

## SRI LANKA

### CCPR A/39/40 (1984)

95. The Committee considered the initial report of Sri Lanka (CCPR/C/14/Add. 4 and 6) at its 471<sup>st</sup>, 472<sup>nd</sup>, 473<sup>rd</sup> and 477<sup>th</sup> meeting held, on 31 October, 1 and 2 November 1983 (CCPR/C/SR. 471-473 and 477), in accordance with a decision taken at the nineteenth session, in view of the public emergency which had then just been proclaimed, to give priority to this report.

96. The report was introduced by the representative of the State party who described certain features of the country, its long history of parliamentary democracy, its position in world affairs, its stand on human rights and some landmarks of the 1978 Constitution which had abolished distinctions between forms of citizenship.

97. He stated that the Government of Sri Lanka appreciated that the foundation for maintaining international standards of human rights must be public awareness; and that it had, therefore, been taking steps to promote understanding and respect for human rights among the population, mainly through the activities of the Sri Lanka Foundation, a body corporate created by statute, whose object was the promotion and protection of human rights and belief in the democratic way of life. The Foundation, inter alia, had arranged for the Covenants to be translated and published in Sinhalese and Tamil for public distribution and had conducted competitions among school children with a view to stimulating an interest in human rights. He also described at length the steps taken to introduce the teaching of human rights into the curricula of universities and schools.

98. The representative referred to unfortunate developments that had taken place in Sri Lanka, where the even tenor of political and social life and the functioning of democratic institutions had been disrupted from about the mid-1970s by the activities of an extremist group demanding a separate State and pointed out that, accordingly, it had been necessary to adopt certain legislative measures, such as the Prevention of Terrorism Act, to cope with the terrorist attempts to subvert a legitimate and popularly elected Government.

99. Members of the Committee emphasized the importance and quality of Sri Lanka's report and of its delegation, which bore witness to the Government's willingness to enter into a genuine dialogue with the Committee, and it noted that the country was distinguished by a long tradition of legality and great judicial independence. It was pointed out that the action taken by the authorities to publish the Covenant in Sri Lanka's national languages and to stimulate public interest, particularly that of young people and children, in the question of human rights was especially praiseworthy. Information was requested about the substance of the human rights teaching offered in the schools.

100. Commenting on article 1 of the Covenant, some members wondered whether the interpretation given by Sri Lanka of the right of self-determination did not constitute an excessive restriction since that

article was addressed to all States parties and that sovereign and independent States had obligations thereunder. It was asked whether, for example, part of the population might not claim the right of secession or plead for a federal form of government in accordance with the right of peoples to self-determination as enshrined in this article. Other members pointed out that the right of self-determination in that article was generally interpreted as a right that could not be exercised to the detriment of territorial integrity or by elements which formed an integral part of any given country. They did not agree, however, that this right was not applicable to sovereign States since it was a right of a continuing character - the right of the whole people to choose their form of government and to elect their chosen representatives to carry out policies endorsed by the electorate.

101. With reference to article 2 of the Covenant, it was pointed out that the report merely stated that the Constitution had prohibited discrimination, but that it would be interesting to know how discrimination by private individuals on grounds of race had been dealt with. It was also noted that while the fundamental rights provided for in the Constitution should apply to all persons, some distinction had been made to the effect that aliens in general were unable to enjoy the rights to freedom of speech, freedom of assembly and freedom of association and that the Covenant allowed for derogations from article 2, paragraph 1, and article 26 only in situations of national emergency, whereas the Constitution of Sri Lanka allowed for general restrictions. In this connection it was pointed out that it appeared from the Constitution that no examination of its national law had been made by Sri Lanka before its accession to the Covenant to ensure conformity with its obligations under that instrument - hence the above-mentioned inconsistencies. Noting that the provisions of the Covenant, which were not recognized in common law or incorporated in the domestic legislation of Sri Lanka, could not be directly invoked before the courts and that the Supreme Court was competent to rule on the constitutionality of draft enactments, members asked what remedies would be available to an individual who considered that a measure of domestic law or an administrative act violated his or her rights as defined in the Covenant; which law would prevail in the event of a conflict between common law and the provisions of the Covenant; whether a general principle of interpretation had been developed in the court system of Sri Lanka whereby national statutes must be interpreted in the light of the country's international obligations; and more precisely, whether the Supreme Court could take into consideration a bill's consistency or inconsistency with the Covenant and, if not, who could. Explanations were requested as to the meaning of article 16 of the Constitution, and it was asked whether the provisions of that article did not restrict the effectiveness of the rights proclaimed in the Constitution or embodied in the Covenant.

