. Jaffna NGOs have complained that unemployment within the Peninsula is at 60 per cent, "and 30 per cent of the population lives on one meal a day". Jaffna's Education Department says that 90 per cent of all school buildings are in need of repairs. Over 104,300 buildings, including 13,000 business establishments, within Jaffna have been damaged by the war. We cannot therefore accept a developmental strategy or policy which is predicated on the continuation of the appalling conditions of these persons, where levels of poverty and deprivation are two to three times the national average. There is no attempt in the budget to come to terms with this appalling disparity in the socio-economic conditions and living standards of people in different parts of the country. This is the fundamental reason which compels us to oppose this budget so that, by our action, there can be an agonising reappraisal of the politico-economic strategy which is implicit in the budgetary proposals.

Anna Akhmatova, the brilliant Russian poet, wrote in 1919:

Why is this age worse than earlier ages?  
In a stupor of grief and dread  
have we not fingered the foulest wounds  
and left them unhealed by our hands?

Again in 1916 she anticipated our present predicament when she wrote:

All has been taken away: strength and love.  
My body, cast into an unloved city...  
And only conscience, more terribly each day  
rages, demanding vast tribute.  
For answer I hide my face in my hands...  
but I have run out of tears and excuses.

The IPS report ends with the observation that:

there is every possibility that [Sri Lanka] will be swept along by events just like other countries - that growth rates will have to be revised downwards, that unemployment will increase, that the poor will be hit and the fabric of Sri Lankan society will be stretched even further than it is at present.



## **Votes on the Ministry of Ethnic Affairs and National Integration**

**November 27, 1998**

There can be little disagreement that Sri Lanka presents a contemporary example of the complete mismanagement of inter-ethnic relations and of the failure to build the foundations of a multi-ethnic plural society. All communities are continuing to experience the tragic consequences of this failure and the consequent ethnic fratricide, collective violence and continuing ethnic antagonisms. It is in this context that the Ministry of Ethnic Affairs and National Integration assumes importance, in its efforts to put into place policies and programmes intended to promote tolerance, accommodation and parity of respect for identities, cultures and traditions of the distinct ethnic formations in Sri Lanka. In particular, the National Integration Project Unit, and its efforts to engage in public education programmes and to advocate the de-communalisation of the structures of the State, must be noted. Several important studies have been undertaken on ethnic coexistence. I would like to particularly commend the recommendations of the report entitled "Sri Lanka, A Bitter Harvest" by Elizabeth Nissam, undertaken for the Minority Rights Group. One of the important aspects of public policy, which unfortunately receives inadequate attention, relates to equal opportunity with regard to public employment. This principle is a bedrock of our fundamental rights regime, which mandates that no person may be discriminated against on the ground of ethnicity, religion, gender or political opinion. But the equal opportunity principle does not allow us to merely assert non-discrimination as a formal doctrine, when in practice there are severe distortions and imbalances in ethnic representation in the public service. I submitted to the House an analysis based on official

statistics that clearly demonstrate that Tamil and Muslim representation in public service was well below their proportions and was continuing to decline. In 1990, all the Tamils and Muslims constitute almost 25 per cent of the population, they have 7.9 per cent representation in the public service. According to the figures made available by the Chairman of the Official Languages Commission, of 543 offices surveyed, 437 did not have a single Tamil-speaking officer. This means that no staff officer, no clerk, and no peon would be able to speak Tamil. There are 488 government offices that have no bilingual facilities. Previous governments acknowledged the seriousness of this problem, but there has been uncertainty with regard to the Public Administration Circulars that have been issued with regard to recruitment according to ethnic quotas. This was clearly not intended to be a permanent policy, but was intended to ensure that certain minimum thresholds are achieved with regard to state recruitment.

There has, however, been great disappointment that this policy is not being followed in recent recruitments despite assurances to the contrary. Equal opportunity policy must mean that there must be a conscious effort to ensure that employment reflects the diversity of Sri Lanka. Each governmental department and public corporation must periodically review the diversity profiles of its employees and try to set diversity objectives which it must endeavour to achieve. Such policy is necessary not only for the more effective implementation of language policies, but also to ensure integration. This is how equality is achieved - not merely in theory but as a practical outcome of public policy.

