

Amnesty International's Secretary General, Pierre Sane, has written to the political parties contesting parliamentary elections scheduled for 16 August 1994, asking them to make clear their specific commitments to human rights protection. The text of the letter is reproduced below.

OPEN LETTER TO POLITICAL PARTIES

In the past decade, Sri Lanka has experienced a period of intense violence and flagrant and widespread violation of human rights. Some checks and safeguards against human rights violations have now been introduced, but a tremendous amount of work remains to be done to protect the human rights of all people in Sri Lanka during peace and during conflict.

Amnesty International is writing to each of the main political parties expected to contest parliamentary elections in Sri Lanka to urge you to consider, and make known, your party's position on human rights and the specific commitments your party is making to strengthen human rights protection in Sri Lanka. In this letter, we suggest three main areas for action. These are:

Constitutional and Legal Reform

The constitution and all relevant laws need to be reviewed and reformed to ensure that they conform fully with the provisions of the International Covenant on Civil and Political Rights (ICCPR), the Torture Convention, and other international human rights standards;

Ending Impunity

Impunity- that is, exemption from punishment or any serious form of accountability- contributes significantly to the continuation of human rights violations. To overcome impunity, it is necessary for human rights violations to be fully and thoroughly investigated, as required under international human rights law; for those responsible for violations to be brought to justice; and for those whose rights have been violated to be adequately compensated.

Ratification of Further International Human Rights and Humanitarian Standards:

Sri Lanka is already party to the main human rights instruments, but would strengthen its commitment to human rights protection by also ratifying at least the two Optional Protocols to the ICCPR and the Second Additional Protocol to the Geneva Conventions.

Amnesty International is a worldwide human rights organization which seeks to promote adherence to international human rights standards and which campaigns on certain specific concerns. Sri Lanka has already

acceded to some of the main international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These instruments will remain binding on future governments of Sri Lanka. It is therefore important for all parties to consider how they intend to implement the provisions contained within these instruments should they succeed in the elections. We hope that the government that is elected will give high priority to bringing Sri Lankan law and practice fully into line with international human rights standards to ensure that there can be no recurrence of the gross violations of human rights reported from Sri Lanka in the recent past.

We also hope that all political parties and parliamentarians, whether in power or in opposition, will assist in developing a climate within which the rights of all people in Sri Lanka will be respected and protected. The protection of human rights will advance most readily when human rights are understood to be in the interests of all people, regardless of party-political or other differences between them. Genuine initiatives to strengthen human rights protection will be more effectively pursued if they are not treated as party-political issues, and if they can be considered in a constructive light, whether they originate from within the ruling party, opposition parties, or other sources. Such initiatives-which should include amendment of the constitution and other laws to ensure they comply fully with international human rights standards, as well as providing the means to ensure that these standards are enforced in practice-often require cross-party support to succeed.

Under international law, it is governments who are obliged, whatever their political complexion, to ensure that human rights are fully protected and that human rights are not violated by agents of the state. "Human rights" is not a party-political issue. Human rights apply to all people, regardless of political allegiance, ethnicity, race, religion, language, caste or sex. They must be enforced by all governments, whatever their ideological or other differences.

International human rights law also envisions a role for individuals in promoting better human rights practice. The ICCPR, for example, describes the individual as having duties to other individuals and to his or her community, and as having the responsibility to strive for the



promotion and observance of the rights described in the covenant.

At present, the Constitution of Sri Lanka fails to provide the full range of human rights protection that is required by these international instruments. For example, the fundamental rights chapter of the constitution does not include the right to life, and permits considerably greater restrictions to be imposed on the exercise of other rights than are permitted under international law. The constitution also provides for laws to remain valid which were already in existence at the time the constitution came into force, regardless of whether they conflict with the fundamental rights provisions of the constitution. Emergency Regulations and the Prevention of Terrorism Act are also in urgent need of amendment to ensure that the safeguards on detention required under the ICCPR and the Torture Convention are implemented. Amnesty International has repeatedly expressed concern to successive governments about aspects of these laws. These concerns include the fact that the laws permit detainees to be held in conditions conducive to torture, and that the inquest procedures which can be applied under the Emergency Regulations following a death in custody could be used to cover-up illegal killings.

The observance of humanitarian law, as expressed in the Geneva Conventions, is also of critical importance in Sri Lanka. The most widespread and gross violations of human rights have been committed in a context of armed and violent opposition to the government—be it by Tamil separatists in the northeast, or by Sinhalese insurgents in the south. Even while they have campaigned internationally against human rights violations committed by government forces, those who have opposed the government by violent means have themselves committed grave and widespread abuses. These have included killing large numbers of non-combatant civilians, torturing prisoners, taking hostages, and forcing thousands of people from their homes in certain areas of the country solely because of their ethnicity or religion. Humanitarian law clearly outlaws such practices, whether committed by government or opposition forces.

The main focus of concern in recent years among international and local human rights organizations in Sri Lanka has been on the most grave human rights violations, including “disappearances” and extrajudicial killings, committed against a background of protracted internal armed conflict in the northeast and a more short-lived armed insurgency in the south. Such a focus should not mislead anyone into thinking that human rights violations are only committed in such contexts. When such conflict ends, there will still be a need for active programs to protect human rights. If impunity is allowed to prevail, it will become harder to prevent human rights violations in the future. Safeguards against

human rights violations, such as those detailed in the ICCPR and the Torture Convention, need to be rigorously implemented and accountability for violations must be ensured if the protection of human rights is to be achieved.

