

Sri Lanka's third periodic report on the implementation of the International Covenant on Civil and Political Rights was made to the Human Rights Committee of the United Nations in 1994. The report was prepared and submitted by the UNP government then in power. It was not taken up for consideration in 1994. This gave the new government the opportunity to submit a supplementary report; both reports were taken up for review at meetings of the Committee in July 1995.

We reproduce below some of the comments of the Committee and its recommendations from UN press releases and document CCPR/C/79/Add.56 of 27th July 1995. It should be kept in mind that some of the strictures were on the original report. The recommendations would however apply to the current situation.

We believe these extracts are of significance in indicating the areas of concern to the international human rights community; they also show its faith that the present government identified as the 'new democratic regime', would take action to respect and observe the human rights of all citizens without any discrimination.

THE PROCEEDINGS OF THE UN HUMAN RIGHTS COMMITTEE

Appreciating a supplementary document and the oral presentation by the delegation, several members criticized the report as too superficial, purely legalistic and inadequate. One expert said that it lacked both "quality and purpose". Others said it was unacceptable to cover the significant issue of self-determination, the first article of the covenant, in two short paragraphs... Another expert said there were deep contradictions between the report and the supplement as only the latter had been carried out by the new democratic regime...

Several experts pointed to the large number of commissions dealing with human rights violations. As least nine in number, they were criticized as being too administrative, too fragmented and only able to look into abuses after the fact...

State of emergency regulations was another area of concern. There were no time-limits for detaining persons within emergency regulation, one member said and noted that some people had been detained for years without charge. Other experts brought up a decision by the supreme court that it lacked jurisdiction and control over a state of emergency. Abuses and excesses against detainees within the emergency were of great concern.

Other areas of concern included fragmentation at the constitutional, judicial and legislative level, rights of migrant workers and constitutional distinctions between citizens and others...

Human Rights Committee experts questioned allegations of poor prison conditions, rights of detainees and crimes punishable by death in Sri Lanka. Some members pointed to discrepancies in reports of human rights abuses and information provided by the delegation.

One expert drew attention to apparent discrepancies between repeated allegations of poor prison conditions from non-governmental organizations and statements by the delegation. The same was true with forced confessions which the delegation said were unac-

ceptable. However he referred to repeated allegations of such confessions being used against persons accused under the anti-terrorist act.

Responses by Delegation

Rohan Perera, Legal Advisor in the Ministry of Foreign Affairs of Sri Lanka, responded to the issues raised by the committee concerning the constitutional and legal framework of the covenant, state of emergency, conduct of public affairs and minority rights. He said new legislation would bring certain non-citizens' rights, including freedom of movement, speech and assembly, into conformity with citizens' rights...

Replying to a variety of questions on the role of legislative bodies, he said that a large number of human rights committees had been created as a testimony of the commitment by the Government to those issues which had formed a major part of its electoral campaign. The Supreme Court was the final arbiter of any constitutional question. It could refer questions to the Human Rights Commission for examination, and that body would then be required to report back to the Court. Sensitizing security forces on human rights had been carried out through various pilot training projects.

He said it was not the intention of the Government to arm civilians. There had been claims of "ethnic cleansing" in the eastern provinces where, for security purposes, gun permits had previously been withdrawn. Therefore, the Government had issued shotguns for local residents to protect themselves against attack. The so-called "Muslim home guards" were in fact regionally based and were under the direction of the local police.

Mr. Perera then addressed the second group of issues, namely, the right to life, liberty and security of person, treatment of prisoners and detainees and right to a fair trial. Remedies had been applied to alleviate the situation of detainees and regulations had been established for that purpose. He said earlier abuses were being investi-

gated and new reporting procedures had been put in place to protect against abuses such as torture, disappearance of persons and arbitrary arrest.

The over-all situation in prisons was acceptable, he said, and the International Red Cross (ICRC) was allowed access to prisoners and detainees. However, no access was permitted to detainees in the north. The number of such detainees was estimated at several thousand. Detention was prescribed from three months to one year. Grounds for extension would have to be brought to a judiciary body. While the death penalty was still on the books, no execution had been carried out since 1976. Confessions which had been taken under duress, through inducement, threat or promise, were not permissible evidence in court. An additional safeguard was that judges consistently sought confirmation of a confession through evidence.