102. Noting that the Supreme Court had sole and exclusive jurisdiction to hear and determine violations of the rights recognized by the Constitution and that persons whose rights were infringed by executive or administrative action had only one month to bring the matter before the Supreme Court, members pointed out that the number of cases must, therefore, be limited and wondered whether the time-limit of one month was not too short, especially in the case of a detainee who might find access to legal advice difficult. Reference was made to a statement in the report to the effect that the Supreme Court was able to grant such relief or make such directions as it may deem just and equitable in the circumstances, and information was requested on the effectiveness of the remedies offered to citizens by the Supreme Court and, in particular, about the number of cases that had been referred to the

Supreme Court and their results; whether the Supreme Court had any discretion to extend the time-limit in certain cases and whether, in view of the distance and cost involved, recourse to the Supreme Court was effectively possible for all persons. In this connection, it was asked what the relations were between the Supreme Court and the Ombudsman and whether recourse to the Ombudsman was an alternative to proceedings before the Supreme Court. More details were requested about the functions of the Ombudsman and the number and outcome of cases referred to him, and it was asked how accessible the Parliamentary Commissioner was in fact to an individual who claimed that his or her rights had been violated and whether the procedure governing relations between the individual and the Commissioner did make for the efficient investigation of grievances. Reference was made to reports of excesses on the part of police officers or the administrative authorities and to a police superintendent who had lost a court case but had subsequently been promoted and the compensation he had been ordered to provide had been paid by the Government, and it was asked whether the executive, at least indirectly, might act to protect officials who had exceeded or abused their powers and what the effects of such action could be, considering that respect for human rights in daily life depended more on the attitude of the Government and police than on court decisions.

103. With reference to article 3 in conjunction with article 23 of the Covenant, more information was requested about existing legislation and practice relating to equality between men and women in Sri Lanka and about access of women to educational institutions, Parliament, foreign service and to free professions. Recognizing that religious laws had to be respected in Sri Lanka as anywhere else and that they often led to discrimination against married women, members wondered whether the Sri Lankan Government had the means to verify that religious practices and laws were not contrary to article 3 of the Covenant and whether, when there was discrimination, the courts were authorized to take cognizance of the case and whether equality between both sexes existed in Sri Lanka in case of divorce.

104. Commenting on article 4 of the Covenant, members asked what derogations from the provisions of the Covenant had been considered necessary following the proclamation of the state of emergency; whether any of the rights listed in article 4, paragraph 2, had been derogated from; whether the Prevention in Terrorism Act was considered an emergency measure; and whether the Public Security Ordinance was compatible with this article. It was asked why the Sri Lankan Government had not thought fit to make the notification of the proclamation of the state of emergency, as required under this article, and to what extent the proclamation of the state of emergency had influenced the situation of human rights in Sri Lanka. In this connection, it was pointed out that as long as no notification or justification had been given in respect of rights permitting derogation, they must be considered in force and hence the Government must account for them as in normal situations.

105. As regards article 6 of the Covenant, it was asked what the Government was doing to protect children against epidemics, hunger and the like, whether there was an excessively high birth rate and high infant mortality and whether abortion was authorized. Information was requested about the use of firearms by the police, the existence or otherwise of strict rules governing such use and the penalties imposed on policemen for the careless use of firearms. Reference was made to the recent intercommunal clashes in Sri Lanka which had been marked by special violence and the loss of innocent lives as well as to the inability of the police to perform its duty and the failure of the prison authorities to ensure the

safety of detainees, and it was asked what was the exact number of persons who had been killed; whether any thorough investigation had taken place of the incidents and, if so, with what results; and whether any measures had been taken to prevent incidents of the kind from recurring. In this connection, reference was also made to a provision of the Emergency Regulations, issued on 3 June 1983, to the effect that the police could take possession of and bury or cremate any corpse and forbid anybody to be present on pain of committing an offence, and it was pointed out that this provision was extremely disquieting, especially from a moral point of view, since the respect due to the dead had been common to all peoples from the most remote antiquity. In the absence of a clear explanation, the hypothesis lay open that the provision would enable the police to dispose of potential sources of embarrassment in the form of corpses, the sight of which might give rise to questions, assumptions or certainties about the exact circumstances of the death and what had preceded it.

106. With reference to articles 7 and 10 of the Covenant, it was noted that the Constitution prohibited torture and cruel treatment but that some detainees had complained of ill-treatment by the police and the security forces. It was asked who received and investigated such complaints; how the offenders were dealt with; whether cases of torture had been tried by the courts and whether there were any relevant provisions in the criminal law; how prisons were supervised; and whether prisons were regularly visited by persons who were completely independent of the prison authorities. In this connection, reference was made to a statement in the report to the effect that the Supreme Court had unanimously decided that there was no evidence of "an administrative practice of torture or ill-treatment", and it was asked whether that meant that the Court had found unlawful practices in many individual cases but no evidence of a pattern which could be described as an "administrative practice" and what the role of the Supreme Court was under this article, which was linked with article 2 of the Covenant.