Amnesty International very much hopes that in the run-up to the forthcoming elections, all political parties will give full consideration to the ways in which they will contribute to the future protection of human rights in Sri Lanka, whether or not they come to power, and that they will make their positions known publicly. Public debate on these issues would enhance public awareness and, in the longer term, would help ensure that any promises made now will be acted upon in the future.

The texts of the main human rights and humanitarian law instruments which Sri Lanka has ratified or acceded to are attached, together with a comment on the further instruments which Amnesty International hopes the next government will ratify and implement at the earliest opportunity.

APPENDIX

The International Covenant on Civil and Political Rights

Sri Lanka acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1980, thereby undertaking to protect its people by law against cruel, inhuman or degrading treatment and recognizing the right of every human being to life, liberty, security and privacy of the person. The Covenant prohibits slavery, guarantees the right to a fair trial and protects persons against arbitrary arrest or detention. It recognizes freedom of thought, conscience and religion; freedom of opinion and expression; the right of peaceful assembly and of emigration; and freedom of association.

There are now two Optional Protocols to the ICCPR neither of which Sri Lanka has signed. Amnesty International hopes that the government that is elected will ratify the two Optional Protocols at the earliest opportunity.

The first Optional Protocol enables individuals whose rights have been violated, and who have exhausted all available national remedies, to appeal directly to the Human Rights Committee of the United Nations. The Human Rights Committee is the body created under the ICCPR to monitor its implementation. The Second Optional Protocol provides the world's first pact of universal scope aimed at ending the death penalty. States that become party to this protocol are bound not to carry out executions, except in certain limited circumstances: “in time of war for a most serious crime of a military nature committed during wartime.”

The International Covenant on Economic, Social and Cultural Rights

Sri Lanka acceded to the International Covenant on Economic, Social and Cultural Rights in 1980, thereby acknowledging its responsibility to promote better living conditions for its people. The Covenant recognizes everyone's right to work, to fair wages, to social security, to adequate standards of living and freedom from hunger, and to health and education. It also protects the right of everyone to form and join trade unions.

The Convention Against Torture

Sri Lanka acceded to the Convention against Torture in 1994, thereby undertaking to "take effective legislative, administrative, judicial and other measures to prevent acts of torture." The Convention requires state parties to accept that torture cannot be justified in any circumstances—for example, torturers cannot use the excuse that they were carrying out orders from their superior officers, and governments cannot claim that a war or state of emergency or political instability justifies torture. The Convention requires that torture be made punishable as a crime of a "grave nature", and the authorities are required to examine allegations of torture promptly and impartially. Victims or their families must be able to get fair compensation and receive rehabilitation. Statements made under torture may never be used as evidence in court—except when alleged torturers are being tried, when such a statement can be introduced in court as evidence that the statement was made.

Geneva Conventions

Sri Lanka ratified the Geneva Conventions in 1959. The four Geneva Conventions of 1949 set forth detailed rules of behavior to protect actual or potential victims of war. Each Convention covers a specific class of "protected persons"—wounded and sick members of the armed forces on land; wounded, sick and shipwrecked members of the armed forces at sea; prisoners of war, and civilians respectively. The Geneva Conventions do not outlaw war, but they do provide that people not involved in the fighting are to be treated humanely. The Conventions apply to international conflicts, but importantly, Article 3 (which is common to all four Conventions) extends to internal conflicts and is binding upon all parties to the conflict. Common Article 3 forbids the killing, mutilation, torture or cruel treatment of people who do not take a direct part in hostilities, including those who have surrendered or are *hors de combat*. It also prohibits hostage-taking and humiliating and degrading treatment.

There are also two Additional Protocols to the Geneva Conventions of 1977. The Second Additional Protocol, which Sri Lanka has not ratified, relates to the protection of victims of internal armed conflicts. Amnesty International urges the government that is elected to ratify the Second Additional Protocol at the earliest opportunity.

The Second Additional Protocol develops and supplements the protections provided in Common Article 3. If ratified, it would automatically become binding upon any other party in conflict with the government.

ETHNICITY, 'NATION' AND STATE FORMATION IN SRI LANKA: ANTINOMIES OF 'NATION-BUILDING'

Jayadeva Uyangoda

A unilinear national hagiography is impossible: any attempt of this sort appears immediately sectarian, false, utopian, anti-national, because one is forced to cut out or undervalue unforgettable pages of national history.... There is nothing of the sort in Italy where one must search the past by torchlight to discover national feeling, and move with the aid of distinctions, interpretations and discreet silences... The preconception that Italy has always been a nation complicates its entire history and requires anti-historical intellectual acrobatics.... History was political propaganda, it aimed to create national unity—that

is, the nation-from the outside.... It was a wish, not a move based on already existing conditions.

- Antonio Gramsci.¹

Sri Lanka's problem of violent ethnic conflict is by no means a unique case of how a 'nation-state' project has fallen to pieces; the contemporary world provides so many examples of ethnic disintegration of states. The collapse of the post-war model of multi-ethnic nation-states in a way points to a world historical process in which a tendency towards the formation of states based on