Questions by Committee

Some experts directed questions to the death penalty. One expert urged a fresh look at such offences, saying that neither assistance to a person committing suicide nor all drug-related offences could be considered to fall into the category of serious capital crimes. Several questions were directed to the situation of detainees. One expert asked if corporal punishment against prisoners was considered acceptable. Another pointed out reports of security officers who had violated human rights including torture, but were still in their positions of power. What review and punitive measures were being undertaken?

Another expert said he was confused at discrepancies between repeated reports of poor prison conditions and forced confessions on the one hand, and statements by the delegation as to satisfactory conditions and prohibitions against such confessions, on the other. Some members pointed out that, while the international definition of torture included physical and mental pain and suffering, the word suffering had been omitted from Sri Lankan legislation against torture. Others were concerned about the effectiveness of measures to protect civilians in areas involved in the secession war, extra-judicial killings and protection of children.

Responses by Relegation

Crimes punishable by the death penalty were currently under review, Mr. Perera said. Damage to property and extortion were likely to be removed. Any quantity of drugs over two kilos was likely to continue to be met by the death penalty. On the discrepancy between national legislation and the covenant, although the word suffering had been deleted, pain, either physical or mental, had been left in.

With reference to a recent bombing offensive by Sri Lankan armed forces, BERNARD GOONETILLEKE said that certain steps had been taken to protect civilians. Leaflets had been air-dropped saying that bombing would take place and that civilians should go to schools for safety. That same message had been broadcast over the radio every 30 minutes. He did not deny a report that a church had

been bombed by the Air Force, but stressed that the Government policy was not to attack civilians.

Mr. Perera then took up the final group of question concerning liberty of movement, expulsion of aliens, freedom of conscience and religion and protection of family and children. Buddhism was the religion of over 69 per cent of the population and it did have preferential status. But, he said, other religions were granted complete freedom and there was no discrimination against other religions or against non-believers. Replying to a question which had been overlooked this morning, he said the recent marriage act which determined minimum age for both sexes as 18 had not changed the situation of Muslim girls who were still permitted to marry at age 12. The minimum age for Muslim boys was 16.

Human Rights Committee members this morning acknowledged that the new Government in Sri Lanka was concerned about human rights and had been making progress in that regard. They were also in general agreement that the civil war was the source of many of the existing human rights abuses and violations. But they still had many reservations and concerns.

Several committee members pointed to the large amount of power in the hands of the army and questioned whether sufficient controls were in place. Many were concerned about the treatment of detainees, abuses of their rights and continuing reports of corporal punishment. Speakers stressed the need for better mechanisms for monitoring abuses, as well as the importance of coordinating and centralizing the many fragmented newly established human rights committees.

Other areas of concern included parliamentary privilege and other limitations on the rights of free speech, judicial independence and extra judicial killings and torture.

Discussion of Report

BERNARD GOONETILLEKE (Sri Lanka) completed his answers to the final group of questions concerning liberty of movement, expulsion of aliens, freedom of conscience and religion and protection of family and children. Regarding the rights of children, he said that the United Nations Children's Fund (UNICEF) had praised Sri Lanka on issues relating to child care. On the situation of detained children, the Penal Code now covered a variety of abuses against children. There were several measures available for treatment of juvenile offenders, including remand to parents, corporal punishment for males and community service in lieu of imprisonment. At the practical level, some major concerns existed, among them the fact that only one juvenile court existed in the country and that, in practice, juveniles were not always separated from adult criminal offenders.

With regard to concerns over physical abuse against prisoners, Rohan Perera, Legal Advisor, said that corporal punishment against prisoners had been suspended during the past decade. On the presumption of innocence, guilt was assumed, in principle, if a person did not answer charges. While the accused must in that sense

prove innocence, the prosecution must nevertheless prove guilt beyond any reasonable doubt.