**Adjournment Debate  
on the Peace Delegation to the North  
by the Inter-Religious Alliance  
February 24, 1999**

There is a great deal of disillusionment and despair at the continuation, since April 1995, of the armed confrontation in the North-East and the consequent human suffering resulting from displacement, death, injury and destruction. There can be no other task more sacred and critical to the well-being of persons of all communities than to bring about a peaceful and enduring solution to this conflict. But we need to go beyond rhetoric to practical action. There is a long and bitter legacy of distrust between the two sides. The events of recent years have sadly contributed towards the intensification of this distrust. The decision of one side to renew hostilities in April 1995 and the several military campaigns by the other side to intensify the fighting have further compounded the problem. In no other phase of our history has the armed confrontation been so cruel and brutal. And yet, more and more, people despair at our collective inability to respond imaginatively or with a sense of urgency to the magnitude and intensity of this crisis. They have lost faith in politics and the political process, which is captive to an acrimonious and opportunistic form of adversarial democracy. We must all take responsibility for this predicament.

It is in this context that recent civil society initiatives assume importance. Civil society groups for decades have struggled to uphold the sanctity of human life and to campaign for peace and reconciliation. Some have focused on human rights issues, while others have worked on the humanitarian consequences of the conflict, including relief and rehabilitation. Sometimes these organizations have had to



work against the tide of public opinion, and have had to take lonely and unpopular positions in upholding universal human values. But increasingly, the tide of public opinion is beginning to shift visibly. We need to seize the moment with courage and determination.

There are three recent initiatives that need to be mentioned. The first is the effort to focus on the problems of border villages through a non-governmental commission. These are areas that are proximate to the borders of the North-East and the people in these areas more directly face the consequences of war. The Commission documented the experiences of people living in border areas and provided a forum for them to articulate their quest for peace. The second initiative is the business community's effort to forge a consensus between the PA and the UNP with regard to the substantive political issues necessary for the resolution of the conflict. This initiative is in its early stage and we must encourage the major political parties to engage seriously in this process. The third is the initiative by the Inter-Religious Alliance to undertake a mission of peace and goodwill to the war-affected areas of the North, led by the scholar-monk Venerable Vajira. The delegation was warmly received by displaced civilians at Madhu and by the Bishop of Mannar. The delegation has also reported on what it has described as frank and cordial discussions with representatives of the LTTE on the causes and consequences of the conflict in the North-East. This is a significant and constructive initiative by religious leaders, including some of the most eminent and widely respected members of the Buddhist Sangha and the Christian clergy, to undertake a mission of peace and goodwill. It has helped to create an environment that is more conducive to the objective and detached consideration of the political issues that divide the major communities. It is, however, important for us to ensure that the initiative does not become an isolated event that is quickly to be overcome by other events. We also do not, in any way, wish to be unmindful of

the complexities of this process. There will be setbacks and reversals as in other peace processes in, for example, the Middle East, Northern Ireland, Southern Africa and Central Europe. If the process is to succeed, we need to be determined and unwavering in our resolve.

We urge the State and all concerned groups to cooperate and act with sincerity, determination and a sense of urgency. We welcome the meeting to be held at the end of this week between the President and the Leader of the Opposition to discuss issues relating to the conduct of free and fair elections. The questions of democracy, peace and reconciliation are inextricably linked. We would urge that the agenda for this discussion include the need for a common approach between the two major parties to revive political negotiations. The common approach must include a negotiating framework and agreement on the substantive issues relating to power sharing.

# **Suppression of Terrorist Bombings Bill**

**March 1, 1999**

This legislation is in pursuance to the International Convention for the Suppression of Terrorist Bombings, which was adopted by the United Nations on December 15, 1997. The objective of the Convention is to encourage states to develop a comprehensive legal framework relating to the suppression of terrorist bombing.

