

DOCUMENTS

The Date of Introduction and the Extent of Devolution are two key themes in Sri Lanka's contemporary debate on power devolution. It is the 50th anniversary of the All Party Representative Committee (APRC), the body of District Development Councils, set up in 1965. We publish here a memorandum in which former Prime Minister J. R. Jayawardene, as a U.N.P. member, Sr. Sena Ratnayake, as a member of the District Development Councils, and Ratnayake, as a later minister, set out their respective views.

Prime Minister
Ceylon

PM/1.C. (68/1)
Colombo,
21 February, 1968.

Dear Mr. Ratnayake,

I am in receipt of your letter of 25 January, 1968, which you have printed. I presume, for purposes of distribution, I am glad you have written to me outlining the fears that you have about the proposed District Councils Bill because that provides me with an opportunity of clearing your doubts, which, I trust, say, are based on a misunderstanding and a misapprehension of the present Government's intentions.

I must say at the outset that it is surprising that you have taken up such an attitude on the issue without having any idea about what the final form of the legislation will be. I am at present, as you may have heard, having discussions with the leaders of the constituent parties of the National Government on this matter but we have not yet decided on the final shape of the Bill. I should think that, in fairness to the Government, you might have waited until the draft Bill was presented before arriving at the conclusions that you have presently expressed. You have assumed that the National Government has drafted the proposed District Councils Bill under a threat issued by the Federal Youth League. I presume that here you refer to the so-called "deadline" which certain newspapers referred to at the end of the 31st of January before which the Bill was to be produced. You will yourself note that the 30th of January is now past and that no Bill has been presented. It would therefore be obvious that there was no deadline and there was never any semblance of the Government being threatened to produce a Bill before a given time. As a matter of fact, the question of District Councils was first discussed between leaders of the United National Party and the Federal Party some months before the General Elections of March 1965 and have been stated in specific

terms in the three Throne Speeches of the National Government. In each such instance we have said very deliberately that District Councils will be established under the control and direction of the Central Government.

Let me describe the history of this District Councils idea so as to place in its proper perspective the position of the present Government on this matter. I believe the first mention of the desirability of the decentralization of administration was in the Donoughmore Commission Report of 1931 in which it was recommended that Provincial Councils be set up that "might result in a large part of the administrative work now carried out in the Legislative Council coming into the hands of persons permanently resident in the country districts and thus more directly in contact with their needs." In 1940, the State Council debated and passed the following Motion which was strongly supported by the Hon. S.W.R.D. Bandaranaike, then Minister of Local Administration. The Motion read as follows:

This Council is of opinion that immediate effect should be given to the recommendation of the Donoughmore Commission with regard to the establishment of Provincial Councils. (Debates of the State Council of Ceylon, 1940, Session 10 July 1940)

Thereafter, from time to time various schemes for the establishment of Regional Councils were considered. The Chokoy Commission Report (Sessional Paper XXXIII of 1955, paragraph 112) refers to "Regional Councils which were to be composed entirely of members elected by the people on the same qualifications as were prescribed for Village Committee Members under the Legal Authorities' Election Ordinance."

This was based on a recommendation made by the Hon. S.W.R.D. Bandaranaike, Minister of Health & Local Government in 1956. In 1951 Mr. Bandaranaike, at the inauguration of the Sri Lanka Freedom Party (September 2, 1951) declared:

The difficulties in the way of local self-Government, financial as well as otherwise, must be removed so that Local Government, which is the foundation of any democratic form of Government, should be established in a firm and sound footing. Provincial Councils, which are urgently required to complete the structure of Local Government and decentralize many functions today vested in the Central Government, must be established without delay.

You have, yourself, referred in your letter to me to the discussions between Mr. Bandaranaike and the Federal Party, which resulted in the well-known Bandaranaike-Cheivanayakam Pact, signed in 1957, and to the opposition that the United National Party conducted at that time against that Agreement. I am glad you have referred to that Pact, because what was contemplated therein was fundamentally different from the concept of District Councils that the present Government is working on. Mr. Bandaranaike's position on Regional Councils can best be judged by examining the provisions of his joint Statement which he released to the public as 'Annexure B' of the Bandaranaike-Cheivanayakam Pact on 13 August 1957. I give below the full, unabridged, content of 'Annexure B' of that publication:

"Joint Statement by the Prime Minister and Representatives of the Federal Party on Regional Councils

(a) Regional areas to be defined in the Bill itself by embodying them in a schedule thereto.

(b) That the Northern Province is to form one regional area whilst the Eastern Province is to be divided into two or more regional areas.