107. As regards article 9 of the Covenant, it was pointed out that no restrictions were permitted on the rights set forth in this article although derogations from that article could be made under the emergency powers envisaged in article 4 and that both Sri Lanka's Prevention of Terrorism Act of 1979 and the Public Security Ordinance seemed to derogate from article 9 without any attempt being made to meet the requirements of that article. It was also noted that by virtue of an amendment adopted in 1982, the Act of 1979, which had been originally of a temporary character, would henceforth remain in force until repealed and it was asked whether the 1982 amendment was not inconsistent with the emergency character of the legislation. More information was requested in that respect, since a formal notification setting out the justification for the departures which had been enacted was required under article 4 of the Covenant. Concern was also expressed on the measures taken under that Act, especially with regard to arrests without warrants and preventive detention by order of the Minister of Internal Security for a period of up to 18 months as well as over alleged political detentions under Emergency Regulation No. 19, and it was asked whether those provisions were really justified by the situation; how many persons were being detained under a ministerial order; what the maximum period was for which any such person had been held; what remedies were available to an individual who considered himself to be a victim of arbitrary detention; and what the legal status of insurgents was.

108. Commenting on article 14 of the Covenant, members asked whether the courts were really accessible to all, what training was required to become a judge, who appointed judges and whether any

women served as judges, particularly in the Court of Appeal; whether the independence of the judiciary was ensured at all levels and whether referral of cases to the Secretary to the Ministry of Defence might not threaten such independence; whether confessions as a means of proof were accepted under Sri Lankan law and, if so, what happened in the case of confessions extracted in dubious circumstances. Noting that the constitution had placed certain restrictions upon the rule of presumption of innocence and that the Covenant would allow a departure from the rule only within the framework of a state of emergency envisaged under article 4, one member expressed the view that the limitation clause in the Constitution should be reconsidered in the light of Sri Lanka's obligation under the Covenant.

109. With reference to article 15 of the Covenant, members noted that, according to the Prevention of Terrorism Act, acts which had not been criminal offences when they had been committed could be declared criminal offences and they asked how the Government of Sri Lanka could justify the retroactive character of that Act in the light of the express provisions of this article and the prohibition in article 4 of any derogation therefrom. It was also pointed out that article 15 (1) of the Constitution which provided for restriction of the prohibition of retroactivity was incompatible with article 15, paragraph 1, of the Covenant and it was suggested that the Law Commission of Sri Lanka should look into the matter.

110. In relation to article 18 of the Covenant, reference was made to article 9 of the Constitution which gave to Buddhism the foremost place, and information was requested on the actual effects of that provision, particularly with regard to the application of articles 25 and 26 of the Covenant.

111. As regards article 20 of the Covenant, information was sought on the relevant provisions of the Constitution and the criminal law which covered the prohibition of war propaganda as provided for in this article. One member noted the absence in the report of any mention of the prohibition of racial hatred as required in this article and he maintained that such prohibition by law would be a most effective means of combatting the terrorism now racking Sri Lanka.

112. In connection with article 22 of the Covenant, it was asked what the reasons were for prohibiting certain political parties; what remedies were available to them and whether they had been invoked; and what the exact meaning was of article 15 (4) of the Constitution which authorized restrictions on the freedom of association in the interest of national economy.

113. With reference to article 24 of the Covenant, it was asked whether the legal status of children born out of wedlock was the same as that of legitimate children; how children acquired Sri Lankan nationality and whether children of Indian Tamils residing in the country had Sri Lankan nationality or the nationality of their parents; and what legislative or administrative measures had been taken to protect children against exploitation and discrimination in employment.

114. Commenting on article 25 of the Covenant, one member sought clarification of the Fourth Amendment to the Constitution prolonging the mandate of the present Parliament until 1989 which appeared to involve a serious curtailment of the democratic rights of the people. Another member requested information about the constitutional amendment requiring public officials to take an oath

disavowing separatism.

115. Regarding article 27 of the Covenant, it was asked what distinction was made in practice between the official language and the national language in a country of multilingual character as Sri Lanka's, whether the need to know two languages was not, for the majority of the population, an obstacle to entry to the civil service or university; how effect was given to article 25 of the Constitution which bound the State to enable all citizens to use their own language; and whether the Tamils, the majority of whom lived in another country, were considered as an ethnic group or as a national minority. Noting that Sri Lanka was a "multinational, multilingual State", members requested details about the measures taken to guarantee the rights of ethnic and religious minority groups, about the assistance given to them to preserve their cultural identities, languages and religions and about the manner in which they were represented in Parliament.

116. It was suggested that nearly all of Sri Lanka's problems in the human rights field arose from racial antagonisms which the newly independent State had inherited from the colonial era; that traditional differences between the majority of the country's population and a sizeable minority, deliberately encouraged by foreign political and economic interests, were at the root of the process of deterioration of the human rights situation; and that unless a political solution was found, it would be extremely difficult in future to avoid a recurrence of the tragic events which had occurred in July 1983.

117. Members of the Committee asked what the Government of Sri Lanka intended to do about the observations and questions put forward in the Committee and whether the people of Sri Lanka would be given a full account of the discussion which had taken place in the Committee. It was stressed that the examination of States' reports could be fully effective only if the people were properly informed, so that a genuine dialogue could be said to take place between the Committee and the public, as well as the Government, of the country concerned.