Any person who abhors violence must unequivocally condemn incidents of bombing, which cause loss of life and injury to ordinary citizens. Modern technology relating to explosives, and free access to explosive devices, have aggravated the risk to civilians. However, from a human rights perspective, there are many aspects of the Convention and the Bill that give rise to concern. Firstly, while the Convention is directed towards the methods, practices and acts of violence of non-state actors, it should be noted that similar consequences to civilians have resulted from the action of states and the activities of the military forces of states. The preamble to the Convention states that government military forces are governed by the rules of international law. The Convention does not condone or make lawful otherwise unlawful acts by such forces or preclude prosecution under other laws for such abuses. This is an important principle that must be kept in mind if we are to address all forms of violence, whether they are by state actors or by non-state actors. The rule of law cannot be upheld if impunity is accorded to violations by state actors, while more vigorous measures are effected to deal with violations by non-state actors.

The present bill primarily focuses on issues relating to extradition. Issues of extradition challenge the basic premise of criminal law, which is grounded on the principle of territoriality. However, there has been an effort to evolve



general principles relating to universal jurisdiction to define and prescribe punishment for certain offences that are recognised by the Community of Nations to be of universal concern. These offences include piracy, the slave trade, attacks on or the hijacking of aircraft, genocide, and war crimes, where none of the grounds of traditional jurisdiction are present. The objective of the International Convention was to expand the general principle and include "terrorist bombings" within the category of such offences.

One of the difficult questions in framing legislation of this nature relates to the definition of what constitutes an offence within the meaning of both the Bill and the International Convention. This definition is dealt with under Section 3 of the proposed Bill, which refers to terrorist bombings as unlawful and intentional detonations of explosive or lethal devices in places of public use. The offence also includes, under Section 3(2a), attempting to commit the offence, aiding and abetting the commission of the offence, and conspiracy to commit the offence. When similar issues arose in the United Kingdom, Amnesty International issued a statement of concern that such definitions could be over-broad. Section 5 of the Bill also outlines the rights of a non-citizen who is arrested for an offence in Sri Lanka under the Law. The Convention, in this regard, specifically acknowledges the duty of a state party to invite the International Committee of the Red Cross to communicate with and visit the alleged offender. This is a significant safeguard to which, unfortunately, there is no reference in the Bill.

An important principle relating to extradition is that offenders who commit political crimes or religious offences are not subject to extradition. The principle of non-extradition for political offences is an important principle which crystallised in the nineteenth century, and is based on the right to shelter political refugees. A political crime would be inferred where it is evident that a fugitive is to be punished for his politics rather than the offence itself. The definition

of a political crime has been extended by case law to include offences committed in association with a political objective or with a view to avoiding political persecution or prosecution, notwithstanding the absence of any intention to overthrow an established government.

Section 10 of the Bill removes a fundamental safeguard in the laws relating to extradition by excluding political crimes from the category of non-extraditable offences. In effect, it precludes the courts from inquiring into whether the offence is of a political character, an offence connected with a political offence, or an offence inspired by political motives. There are similar provisions in Article 11 of the Convention. In Sri Lanka, this provision is particularly troubling since Extradition Law No. 8 of 1977 explicitly excludes political offences from the category of offences to which the law would be applicable. Section 7 of the Law excludes extradition in respect of offences of a political character, or where the real purpose of extradition is to punish a person on account of his race, religion, nationality or political opinion. The removal of the safeguard relating to political crimes in this Bill would be a retrograde provision, and may lead to abuse and prosecution of persons for reasons of political opinion as opposed to criminal activity. Article 14 of the Convention also provides that any person who is taken into custody, or against whom any other measures are taken, shall be guaranteed "fair treatment including enjoyment of all rights and guarantees in conformity with domestic law and the applicable provisions of international law including the international law of human rights". The absence of similar safeguards in the Bill leads one to conclude that the Bill, while embodying many of the coercive provisions in the Convention, has omitted some of its important humanitarian and human right safeguards.