On the protection of the rights of children, one expert expressed concern that Muslim girls could marry at age 12 and that their right of consent was often breached. Others asked what was being done to protect children against sex tourism and to provide for child victims of the violent conflict. Another expert questioned the circumstances of child servitude. Several questioned exploitation of children and asked what the state was doing against it. One member noted that 11% per cent of children did not attend school and that no legislation existed to force them. In view of distinctions in legal age levels for children, a universally accepted age, valid for all communities and for all purposes, should be defined.

Other experts questioned limitation on the right to criticize Parliament, saying they were counter to fundamental principles of democracy. "No Parliament in the world had the right to declare itself infallible", said one. Questions were also raised on freedom of association, freedom of speech and freedom of the media, and violations of the right to privacy by defining homosexuality as a criminal act. Another expert raised concern over a new law which amended regulations on bribery, saying it violated the covenant protection against retroactive guilt. She also questioned the extreme breadth of the official secrecy act and urged a review of some of its broader sections to ensure that burden of proof would be placed on the state.

Mr. Perera (Sri Lanka) said there were no restrictions on freedom of association, that a free press existed and no newspaper was banned. Parliamentary privilege did exist, but criticism was permitted. There was a great deal of press exposure on Parliamentary issues. There were also four or five independent television stations. Homosexuality would, at least for the time being, remain a criminal act. On the Muslim age of marriage for girls, the Government had attempted to make a common civil code for all communities, but that was abandoned due to protests by the Muslim community. He added that research by a Muslim group had indicated that girls in Sri Lanka tended to marry at age 18.

On child labour, Mr. Goonetilleke said national legislation conformed to the covenant. Nevertheless, he estimated that at least 80,000 children in the 10 to 14 group were working illegally, many as domestic helpers. The Government had begun a public awareness campaign, but enforcement of the law was difficult. Child prostitution, especially male, had increased with the rise in sex tourism, and was of grave concern to the Government. Such acts were criminal, and sentences ranged from two years for forcing a girl into prostitution to 20 years for rape.

Some 600,000 victims of civil strife, around 400,000 of them children, were living in centres around the country and a large number were displaced. Efforts were under way with non-governmental organizations to provide for their needs, including special nutritional needs of babies, schooling, medical care and rehabilitation for traumatized children. It was a difficult task and resources were limited.

Suggestions and recommendations

The Committee strongly recommends that the State party take urgent steps to ensure that its domestic laws are in full compliance with the Covenant. In this regard, it further recommends that within the context of the present efforts to reform the Constitution due consideration be given to the provisions of the Covenant.

The Committee recommends that the State party consider acceding to the optional Protocol.

The Committee notes the efforts being undertaken by the Government to establish various mechanisms to promote and protect human rights, including the National Human Rights Commission. In this regard, the Committee would like to strongly recommend that the multiplication of bodies with parallel competencies should be avoided and that the coordination of such mechanisms should be ensured. It also urges the State party to take into account that investigation and prosecution of criminal offences should be carried out by an independent body and that punishment of criminal offenses should be carried out by the judiciary.

The Committee recommends that the State party review the provision of article 16 of the Constitution which permits all existing laws to remain valid and operative notwithstanding any inconsistency with constitutional stipulations relating to fundamental rights. It also recommends that the two-year time limit for challenging constitutionality of enacted legislation should be deleted.

The Committee recommends that the provisions of the Covenant should be fully respected in the areas where a State of Emergency has been proclaimed. The Committee also urges the State party to vigorously investigate into all violations of human rights both past and present, through an independent agency, to punish those guilty of such acts and to compensate the victims.

The Committee recommends that the State party ensure that the death penalty may only be imposed for the most serious of crimes as required by Article 6 of the Covenant. Moreover, in view of the fact that the death penalty has not been carried out since 1977, the Committee wishes to further recommend that the State party consider taking measures for the abolition of the death penalty and the ratification of or accession to the Second Optional Protocol.

The Committee, noting that the definition of torture given in the Act passed by Parliament on 25 November 1994 is somewhat restrictive, recommends that the Act be amended to bring it in conformity with Article 7 of the Covenant. It further recommends that in view of the statement by the Government that corporal punishment has been suspended the provision of the domestic legislation allowing this form of punishment be revoked.