118. Responding to comments made by members of the Committee, the representative of the State party stated that his Government's accession to the Covenant formed part of its affirmative action to promote human rights in Sri Lanka in line with its commitments to the ideals of the United Nations, but that the terror that ravaged his country recently could not be contained or controlled by normal processes applied by civilian law enforcement authorities, but could only be done by the assumption of additional powers limited to the exigencies of the situation and to the areas where the terrorists operated.

119. Replying to questions raised under article 1 of the Covenant, the representative pointed out that there was both a legal and a political problem with respect to this article and that they were competent to deal only with the legal question. They also reiterated their Government's interpretation of the phrase "the right of self-determination" as applying to peoples still under alien and foreign rule but not to sovereign independent States or to a section of a people or country.

120. As regards questions raised under article 2 of the Covenant, the representative confirmed that certain provisions of the Constitution had restricted the rights of non-citizens but that this was not done in a manner inconsistent with the Covenant. He also stated that the restrictions provided in article 15

(7) of the Constitution, although grouped together for the sake of convenient drafting, were not applicable to all the rights set forth in the Constitution but only to certain relevant rights in the interests of public health or morality. He conceded that article 16 of the new Constitution diverged from the provisions of the Covenant but explained that its authors, rather than abolish or invalidate any laws that were not strictly in compliance with the Covenant, had decided to keep them in force while, at the same time, setting up a Law Commission in order to examine those laws and change them as necessary from time to time, and that the Commission's current programme of work included the study of procedures for the enforcement of fundamental rights. All the rights set out in the Covenant were, in substance, enshrined in one or more articles of the Sri Lankan Constitution; any bill which was consistent with the Constitution was ipso facto consistent with the Covenant. The constitutional validity of bills could be examined, as had been the case on several occasions, at the request of any citizen or organization composed of citizens.

121. Replying to a question concerning the one-month time-limit for invoking the jurisdiction of the Supreme Court, the representative stated that a certain time-limit had to be provided to ensure that complaints were not made so long after the alleged event that the veracity of the complaint could no longer be verified. However, the Supreme Court had recognized that no one should be denied relief as a result of having been unable to set the machinery in motion within the prescribed period. With regard to the cost of instituting an action, if account was taken of the fact that free legal assistance was available and that lawyers often appeared in fundamental rights cases without a fee, it could be said that the cost of invoking the jurisdiction of the Supreme Court would be about \$100. In this connection, he stressed that there was no limit placed on the power of the Supreme Court to grant any relief that might seem just and equitable. The Ombudsman or Parliamentary Commissioner could investigate not only the violation of a fundamental right but also any other case of injustice; that once he had concluded his investigation, he had to report to the Parliamentary Petitions Committee, and that where complaints were made of any offences or acts of violence by service personnel, they would initially be examined by a senior police officer and then referred to the Attorney General who would institute proceedings in appropriate cases. There was also a procedure whereby any person could institute proceedings by way of a private complaint before the magistrate. There was no official tolerance of violence. In every case where there was evidence of a breach of the law by service personnel, those legal procedures would be set in motion, without exception.

122. With respect to the questions put under article 3 in conjunction with article 23 of the Covenant, the representative stressed that no discrimination between men and women was permitted and that equality of all citizens, irrespective of sex, was protected by the Constitution. He gave a detailed account of women's active role in all spheres of life - political, diplomatic, social, educational etc. - and pointed out that there was no discrimination in labour law as between male and female workers except in a few areas such as the tea plantation sector, in which there was a difference based on the nature of the work performed.

123. Replying to questions raised under article 4 of the Covenant, the Committee was assured that none of the articles referred to in article 4, paragraph 2, of the Covenant had been derogated from in the emergency; that the conditions under which derogations from other articles of the Covenant were

permitted under the Constitution related to the safeguarding of national security and public order, the protection of public health and morality, and the securing of due recognition and respect for the rights and freedoms of others; that restrictions on the rights described in the Covenant could be imposed not only for an emergency but also on other grounds specified in respect of each article; and that none of the restrictions stipulated in the Constitution went beyond the restrictions recognized by the Covenant. He informed the Committee that the necessary procedures to fulfil Sri Lanka's obligation to notify the proclamation of the state of emergency of stipulated in this article were being devised by the relevant authorities.

124. In connection with questions put under article 6 of the Covenant, the representative pointed out that the quality-of-life index in Sri Lanka was among the highest in the third world; that the infant mortality rate compared favourably even with that of some developed countries; that population growth had declined sharply in the last decade; and that family planning clinics in his country had existed for many years. He also gave details on capital punishment and said that no one had been executed since 1977. He stated that there were strict laws and regulations under which firearms could be used by members of the security forces; that members of the police did not carry firearms in the course of their normal duties except in the case of an emergency; that prison officers were entitled to cause death in apprehending an escaped prisoner; that the prison incident which result in the death of 53 prisoners involved an unprecedented situation where prisoners in one part of the prison had attacked prisoners in another part, that the small number of guards within the prison had been unable to control the rioters who had caused the death of the prisoners in question; that a magisterial inquest had immediately been held and the proceedings had been made public in the newspapers; and that steps had since been taken by the authorities to prevent a recurrence of a similar disaster. As to the emergency regulations regarding the disposal of dead bodies, he pointed out that the question of not holding a public inquest and excluding relatives from the funeral had a vital relevance in the context of the situation in Sri Lanka; that police officers had no right to bury deceased persons without an inquest unless the Secretary of Defence decided that an inquest was unnecessary after considering the notes of investigation; and that the reason for the exclusion of persons from the funeral was to prevent attendance by sensation-seeking journalists who might further exacerbate the feelings of the public.