(c) Provision is to be made in the Bill to enable two or more regions to amalgamate even beyond provincial limits; and for one region to divide itself subject to ratification by Parliament. Further provision is to be made in the Bill for two or more regions to collaborate for specific purposes of common interest.

Direct Elections

(d) Provision is to be made for direct election of regional councilors. Provision is to be made for a Delimitation Commission or Commissions for carving out electorates. The question of M.P.s' representing districts falling within regional areas to be eligible to function as Chairmen is to be considered. The question of Government Agents being Regional Commissioners is to be considered. The question

of supervisory functions over larger towns, strategic towns and municipalities is to be looked into.

Special Powers

(e) Parliament is to delegate powers and to specify them in the Act. It was agreed that regional councils should have powers over specified subjects including agriculture, co-operatives, lands and land development, colonization, education, health, industries, and fisheries, housing and social services, electricity, water schemes and roads. Requisite definition of powers will be made in the Bill.

Colonisation Schemes

(f) It was agreed that in the matter of colonization schemes the powers of the regional councils shall include the power to select allottees to whom lands within their area of authority shall be alienated and also power to select personnel to be employed for work on such schemes. The position regarding the area at present administered by the Gal Oya Board in this matter requires consideration.

Taxation, Borrowing

(g) The powers in regard to the regional councils vested in the Minister of Local Government in the draft bill to be revised with a view to vesting control in Parliament wherever necessary.

(h) The Central Government will provide block grants to the regional councils. The principles on which the grants will be computed will be gone into. The regional councils shall have powers of taxation and borrowing.

I would draw your attention to a few significant features in this Agreement. Firstly, the Northern Province, including the administrative districts of Jaffna, Mannar and Vavuniya, were to form one regional area while the Eastern Province, consisting of Trincomalee and Batticaloa, including Amparai, was to be divided into two or more regional areas and there was to be provision made in the Bill to enable regions to amalgamate even beyond provincial limits. Secondly, Parliament was to delegate powers to the Regional Councils who would have powers over specified subjects including lands and land development, colonization, etc. There is no mention here of any control or direction by the Central Government and it would appear that these powers were to be handed over in toto to the Regional Councils. Thirdly, it was agreed that in the matter of colonization schemes, the powers of the Regional Councils, would include the power to select allottees, and fourthly, since the draft Bill (which was then

under preparation) envisaged certain powers being vested in the Minister of Local Government in regard to the Regional Councils, that draft was to be revised with a view to vesting control in Parliament. Thus, you will note, it is significant that such powers that the Minister of Local Government was to have were to be removed and given to a remoter authority, viz. Parliament. The limited power which the Executive had in this matter was to be further watered down. It was because of precisely these reasons that the United National Party at that time campaigned against the Bandaranaike-Chelvanayakam Pact and obtained its abrogation.

As you are aware, the problem of decentralizing Government administration occupied the attention also of Mrs. Sirima Bandaranaike's Government. Although the idea of Regional Councils had by then been dropped, that Government adopted as its policy that "authority should be decentralized to take administrative decisions as rapidly as is practicable in order to accelerate social development in the country." The Sirima Bandaranaike Government therefore declared in its Throne Speech in July 1963 that early consideration would be given to the question of establishing District Councils to replace the Kachcheries. You will note again that no mention is made of any direction or control by the Central Government and that the entire work of the Kachcheri organization was to be transferred to the District Council that was to replace it. With this end in view, the then Government appointed an official Committee in 1963 to prepare a scheme of decentralization for the purpose of establishing District Councils. This Committee obtained the views of official organizations, local authorities, Heads of Departments and Government Agents and prepared a Report and draft Bill which was submitted to the then Government for consideration. In its one and the last Throne Speech, in July 1964, the Sirima Bandaranaike Government announced that a draft Bill to implement the proposal to establish District Councils would be placed before Parliament. This Session of Parliament was an extremely short one and that was probably the reason why such a Bill could not be placed before Parliament before the Government itself was finally defeated in December 1964. In the first Throne Speech of the National Government, on 9 April, 1965, we stated our position that earnest

consideration will be given to the establishment of District Councils, which will function under the control and direction of the Central Government. This position was re-enunciated in the Throne Speeches of 8 July 1966 and 8 July 1967. You will note the fundamental difference between the District Councils in Regional Councils, as envisaged under the Bandaranaike Governments and the District Councils that we propose to establish now. You will no doubt be able to see for yourself, when the District Councils Bill is presented, the extent and degree of that control by the Central Government, which we have emphasized as a cardinal point in our concept of District Councils. In fact, you will then see that the District Councils will have even less autonomy than Local Bodies. In the case of Local Government Bodies, as you know, they have complete authority over certain subjects assigned to them by statute, but the District Councils will function under the control and direction of the Central Government. You will therefore agree that the fear that some people have expressed that the District Councils are "a first step to Federalism" is a completely unwarranted one and based on a misconception of what is intended.