With regard to articles 9 and 10 of the Covenant, the Committee recommends that as a matter of priority all legal provisions or executive orders be reviewed to ensure their compatibility with the provisions of the Covenant and their effective implementation in practice.

The Committee recommends that the State party review the existing procedure relating to the removal of Supreme court judges and judges of the Courts of the Appeal with a view to its amendment as a means to further secure the independence of the judiciary.

The Committee recommends the amendment of the Special Presidential Commissions of Inquiry Act in order that it comply with the provisions of Articles 14 and 25 of the Covenant.

The Committee recommends that the present provisions by which freedom of the press can be restricted by reason of parliamentary privilege should be removed. The State party should also take the necessary steps to prevent control and manipulation of electronic media by the Government.

With respect to the implementation of article 22, the Committee recommends that the State party ensure that workers within the Free Trade Zones effectively exercise their right to organize.

The Committee recommends that measures be taken to ensure the protection of the child and in this regard the particular attention of the State party is drawn to the Personal Status Act which permits the marriage of a girl at the age of 12 and its incompatibility with the provisions of the Covenant.

The Committee urges the State party to develop a comprehensive programme to deal with the issues of child labour, particularly of children in domestic service and the sexual exploitation of children of both sexes.

The Committee strongly recommends that greater efforts be undertaken to ensure that all ethnic groups are provided with opportunity to participate fully in the conduct of public affairs and are ensured equitable access to public service.

The Committee recommends that further measures be taken to develop greater awareness of the Covenant: in particular, law enforcement officials and members of the legal profession should be made fully cognizant of the provisions of the Covenant.

WE REPRODUCE BELOW SOME OF THE PROTESTS ON THE DEPORTATION OF DR. JANE RUSSELL

Women's organisation in Sri Lanka protest the summary arrest and deportation of Dr. Jane Russell, the well known British scholar who has produced many important work on Sri Lanka. Dr. Russell, trained in Cambridge England and at Peradeniya, Sri Lanka was working on two projects on Sri Lankan Women's history at the time of her deportation. She was researching the Women's Franchise Union of the 1920s as well as the life of prominent educationist Hilda Kularatne at the time of her summary deportation from this country. Dr. Russell's work is of enormous importance to the severely under-researched area of Sri Lankan women's history, and her deportation poses a great loss to Sri Lankan scholarship. We ask the government to take into account her past contributions to the field of Sri Lankan historical research as well as her ongoing work on women's history and ensure her return and continued work in Sri Lanka.

Signatories

Feminist Forum
Women's Education and Research Centre
Women and Media Collective
Women's Task Force

SSA Gender Unit
Women For Peace
Voice of Women
Muslim Women's Research and Action Front.

FORCEFUL DEPORTATION OF DR JANE RUSSELL: AN OUTRAGEOUSLY CONTEMPTUOUS ACT

Women for Peace is outraged and appalled to witness the arbitrary arrest, detention and subsequent forceful deportation of Dr Jane Russell, a renowned scholar and academic from Sri Lanka on 17th April 1996, when the government was celebrating the 80th birthday of the Prime Minister. We feel that she should have been honoured rather than deported on the day. We strongly condemn this capricious act of the bureaucracy. This act constitutes an instance of misuse of power of a sinister kind. Russell's lawyers were in the end, unable to plead her case in court which was due on 18th April 1996.

The actual reason for her deportation, we are told, was her overstay of her visa. However, the Immigration authorities have so far failed to explain the reason for confiscating Russell's passport. How did this high handed action of the Immigration authorities go unnoticed and unquestioned? Does this mean, that despite rhetoric on good governance and transparency, a bureaucracy has its own institutional powers to punish individuals with impunity?

The very modus operandi of the event underlines the extent of unlimited powers entrenched in the bureaucracy. While the real motive for her deportation remains yet to be determined, in the eyes of the law of the land, Russell was made guilty of the alleged charge of overstay of her visa. The law, however, is absolutely silent on the question of impoundment of her passport. The Controller of Immigration, it would appear, has been instructed from above to take stern action against Russell. We ask why?