I would also wish that the Government would show equal enthusiasm for the implementation of the Ottawa Anti-Land Mines Treaty, which has been signed by 133 countries, and ratified and brought into force by 63. Sri Lanka has not

become a signatory of this important Convention. Similarly, while 120 countries endorsed the establishment of an International Criminal Court to prosecute individuals accused of genocide, war crimes and crimes against humanity, Sri Lanka is yet to become a signatory of the treaty establishing this Court. The establishment of such a Court would be a "great step forward in the march towards universal human rights and the rule of law". Human rights groups have also deplored the failure of the Government to adhere to the additional Protocols, Part I and II, of the Geneva Convention on the Victims of Armed Conflicts.



## Emergency Debate

May 6, 1999

We need to draw attention to the difficulties that arise with regard to the transportation of civilians and goods to and from Jaffna, and the need to take urgent remedial action in this regard. There are, at present, about 4,000 passengers in Trincomalee awaiting transportation to Jaffna. Similarly, there are 1,500 internally displaced persons in Vavuniya, who have registered and are awaiting transportation to Trincomalee and to Kankesanthurai. In addition, there are 1,016 internally displaced persons awaiting transportation from Mannar. There is an urgent and immediate need to clear this backlog and to bring relief to the civilians and internally displaced persons that are suffering hardship. The International Committee of the Red Cross has been assisting in the transportation of patients and those in need of urgent medical attention. I understand that the ICRC would be willing to be of assistance in facilitating the transportation of civilians provided the vessels are able to meet international safety standards with regard to seaworthiness.

I would strongly urge all parties to the conflict to accept the inviolability of the rights of civilians to safe and secure transportation to and from Jaffna. This is a fundamental principle of humanitarian law during times of internal conflicts. This also means that the integrity of civilian transportation should not be compromised by seeking to mix civilians and combatants. The ICRC and UNHCR should be in a position to monitor this process and thereby to command the confidence of all parties that this principle is being strictly enforced. There is also need for urgent and immediate remedial action to ensure that this backlog of almost 6,500 persons languishing without transportation is resolved within a defined time frame of three months. There is a need for some agency

of the Government, either within the Ministry of Ports and Rehabilitation or some other civilian authorities, to take responsibility for this matter.

There is also a need for greater transparency with regard to the decisions that are taken on the transportation of goods to and from Jaffna. There must be fair competition between vessel owners to prevent exploitative and anti-competitive practices. The vessels that are presently licensed to provide this transportation charge a freight rate ranging from US \$46 to US \$65 per metric ton plus GST. The freight rate from Sri Lanka to Bombay ranges from US \$28 per metric ton to US \$50. These charges are not competitive and have contributed to a significant escalation of prices charged on essential commodities within Jaffna, with items like cement being sold at Rs. 650/- per bag, more than double the price in Colombo. There are a number of other vessels such as MV Ocean Success, MV Induruwa Valley, MV City of Liverpool, and MV Khalid that are awaiting clearances from the Commissioner-General of Essential Services and the Ministry of Defence. There is a great deal of frustration at the arbitrariness, delay and discriminatory nature of this process of approval. I would urge that the criteria for approvals and decisions be made transparent and that Parliament be periodically informed of these decisions.

The final matter relates to the absence of adequate facilities for civilian transportation by air after the terrible tragedy relating to the Lion Air flight which resulted in the presumed death of 43 passengers and crew. We understand that the Director of Civil Aviation has undertaken an investigation and prepared a report on this tragedy. This report must be tabled in the House and we must be given a full opportunity to debate the circumstances relating to this tragedy. At present, the airforce is operating a service from Katunayake to Palaly, on which civilians are also accommodated. There needs to be a clear, open and transparent policy on this matter. The paramount consideration should be

the safety and security of the civilians, and both sides of the conflict must respect this. Here again, institutions like the ICRC are in a position to negotiate an understanding that could facilitate the resumption of civilian flights by private airlines. There is also a request and offer by international relief agencies to engage an independent aircraft that would facilitate the travel of international experts and relief workers. Such transportation is critical to any international assistance for reconstruction of the North and for related development work. I would urge the relevant authorities not to adopt an obstinate and imperious attitude to such requests and to make all necessary arrangements to facilitate such travel.