125. With reference to questions raised under articles 7 and 10 of the Covenant, the representative pointed out that on receipt of complaints containing allegations of torture, action would be taken to instruct the judicial medical officers, who were not members of the security force, to examine the plaintiff. There had been allegations made by detainees who had given evidence in court and been subjected to cross-examination but that, on those occasions, it had been established that the allegations were false and unsupported by any evidence from doctors who had examined the detainees. Prisons were regularly inspected and every member of Parliament had the right to make surprise visits and thus complaints of ill-treatment could be investigated and action taken where necessary.

126. In connection with comments made under article 9 of the Covenant, he stated that the Prevention of Terrorism Act was an emergency measure; that its preamble set out the purposes and conditions under which it had come into operation; that the question really turned on what was meant by an imminent threat to public order and whether it could be limited to a definite period of time or should

continue as long as the threat existed from a group of people who had already used violence against government officials and institutions. He also stressed that all detentions under the Act were subject to review by the courts which, like the United Kingdom courts, had never been deterred by the existence of an exclusion clause from subjecting an order to judicial review; that the writ of habeas corpus had been resorted to in a number of cases and the reasons to arrest had to be justified; and that the Act also provided for the release of prisoners on bail in certain circumstances. The Emergency Regulations provided that where the Secretary to the Ministry of Defence was of the opinion that it was necessary to prevent a person from acting in a manner prejudicial to national security or the maintenance of public order or the maintenance of an essential service, or from committing any act of sedition or incitement to sedition, or any act of terrorism or fostering terrorism, such a person might be detained. However, the validity of the detention order could always be challenged in the courts and in such cases the Secretary to the Ministry of Defence would have to satisfy the court that the order had been made bona fide in the interests of national security and not for any collateral purpose.

127. With respect to questions raised under article 14 of the Covenant, the representative stated that the Constitution sought to ensure the independence of the judiciary and provided security of tenure, fixed salaries and insulation of judges from disciplinary controls by the Executive; and that the superior courts could not be arbitrarily abolished or the judges removed, except by the procedures provided for in the Constitution. Noting that the admissibility of confessions made to police officers as evidence against defendants was part of the law of several countries, he stressed that the Prevention of Terrorism Act, while making confessions admissible, contained safeguards against forced or non-voluntary confessions; that since no confession forced from a suspect was acceptable in a court of law, there would be little purpose in compelling him to make such a statement by torture or other means; and that there was the further safeguard that the court always looked for corroboration of a confession by testing the evidence. He explained that it had been necessary to enact such legislation because experience had shown that witnesses to acts of terrorism were frightened of becoming victims in their turn if they testified against the perpetrators of such acts. He also pointed out that the provision in the Constitution that "the burden of proving particular facts may be placed on an accused person" was explained by the dictum of Lord Ellenborough that where an accused person did not offer an explanation for circumstantial evidence which pointed to his guilt, it was to be presumed that he had no explanation to offer; that while the Constitution permitted the burden of proof in such circumstances to be placed on the accused, the onus of proving guilt always rested on the prosecution. It was, therefore, not unreasonable to provide that when an accused person subsequently wished to challenge the admissibility of his confession as being non-voluntary, the burden of establishing the facts which had affected his mind should be placed on him.

128. Commenting on questions posed under article 15 of the Covenant, the representative could not agree that the Prevention of Terrorism Act contained any provisions that could be construed as having retroactively created offences, but agreed that article 15 (1) of the Constitution which provided for restriction of the prohibition of retroactivity could be construed as detracting from article 13 (6) of the Constitution which prohibited retroactivity. He assured the Committee that his Government had not hitherto invoked the provision concerned and that he was confident that it would not do so in the future, but that the point could be referred to the Law Commission for consideration.

129. Replying to further questions raised, he explained the historical background for the provision in the Constitution giving to Buddhism the foremost place and pointed out that the Constitution also stressed that the freedom of all Sri Lanka citizens to practice their own religion was guaranteed; that the people were free to establish their own places of worship; and that the Government had been providing assistance to people of other religious faiths.

130. As regards questions raised under article 22 of the Covenant, he stated that his Government had considered that it had a right to apply restrictions in the interests of public safety or public order, as provided for in this article; and that there were currently no such restrictions, but that his Government preserved its right to apply them as necessary.

