

this issue of *Pravada* is a critical look at Sri Lanka's current policies of growth and development.

Of late, the business community too has begun to express scepticism about the political-bureaucratic myth of an accelerated path to NIC status. In the business pages of the Sunday English press, unnamed industrialists are often quoted to "pooh-pooh NIC status predictions." One newspaper went on to say that "the fear of offending authorities" prevented the business community from making any critical utterances in public fora.

That in a way suggests a point: Sri Lanka is probably in the path to approximating the political status of the NIC countries. In all NICs, fast economic growth did not occur merely due to the magic of 'free market' policies. The so-called free markets were put into operation in such a political environment that "the fear of offending authorities" loomed large. The freedom of business communities to operate in 'free markets' was one that was determined, regulated and controlled by the political-bureaucratic leadership. Both capital 'unbound' and labour 'disciplined' were instruments of policy, defined and implemented by highly authoritarian regimes. **P**

NGO COMMISSION AND EMERGENCY REGULATIONS

To begin with, some facts about the Presidential Commission of Inquiry into NGOs appointed by the late President Mr. Premadasa on 14 December 1990.

The warrant appointing the Commission, after referring in its preamble to a report made by a Committee which had made a preliminary report on Non-Governmental organisations functioning in the country, asked the Commission:

to inquire into and obtain information on the activities of NGOs, whether registered under current laws or unregistered, and to ascertain whether any funds received by NGOs from local or foreign sources had been misappropriated and/or "are being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka."

The Commission was also asked:

to look at the laws and institutional arrangements currently in force "for monitoring and regulating the activities and funding of such organisations", determine whether they were adequate and if not, "what legislative provision would be required to prevent such funds being misappropriated and/or from being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka, or resulting in the exploitation of labour rendered by any person or group".

We reproduce these requirements in order to establish in simpler terms the assumptions behind the appointment of the Commission.

Briefly, there was suspicion that NGO funds were being misappropriated, that they were being used against the interests of national security and public order and to upset ethnic, religious and cultural harmony, and that a legislative framework was necessary to monitor and regulate the activities of NGOs.

The Commission began work in the first week of January 1991 and continued until December 1993. It first published a notice in the newspapers on 10.1.1991 inviting "any person or organisation having any information or complaints" or "desirous of making representations" to communicate with it. The Commission then sent a detailed questionnaire to a number of NGOs, the exact number being yet unknown. From NGOs who answered the questionnaire, we know that a number of them were asked for very detailed information through many subsequent questionnaires; information was asked not only of the organisations themselves but also of the assets of principal office bearers and their spouses and children.

The Commission heard evidence in public from some persons who had made representations and public officials about NGOs in general and the place they occupy in public life. The tenor of this evidence, by and large, was to confirm the existence of a growing NGO sector and that there was a need for monitoring and regulation by the state.

The Commission also had a police unit whose task was to make investigations and record statements.



The Commission then held public hearings into allegations against three NGOs: World Vision, an American NGO which it was alleged was making conversions to Christianity by the offer of material inducements, the Eye Donation Society and Sarvodaya. It had framed some charges against Sarvodaya, after lawyers for Sarvodaya had insisted that it could not lead evidence without knowing the matters on which evidence was sought. At this stage the Commission's public hearings were brought to an end. Newspapers reported that the Commission had been asked to submit its report by the end of the year on the basis of the material it had already collected.

The Commission's methods of work were scrutinised by a representative of the International Commission of Jurists. Reproduced below are some of his conclusions:

The commission must genuinely, and not merely nominally, be a vehicle for finding facts that will be relevant to the regulation of NGOs. It must not be used as a device for intimidating NGOs....

Bearing this general principle in mind, several aspects of the Commission's operations call for serious reexamination. One is the extreme breadth of the terms of reference. This is an extremely worrying factor when considered in conjunction with two other aspects of the commission's activities: (a) the general notice of January 1991, inviting any one from the public at large to come forward to testify and (b) the high level of press attention accorded to the commission's hearings. These three factors, in combination if not singly, make for an unacceptably repressive atmosphere. This way of operating makes for the airing of wild accusations which receive significant publicity. The result is all too likely to be the building up of a general atmosphere of hostility against NGOs, irrespective of the precise findings which the Commission may produce in due course....

Another general consideration of the utmost importance is that the NGO Commission's activities ought not to cross over the line from information-gathering into the sphere of criminal prosecution. Police investigations should, at a minimum, be undertaken only under the most careful supervision of the Commission itself, rather than of the Commission's staff. The preferable course of action is that police investigations in the commission's name ought to be stopped altogether and the police unit attached to the Commission disbanded. If the authorities wish to investigate possible crime, with a view to prosecuting those responsible, they should do this through the normal law enforcement channels. As things stand presently, there is unacceptably great scope for police harassment of NGOs under the general auspices of the Commission.