I recall that in regard to the Indo-Ceylon Agreement Implementation Act, too, you expressed great fear that the passage of that legislation would result in this country being "overrun by the Indians." In your own language. You can see for yourself that nothing of the sort has happened. Similarly, I have no doubt that your fears regarding the future of this country's integrity as a consequence of the District Councils coming into force will also be imaginary ones. I appreciate your anxiety on behalf of the Sinhalese in particular and I need hardly assure you that I myself am not unmindful of the need to safeguard the legitimate rights of the majority in this country while protecting and respecting the interests of the minority races. That has been a guiding principle in my political life, and I can assure you that all who accept such a principle as being fair and just will have no cause for anxiety when the Bill is finally presented.

Yours sincerely,
Dudley Senarayake
PRIME MINISTER

Sirisantha Ranasinghe Esq.,
Kekuraya.

SRI LANKA'S HUMAN RIGHTS CRISIS

EXECUTIVE SUMMARY AND RECOMMENDATIONS BY THE EUROPEAN UNION

The resumption of war between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE) has been accompanied by widespread human rights abuses by both sides. While the LTTE has continued its deliberately provocative attacks on the military and Sinhalese civilians as well as its violent repression of Tamil dissenters and forced recruitment of both adults and children, the government is using extra-judicial killings and enforced disappearances as part of a brutal counter-insurgency campaign. The likely results will be the further embitterment of the Tamil population and a further cycle of war, terrorism and repression. Without ignoring or minimising the serious violations of the LTTE, the international community needs to bring more pressure to bear on the government, through UN mechanisms, a reappraisal of aid policies and intensified political engagement. The alternative is a further decline into authoritarianism, violence, terrorism and repression.

Civilians are repeatedly caught up in the fighting. More than 1,500 have been killed and more than 250,000 displaced since early 2006. There have been hundreds of extra-judicial killings, and more than 1,000 people are still unaccounted for, presumed to be the victims of enforced disappearances. Hundreds more have been detained under newly strengthened Emergency Regulations that give the government broad powers of arrest and detention without charge. The security forces have also expelled hundreds of Tamils from Colombo. Forces commanded by the ex-LTTE commander Karuna, leader of the Tamil Makkal Viduthalai Pulikal (TMVP) now aligned with the government, engage in child recruitment, extortion, abductions for ransom and political assassinations.

While many deaths result from military clashes, the army – assisted by pro-government Tamil paramilitaries – is also engaged in a deliberate policy of extra-judicial killings and abductions of Tamils considered part of the LTTE's civilian support network. Targeted assassinations have been particularly frequent in Jaffna and parts of the east, often victimizing civilians with no connection to the LTTE. Political killings, abductions and disappearances have also spread to Colombo, where abductions for ransom have targeted both Tamils and Muslims.

Tamils are increasingly fearful and alienated from a government that claims to be liberating them from the LTTE but has failed to promote any viable political solution to the conflict. The violence and abuse suffered by many Tamils has ensured increased support and funding for the insurgents. The counter-insurgency campaign is leading to more authoritarianism in the country as a whole. Officials now routinely brand their political critics and human rights advocates as LTTE sympathisers, while political opponents and journalists have been arrested under the Emergency Regulations. What began as an effort to target LTTE supporters shows disturbing signs of becoming generalized repression of dissent. While routinely attacking moderate democratic forces, the government has given free rein to Sinhalese nationalist groups.

For the most part the government has responded to criticism with denial, obfuscation and virulent, verbal attacks on its critics. In an attempt to deflect international criticism, it has also established new institutions to investigate allegations of human rights abuses. A Presidential Commission of Inquiry (CoI), backed by a panel of international observers, is investigating a series of atrocities. However, the history of such institutions in Sri Lanka is grounds for scepticism: previous commissions have been ineffective in stopping abuses or prosecuting perpetrators.