131. Responding to questions raised under article 24 of the Covenant, the representative stated that children born out of wedlock acquired the nationality of their mothers; that a child born in wedlock would acquire the father's nationality; and that if his mother was a Sri Lankan, he would be granted Sri Lankan nationality on application. However, there was provision for the granting of citizenship by registration to any child born in Sri Lanka who was not entitled to citizenship by right of descent.

132. As regards questions put under article 25 of the Covenant, he explained that the Fourth Amendment to the Constitution sought to extend the life of Parliament by referendum; and that far from being a diminution of the sovereignty of the people and in conflict with article 25 of the Covenant, the referendum was an exercise of that sovereignty. The Fourth Amendment also stipulated that there must be a minimum poll of 66 per cent of the entire country and that a substantial majority of those voting must demonstrate their wish to extend the life of Parliament. Referring to a question concerning the oath to be taken by a person under the seventh schedule to uphold the Constitution, he pointed out that it was impossible to uphold the Constitution and at the same time to agree to dismantling the territory. It was open to the people of the country to amend the Constitution if they so wished, but so long as the Constitution existed, it was not possible to advocate separatism.

133. In connection with questions raised under article 27 of the Covenant, the representative explained the role of the Division of Hindu Religious Affairs established under the Ministry of Regional Development, the International Hindu Centre and the Department of Moslem Religious Affairs established under the Moslem Mosque and Charitable Trusts (Wakufs) Act in furthering religious and cultural interests of Hindu and Moslem interests, respectively. He also informed the Committee that 23 Tamil members of Parliament - 12 per cent of the total membership of 168 - had been elected in the latest general elections in 1977 and that there were several procedures for safeguarding the proper representation of minorities in Parliament.

134. The representative stated that his Government's campaign against separatist terrorists was not directed against the country's Tamil minority group but against those of its members who had chosen to abandon the democratic political process and to proceed instead by methods of inhuman terror with the object of creating a separate State through armed struggle against the Government.

135. He informed the Committee that there was tremendous interest in human rights matters at all

levels in Sri Lanka; that the proceedings reported from Geneva regarding the consideration of the report would undoubtedly be given full coverage; that there would be questions in Parliament not only about the Committee's proceedings but probably also about the performance of members of the delegation; and that the Government would give serious attention and consideration to what had occurred and would no doubt await the Committee's report on the hearing. Some further observations by members of the Committee were also replied to.

## CCPR A/46/40 (1991)

454. The Committee considered the second periodic report of Sri Lanka (CCPR/C/42/Add.9) at its 1057<sup>th</sup> to 1060<sup>th</sup> meetings, held on 9 and 10 April 1991 (see CCPR/C/SR.1057-1060).

455. The report was introduced by the representative of the State party, who said that the Constitution of 1978 had been reviewed and that proposed amendments to the Constitution, on which the members of the Committee were invited to comment, were currently under discussion in Parliament. Sri Lanka was plagued by terrorist activities carried out by separatists in the northern and eastern provinces, and the Government had used its powers under the Terrorism (Temporary Provisions) Act and the Emergency Regulations to maintain the law. A skeleton civil administration was left in the northern and eastern provinces.

### Constitutional and legal framework within which the Covenant is implemented, in particular during the state of emergency

456. With reference to that issue, members of the Committee wished to know what the status of the Covenant was within the Sri Lankan legal system and how contradictions between domestic legislation and the Covenant, if any, were resolved; whether there had been any cases during the period under review where the provisions of the Covenant were directly invoked before the courts; whether the provisions of article 155 of the Constitution relating to parliamentary control of the proclamation of a state of emergency had been effectively applied; what had been the impact of the state of emergency on the exercise of the rights guaranteed under the Covenant, in particular with regard to safeguards and remedies; what was the relationship between the courts and non-judicial bodies operating under the state of emergency such as the Advisory Board, the committees established to monitor the activities of the security forces and to probe into the arrest of students, and the Parliamentary Commissioner (Ombudsman); whether individuals who failed to obtain redress through such bodies could apply directly to the courts; whether there were any other factors and difficulties affecting the implementation of the Covenant; and what measures had been taken to promote public awareness of the provisions of the Covenant.

457. In addition, members of the Committee wished to know specifically what derogations had been made from obligations under the Covenant in the current state of emergency; whether these derogations had been duly notified to the Secretary-General under article 4 of the Covenant; whether legal provisions had been made for ensuring that the amended Constitution would remain compatible with the Covenant; what were the difficulties that could arise if the Constitution was amended to bring it into conformity with the standards of the Covenant; what the legal relationship was between the Constitution and the emergency regulations; whether the series of laws referred to in article 15 of the Constitution and the proposed new article 15 were considered as derogations; what remedies were available to persons whose rights had been violated by Indian forces and what action had been taken by the Sri Lankan Government with respect to complaints of disappearances as a result of actions taken by Indian troops; what was the number of habeas corpus applications made and how many had been declared

valid; and whether lawyers engaged in pursuing complaints feared reprisals.