Most of these forebodings have been borne out by subsequent developments. A number of organisations under investigation by the police unit have complained of unfair treatment and harassment of their staff.

The Commission handed in its report to the President on 11th December 1993. The government announced on 24th December that it was promulgating regulations under the emergency for implementing two of the main recommendations of the Commission; the Public Security Ordinance act was said to be used for this purpose because action was urgently necessary and the enactment of appropriate legislation would take time.

Emergency Regulation

The regulation, to be cited as the Monitoring of Receipts and Disbursements of Non-Governmental Organisations Regulation No. 1, defines an NGO as any organisation formed by a group of persons on a voluntary basis and which

- (a) is of a non-government nature;
- (b) is dependant on public contributions, grants from the government or donations, local or foreign, in carrying out its objects;
- (c) has as its main objects, the relief of suffering, assistance to orphans, the sick, the unwanted, the disabled, the deprived, the disadvantaged or the poor, the development and upliftment of the community, research and training or the protection of the environment.

Excluded by the terms of the definition are co-operative societies and death donation societies and those NGOs whose total receipts per year of money, goods and services are less than Rs. 50,000.

The first thing to be noted about this definition is that it follows the definition of social service organisations given in the Social Service (Voluntary) Organisations Ordinance, adding the two separate areas of research and training and the environment.

All NGOs falling within this definition and whose disbursements per year exceed Rs. 100,000 are compelled to register with the Director of Social Services and to submit to him details of all receipts of money, goods and services, the sources of such receipts and details of all disbursements of money, goods or services. The last requirement goes far beyond the normal audited statement of accounts; the NGO is compelled to give details of every disbursement, together with the name and address of every person to whom such disbursements had been made.

The penalties prescribed for non-compliance are very heavy, with prison sentences up to five years and fines

for officials. Non-registration itself has been made an offence.

The Need?

The need to invoke the emergency has been justified by the government on the basis that legislation in line with the recommendations of the Commission would take time. Thus one must assume that there was some very urgent need to register and monitor the workings of NGOs. This need must necessarily be one that pertains to national security or the maintenance of public order; regulations can be issued under the Public Security Ordinance only where there is a need for regulations to meet threats to public security and public order, to quell any mutiny or commotion or to ensure the maintenance of services essential to public life.

Was there any threat or even sign of threat to these concerns from NGOs in general or even from any specific NGO? As far as is known publicly, the answer to this question must be in the negative.

The report of the Commission has not been released for public information. What we have to go on are certain brief government statements and extracts in the newspapers of some sections of the report. These extracts too reveal no urgency in the national interest.

The commission has recommended the appointment of a separate commission to inquire into the affairs of Sarvodaya where there has been alleged malfeasance, but this cannot be deemed a matter of urgency that affects national security.

We commented earlier on some of the assumptions behind the appointment of the Commission. There appeared to be a suspicion that many NGOs acted in ways that endangered national security or the economy or harmonious relationships between the various ethnic, religious or cultural groups inhabiting this country.

We must assume that, if during its three years of operation the Commission had found at least some of these suspicions well founded, this fact would have received mention in their report and that it would have figured as a reason for urgency, at least in the press release issued by the Presidential Secretariat. Any such mention would also have been avidly seized upon by the press. We can therefore justifiably assume that the Commission has found no material base for these suspicions.

The extracts from the Commission's report refer to one matter that might remotely be construed as endangering

relationships between religious communities, that is what has been referred to as unethical conversions by newly established evangelical churches. These are alleged to use funds obtained from abroad to offer material inducements for conversion. The All Ceylon Buddhist Congress, which has been conducting a campaign on this issue, has welcomed the enactment of these regulations; they must have surely done so in the belief that they would assist in controlling the activities of these evangelical groups.

One is forced to conclude that the government has failed to establish any reason for urgency and thereby the use of the emergency for the enactment of these regulations.

Two Questions

The first question therefore is that of the use of the Public Security Ordinance and the state of emergency for making regulations to compel the registration and monitoring of NGOs.

The Centre for the Study of Human Rights at the University of Colombo and the Nadesan Centre undertook at the beginning of 1993 a study of the emergency regulations then in force. This effort was welcomed by the government and it is our understanding that several high state officials participated in the work. One of their main recommendations was as follows:

That emergency powers should not be used under any circumstances to circumvent the normal legislative process merely for reasons of expediency.

There is a more important matter of principle arising from the infringement of freedom of association guaranteed by the Constitution. Persons have so far had the freedom to associate together and act in ways that further their concerns; these associations have taken various forms according to their objectives and needs, such as unincorporated associations, non-profit making companies or associations formed under existing laws. Is there any necessity or justification for limiting this freedom? Should the state put obstacles in the way of citizens banding together to attend to the needs and welfare of the poor or the disadvantaged?

It is indeed this kind of benevolent activity that will be hampered by the new regulations that require all manner of detailed reporting.

We hope that these matters will come up for adjudication by the courts. **P**