## Emergency Debate

June 15, 1999

I wish to point out that we have consistently appealed to both sides to end the war and to revive political negotiations. When the cessation of hostilities ended in May 1995, we expressed our dismay and drew attention to the terrible consequences war would have on ordinary people. Since that day, no other political formation has been as consistent and persistent as in our appeal to both sides to bring an end to the human suffering, displacement, destruction and senseless loss of lives, both of combatants and of civilians. In the event that there are any ambiguities or uncertainties on this issue, I wish to reiterate that non-violence is the central article of our political faith. We cannot glorify death whether in the battlefield or otherwise. We, on the other hand, must celebrate life, and are fiercely committed to protecting and securing the sanctity of life, which is the most fundamental value without which all other rights and freedoms become meaningless.

We do not for a moment underestimate the complexities of negotiations, given the legacy of distrust on both sides that needs to be overcome. There are also the complications arising from the continuing frustrations in forging a Southern consensus, the seeming confusion, internecine killings, and lack of coherence within the Tamil and Muslim political formations. Despite all these difficulties, there needs to be a concerted effort to develop a negotiating framework that can command the widest possible support. Such a negotiating framework must include at least minimal acceptance, by both sides, of the norms and standards relating to international human rights and a determination to restore peace, normalcy, civil society and democratic governance. The International Bill of Rights (the Universal Declaration and the Covenants on Civil and Political Rights and on Economic, Social and

Cultural Rights), the Declaration on Minorities, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child provide us with a rich harvest of concepts, ideas and principles, which can inform and discipline any negotiating process. Similarly, international humanitarian standards help us to address the problems of internally displaced persons, prisoners of war, and humanitarian relief, which arise in the resolution of issues in an internal conflict. A clear and unequivocal acceptance, by both sides, of the International Bill of Rights and international humanitarian law would represent a significant step forward. We can no longer offer empty platitudes and meaningless slogans such as peace through war to a long-suffering people.

To protract a war for domestic political purposes, or for the purpose of consolidating the hegemony of a politico-military formation, is to commit an unpardonable crime. There is a heavy moral and political responsibility on the principal opposition party to play a constructive and imaginative role in the search for a solution. Many speakers on both sides of the House have frequently expressed dismay and disappointment at their negative approach to the substantive political issues which has contributed to protracting the war and the conflict. Anyone who believes that there is short-term political gain in subordinating the issues of peace and reconciliation to expediency is committing a serious error of judgment.

I wish to draw your attention to a very important recent report of Amnesty International, released on June 1, 1999, on the issue of torture, which is directly linked to the State of Emergency.

We have, in our Constitution, a provision that makes prohibition against torture an absolute value from which there can be no derogation or limitation by legislation, emergency regulation or executive action. But the harsh reality is that the ground situation differs fundamentally from this high

constitutional premise. The Amnesty International report points out:

For years torture has been amongst the most common human rights violations reported in Sri Lanka. It continues to be reported almost (if not) daily in the context of the ongoing armed conflict between the security forces and the LTTE.... In addition police officers regularly torture criminal suspects and people taken into custody in the context of disputes over land and other private issues.

The routine of interrogation, even in regard to ordinary crime, has been the practice of torture. The scale of this problem is reflected in the complaints received by government-appointed investigative bodies, decisions of the Supreme Court and testimonies obtained by Amnesty International. The Committee to Inquire into Unlawful Arrests and Harassment received 47 complaints between July and December 1998. The Supreme Court has awarded compensation to torture victims in numerous cases. The recent report of Amnesty International provides disturbing new evidence of the torture of political prisoners, women, children, and criminal suspects and the use of unauthorized places of detention.