458. Members also wished to know whether the grounds of reasonableness upon which a detention order made by the Secretary to the Ministry of Defence was subject to review were determined by the courts and what criteria were used in that determination; what the demands of the separatists were and how the Government envisaged resolving the situation; what had been done to update legislation in light of the Convention on the Rights of the Child; how, specifically, did □ personal laws □ derogate from the rights of women and children and what actions did the Government propose to take in order to give effect to the provisions of the Covenant in this regard; why individuals had no direct access to the Parliamentary Commissioner for Administration (Ombudsman); why the system of censorship had been adopted in stages; whether constituents had a particularly close relationship with their Member of Parliament; to what extent members of Parliament were aware of the human rights enshrined in the Covenant; and why the proposed new amendment to the Constitution substituted the concept of race for that of ethnicity.

459. In reply, the representative said that the Covenant could not be directly invoked before the courts, since international law became part of domestic law only upon formal incorporation. However, the rights provided for under the Covenant were enshrined in the chapter of the Constitution dealing with fundamental rights. Emergency regulations had to be consistent with the Constitution and, hence, with the Covenant. The declaration of a state of emergency had to be ratified by Parliament and could be struck down by the courts on grounds of unconstitutionality. Only the derogations permitted by the Covenant were permitted under the emergency regulations. Safeguards with regard to the writ of habeas corpus and the ability to challenge the validity of the regulations in a court of law remained unimpaired. Information on human rights instruments had been distributed to the armed forces and the police; seminars on human rights topics had been conducted for members of those services; and teaching about human rights had been made part of the school curriculum.

460. Replying to other questions posed by the members of the Committee, the representative explained that when an application for habeas corpus was filed, a writ was issued and the person was immediately produced in court. The remedy could be filed in any of the High Court zones. Petitions for habeas corpus were only successful in cases where an allegation had been made of unlawful detention and the authorities were able to satisfy the court that the persons concerned were either guilty of offences or of such conduct as justified their detention. Normally the period was one week, but in cases in which the authorities alleged that the person concerned was not in fact in their custody, the necessary investigations could of course be lengthy. Recourse to the Ombudsman could only be had through a member of Parliament because alternative remedies were available. Applications to the Supreme Court regarding allegations of infringements of fundamental rights had to be made within one month but the proposed amendment sought to extend that period to four months. In determining the reasonableness of any restriction on rights in Sri Lanka account was taken of the exigencies of the situation and the nature of the restriction sought. Administrative law was used as a yardstick. Article 15 (1) of the proposed amendment, dealing with permissible derogations, specifically excluded article 13 (4) which governed the right to life.

461. The Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979 was originally intended to remain in effect for three years but it had been necessary to keep extending it, and the limiting provision had thus been annulled. The separatists centred their claim on a traditional homeland but the principle of self-determination was interpreted in Sri Lanka as being in effect only at the point of decolonization. The Government had tried various regional autonomy solutions and maintained an ongoing dialogue with the separatists. The repeal of a large number of customary laws could give rise to problems because of popular resistance to change. The Government was prepared to pay compensation to anyone who could establish that he or she had suffered as a result of the activities of the Indian forces but, as those forces were no longer within Sri Lankan territory, inquiries could not be made.

#### Non-discrimination and equality of the sexes

462. With regard to that issue, members of the Committee wished to be provided with further information on the composition and functions of the Commission for the Elimination of Discrimination and the Monitoring of Fundamental Rights and on the results of its operation, and with statistical data on women's participation in the political, economic, social and cultural life of the country as well as the respective proportion of the sexes in schools and universities. They also wished to know in which respects, other than in the exercise of political rights, the rights of aliens were restricted as compared with those of citizens; whether any measures had been taken to protect the right of Sri Lankan women employed outside the country; whether Sri Lanka was party to the Convention on the Elimination of All Forms of Discrimination against Women; whether discriminatory practices of private enterprises could be made punishable under domestic law; and what the rationale was behind the practice of depriving prisoners of their right to vote.

463. In reply, the representative said that the Commission for the Elimination of Discrimination and the Monitoring of Fundamental Rights consisted of persons having expertise in such areas as law, medicine, science, engineering, banking and administrative or social service. Its mandate was to eliminate unjust discrimination by government agencies on the grounds of race, religion, language, caste, sex, political opinion, or place of birth. The Commission was not empowered to investigate discrimination by a private entity. The disparity in the number of women admitted to university reflected the fact that in the social context of Sri Lanka, fewer women than men sought employment. Universal adult enfranchisement since 1931 had ensured the free and unhindered participation of women in the country's political institutions, as was evidenced by the number of women occupying government posts. According to the Constitution, all persons, regardless of nationality and citizenship, were equal before the law and were entitled to equal protection before the law, except in respect of freedom of movement and extradition rules. Private companies were beyond the dictates of the Government. Responsibility for the treatment of Sri Lankan women abroad rested with the receiving State. Prisoners were not allowed to vote for historical reasons predating the Constitution.