In any case, the CoI is no substitute for proper action by the law enforcement agencies and judiciary to investigate and prosecute abuses. The national Human Rights Commission is deeply flawed and has lost all credibility after being stocked by political appointees. Other domestic institutions are increasingly politicised or dysfunctional, leading to calls for an international human rights monitoring mission, which may be the only way to end the present wave of abuses. The international community has responded to the renewed conflict and human rights abuses, however, in a disjointed and lacklustre way. While there has been some public criticism, there is little sign of a coordinated approach that would put real pressure on the government to change course.

If the government does not begin to reassert the rule of law, it may find itself unable to bring under control the violent forces that have been unleashed – including the TMVP, other Tamil paramilitaries and criminal elements. The nature of the campaign against the LTTE has spawned a rise in general lawlessness. Democratic state institutions are increasingly threatened by the development of a regime that is becoming more authoritarian.

RECOMMENDATIONS

To the Sri Lankan Government:

1. Pursue vigorously investigations, indictments and prosecutions against those alleged to be involved in atrocities.
2. End the policy of extra-judicial killings and disappearances and take active measures to prevent abductions, killings and arbitrary detentions in government-controlled areas.
3. Assert effective control over the TMVP paramilitary group by:
 - (a) restricting it in civilian areas to unarmed political activity;
 - (b) arresting and prosecuting all members engaged in criminal activities, including abduction, child recruitment, extra-judicial killings and robbery; and
 - (c) strictly limiting the role of TMVP members in administration, relief and resettlement programs.
4. Prevent, prosecute and end any government facilitation of child recruitment by pro-government paramilitaries.
5. Guarantee the constitutional right to freedom of movement and residence of all citizens and end all threats and harassment by security forces of Tamils visiting Colombo.
6. Appoint the Constitutional Council and allow it to nominate the members of independent commissions, including the Human Rights Commission and National Police Commission.
7. Ensure that the Human Rights Commission publishes accurate data on complaints, and publish the report of the Mahanama Tillakeratne Commission on disappearances and other reports commissioned by the government on human rights issues.
8. Establish and implement safeguards against arbitrary and abusive detentions, including by:
 - (a) repealing those aspects of the Emergency Regulations that are not consistent with international human rights norms;
 - (b) enforcing existing laws and presidential directives providing for transparent arrests and detentions and instituting strong penalties for non-compliance;
 - (c) allowing the Human Rights Commission and the International Committee of the Red Cross (ICRC) to visit all places of detention, including TMVP offices; and

(d) prosecuting officers who refuse to identify themselves, take down complaints or give receipts to family members when a suspect is arrested.

9. Give every possible assistance to the Commission of Inquiry, including by:

- (a) providing sufficient funds to retain private counsel so it need not rely on government lawyers;
- (b) establishing and properly funding effective witness protection procedures;
- (c) providing it full documentation and ensuring that officials called to testify cooperate fully; and
- (d) proceeding expeditiously with prosecutions.

10. Invite the UN High Commissioner for Human Rights and other UN representatives, including the UN Working Group on Enforced and Voluntary Disappearances, to visit Sri Lanka.

11. Allow the Office of the UN High Commissioner for Human Rights (OHCHR) to establish a human rights field operation mandated to monitor abuses by all parties, protect civilians and perform capacity building in support of domestic institutions.

12. Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance and renew commitments to other human rights treaties, by new legislation if necessary.

13. Incorporate the concept of command responsibility into law and make forced disappearance a criminal offence.

To the Liberation Tigers of Tamil Eelam (LTTE):

14. Cease all political killings, abductions, extortion and suicide bombings and suppression of dissent.

15. Open all prisons and detention centres to inspection by the ICRC and the Sri Lanka Monitoring Mission (SLMM) and cooperate fully with international bodies, including The United Nations Children's Fund (UNICEF) and the OHCHR.

16. Cease all forced recruitment, of children and adults, and forced military training of civilians.

17. End harassment of humanitarian agencies and forced recruitment of their staff.

To the International Community:

18. Support a strengthened resolution in the UN Human Rights Council calling for an OHCHR human rights field operation mandated to undertake monitoring, protection, and capacity-building activities.

19. Maintain political engagement, through high-level contacts and visits, including a visit by senior members of the U.S. Congress and similar visits by delegations from other parliaments.

20. Maintain pressure on LTTE financing and extortion of the Tamil diaspora.

21. Encourage the UN Security Council to impose targeted sanctions against both the LTTE and the TMVP if they continue to recruit child soldiers.

22. Support capacity building for domestic human rights protection, including:

(a) funding and enabling an effective witness protection program that includes provisions for asylum and assistance to witnesses outside the country;

(b) suspending funding for the Human Rights Commission (other than special aid for its effective regional offices) until its

members are reappointed on nomination of a new Constitutional Council; and

(c) giving more effective support to civil society organisations, particularly those committed to civilian protection and coordinated monitoring, documentation and advocacy initiatives.