Torture is also linked to other human rights violations, particularly disappearances, death in custody and rape. Amnesty has observed, "many of the thousands of cases of disappearances reported in Sri Lanka since the early 1980s concern detainees alleged to have died under torture in Police or Army custody whose bodies were subsequently disposed of in secret".

Three Presidential Commissions of Inquiry were appointed to inquire into disappearances, since January 1, 1988. They found disappearances in 16,750 cases. Even as late as in 1997, the UN Working Group on Disappearances



registered 77 cases, the highest number of disappearances reported to them from any one country. The Working Group has pointed out that, of the disappearances that were recorded in 53 countries that they surveyed during 1989-1990, the highest number was in Sri Lanka. Still in 1997 the highest number of reported cases of disappearances in any country in the world remained that of Sri Lanka.

The Committee on Torture made a series of recommendations to the Government, in respect of which no meaningful steps have been taken for more than one year. I would like to refer to two particular recommendations. The first relates to the review of the Emergency Regulations and the Prevention of Terrorism Act, as well as the rules of practice pertaining to detention, to ensure that they conform to the provisions of the Convention against Torture. Our rules with regard to preventive detention must be brought in line with international norms.

The second recommendation is that all allegations of torture past, present and future, must be promptly and effectively investigated and recommendations implemented without delay. The Supreme Court has frequently expressed frustrations at the prevailing climate of impunity in relation to torture. In eight judgements by the Supreme Court in 1997 and 1998 the Court found that police officers were guilty of torture, and the Court recommended that further investigations take place in respect of them. Today, there are seven indictments currently before the High Court against several of these police officers. Both Amnesty and the Committee Against Torture have urged that firmer action be taken against perpetrators of torture. The Amnesty report has also argued that there is a multiplicity of commissions that inquire into this matter. Amnesty has argued the need for a simple procedure, to be implemented by an independent authority with appropriate powers and expertise, to investigate complaints of torture by law enforcement personnel.

The Amnesty report also documents incidents of torture by Tamil militant groups operating in the North-East. Some are political parties represented in Parliament. I would urge them to make an unequivocal commitment to end torture as a routine practice in their interrogations, and I would also urge the authorities concerned to investigate those incidents which are documented in the Amnesty International report.

I also wish to point out the internecine killings that are taking place again between many of these former militant groups, who claim that they have entered the democratic process. I would urge them to bring to an end to these internecine killings and to view with seriousness the repulsion that the general public feels with regard to this issue.

There is one more issue, which I would like to raise before I conclude. That is the proposal of the Government to reintroduce the death penalty. The last hanging in this country took place in 1976. Although the death penalty remains part of our statute book and death sentences are passed, they are automatically commuted. In view of the disturbing incidence of gruesome crime and the increase in crime, it has been proposed that the death sentence should apply in a limited number of circumstances.

I refer to the statement that has been issued by the Presidential Secretariat with regard to this matter. It states that the death penalty will now be carried out in accordance with a procedure where it will seek the recommendations of the trial judge, the Attorney-General and the Ministry of Justice as to whether such a sentence should be executed. I would like to express my strong moral opposition to this measure.

Firstly, in a society where the sanctity of life continues to be debased, it is morally wrong to enforce the death penalty even in these limited circumstances.

Secondly, the UN Commission on Human Rights recently passed a resolution asking all countries that have the death penalty in their statute books to refrain from implementing it

and to suspend operations with regard to the death penalty. So after the last hanging in 1976, Sri Lanka now goes back in history, and against the trend of international public opinion, to revive the death penalty. It would, in my respectful view, be a retrograde step.

Thirdly, there is no credible evidence that the death penalty ever served as an effective deterrent against crime. There has been a large body of scientific studies on this and, up to date, there has been no credible evidence on this point.

Fourthly, even in the United Kingdom, there have been instances where the death penalty was imposed on persons who were subsequently found innocent of the crimes. Given the imperfections of our system, it would be a terrible mistake to implement so severe a penalty in these circumstances.

So, for these reasons, I would record our opposition to this measure and urge that the Government and the Opposition have an opportunity to debate fully this important proposal with regard to the administration of justice.



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