23. Convene a consultation meeting of bilateral and multilateral donors to discuss new approaches that take into account widespread human rights abuses and the renewal of conflict, including significantly limiting aid to the government and increasing support for civilian protection and humanitarian initiatives. ■

Colombo/Brussels, 14 June 2007

Forthcoming from the SSA

International McCarthyism: The Case of Rhoda Miller de Silva

Selected Writings, with a Commentary

by

Judy Waters Pasqualge

In 1954 Rhoda Miller de Silva was labelled as a subversive and deported from Sri Lanka (and separated from her husband Joe). A journalist from New York, who had already published books on post-war Poland and the Rosenberg case, Rhoda, supported by friends in New York, would successfully challenge the United States-inspired deportation. She returned to Sri Lanka and became noted for her hard-hitting weekly column in the *Ceylon Daily News* on current affairs, covering global and local issues. This book contains forty of these articles, with those on Sri Lanka providing a good view of the country in the late 1960s; many of the topics are still highly relevant today. Also included are excerpts from several of her books. The commentary on her 'life and times' is a story that weaves in and out of the US during the New Deal and Cold War, the Russia of her Jewish immigrant parents (and those of her first cousin, writer and activist Howard Fast), and Sri Lanka in the 1950s, '60s and '70s.

APPEAL ON BEHALF OF RIZANA NAFAEEK

Your Excellency Hon Mahinda Rajapakse
The President
Democratic Socialist Republic of Sri Lanka

Your Excellency.

Once again a Sri Lankan, this time a very young woman Naffeeek Rizana is facing the death sentence in Saudi Arabia, allegedly for the strangulation of a four month old baby.

Naffeeek Rizana was born on February 4, 1988 and comes from a war-torn, impoverished village. Like many impoverished families her parents had sent her abroad. According to newspaper reports she left Sri Lanka as an under-aged child at the age of 17 years. It is rather unfortunate that children of our country get exposed to such dubious rackets of employment agencies. In the case of Naffeeek Rizana, the altered birth date, which is to be found in her passport now, is February 2, 1982. It was on the basis of this altered date that the employment agency fixed her employment in Saudi Arabia and she went there in May 2005.

She is a young teenager to whom was entrusted the task of feeding an infant by her employers. It is obvious that she had no experience in feeding babies. As it has been reported the baby-boy died under tragic circumstances due to choking.

Misunderstanding the situation the family members had treated the teenager very harshly and handed her over to the police, accusing her of strangling the baby. At the police station also, it is reported that she was very harshly handled. Like in all other past cases this young teenager had no translator nor other assistance to explain what was happening. It is alleged that she was made to sign a confession and that later charges were filed, in court of murder by strangulation.

According to reports, the judges who heard the case requested the father of the child to use his prerogative to pardon the young girl. However, the father refused to grant such pardon. On that basis the court sentenced her to death by beheading. This sentence was made on June 16, 2007.

There is a period of one month for the lodging of an appeal. However, an appeal has not yet been lodged. We are appealing

to you to intervene immediately and get a pardon for her as what actually has happened is a tragic event and is not a intentional murder by strangulation.

Bearing in mind the close and cordial relationship you have with countries in the Gulf we look forward to effective intervention by you speedily to save the life of Naffeeek Rizana.

Yours Sincerely,

Mothers and Daughters of Lanka
Sri Lanka Women's NGO Forum
Women and Media Collective
Social Scientists Association
Muslim Women's Research and Action Forum
Women's Education and Research Centre
International Movement Against all forms of
Discrimination and Racism
Action Network for Migrant Rights
INFORM Human Rights Documentation Centre
Women's Resource Centre
Movement for the Defense of Democratic Rights
Women's Development Centre – Badulla
Uva Wellasa Govi Kantha Peramuna
Women's Centre
Vikalpani
Women's Development Centre - Kurunegala
Dhabidu Collective
Diriya Katha Organization
Devesarana
Binhanna Gami Kantha Organization
Pahala Uva Human Rights Organization
Irangani Serasinghe
Prof. Neloufer de Mel
Menika Vanderpooten
Seetha Ranjani

Cc: Hon. Minister Keheliya Rabukwella
Ministry of Foreign Employment, Promotions and Welfare

Ms. Indrani Sugathadasa
Secretary
Ministry of Child Development and Women's Empowerment