#### Right to life

464. With reference to that issue, members of the Committee wished to know on how many occasions

since the consideration of the initial report the courts had ordered the death penalty and how often such sentences had been carried out; what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of those rules and regulations and, if so, what measures had been taken to prevent their recurrence; whether the Government was aware of reports alleging that extrajudicial executions had been carried out and, if so, whether such reports had been investigated; what had been the results to date of the deliberations of the Presidential Commission of Inquiry into Disappearances established in January 1991; what were the composition, powers and functions of the Organization for the Protection of Human Rights through Law Enforcement Agencies and what had been the results of its activities; whether the Government had considered abolishing the death penalty for abetting suicide; and why the State had been relieved from the obligation to investigate all deaths resulting from violence. Members also requested additional information concerning Emergency Regulations relating to post mortems and inquests and regarding progress in reducing infant mortality during the period under review.

465. In reply, the representative said that although it remained on the statutes and was mandatory for offences such as murder, treason and abetment of suicide, no death sentence had been carried out since 1977. All such sentences since that time had been commuted by the President to life imprisonment. Police officers did not normally carry firearms; on those occasions when they did, they were required to use a minimum of force. Use of excessive force was followed by disciplinary action or a criminal trial. The Government was vigilant to ensure that no State agency should resort to extrajudicial executions, but a few such cases were under investigation. The Presidential Commission of Inquiry into Disappearances had received 15 complaints that individuals had been removed by unknown persons or that the whereabouts of those removed were unknown. Public hearings were expected to begin as soon as the investigations had been concluded. The main objective of the Organization for the Protection of Human Rights through Law Enforcement Agencies was to promote and coordinate the work of law enforcement officials and agencies in their recognition of and respect for human rights. Infants mortality had decreased from 22.6 per 1,000 live births in 1986 to 20 per 1,000 due to social welfare policies such as food subsidies, pre-natal care and free health care for the entire population.

466. In reply to other questions, the representative said that Sri Lanka was becoming a transshipment point for illicit drug trafficking, and the Government had maintained the death penalty as a deterrent to potential offenders. It had been left to the discretion of the Inspector General of Police to call for an inquest where a preliminary investigation indicated that there was some culpability on the part of the person who had caused a death, but inquests were not usually held after shootouts between terrorists and government forces. Cases of persons dying while in police custody had been investigated; in at least two cases the officers involved had been convicted.

#### Treatment of prisoners and other detainees

467. With regard to that issue, members of the Committee asked what controls had been instituted to ensure that persons arrested or detained were not subjected to torture or to cruel, inhuman or degrading treatment; whether machinery existed for carrying out an independent and impartial investigation of allegations of torture and of arbitrary and extrajudicial executions and, if so, whether any such

independent investigations had been conducted; what the arrangements were for the supervision of places of detention and for receiving and investigating complaints; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment were complied with; whether the relevant regulations and directives were known and accessible to prisoners; whether the International Committee of the Red Cross (ICRC) had full access to the north-eastern part of Sri Lanka; whether the authorities were prohibited from detaining any person in a place other than a publicly recognized and gazetted prison and, if not, whether judges were allowed to visit such unofficial detention centres.

468. In reply to questions posed by members of the Committee, the representative said that every person admitted to prison was examined by a doctor and was informed of his rights and duties, including the right to complain about any ill-treatment. The briefing of detainees also included information regarding the United Nations Standard Minimum Rules for the Treatment of Prisoners and, in places where the Standard Minimum Rules were available for reference, detainees were free to consult them. The Emergency Regulations required the magistrate having jurisdiction over a prison to visit it at regular intervals and to record any complaints from detainees. Under the Prisons Ordinance, the Minister of Justice appointed a Board of Visitors, which was empowered to visit any prison in Sri Lanka to examine prison conditions, hear the complaints of inmates and make appropriate recommendations to the authorities. Moreover, members of the delegation of the ICRC currently in Sri Lanka were granted free access to all places of detention, and their reports were considered at the highest political level. The Supreme Court could and did examine allegations of torture made by detainees. The Court of Appeal, when examining the legality of detention by the procedure of a writ of habeas corpus, could examine any allegation of mistreatment of a detainee during his period in custody, but in most cases inquiries proved that such allegations were unfounded. A representative committee under the umbrella of the All Parties Conference was required periodically to visit places other than regular prisons where detainees were being held.

469. In reply to other questions, the representative said that there were a few camps and places other than regular prisons that had been designated as places where detainees could be held, and judges and magistrates had the right to visit them. The Prevention of Terrorism (Temporary Provisions) Act provided that any person in respect of whom any detention order or restriction order had been made should be informed of the unlawful activity in connection with which such order had been made. The Act also provided that such person or any other person on his behalf might make representations to the Advisory Board, which took the place of the judicial authority where persons were normally brought to trial. A detention order was issued if the Minister had reason to believe that a person was connected with or concerned in any unlawful activity constituting an offence as defined under the Act. The aggregate period of such detention could not exceed 18 months and a detained person could lodge a complaint with an Advisory Board or challenge the validity of the detention order in a court of law. If he was found to be the victim of an unlawful arrest, the court had the power to award compensation.

#### Liberty and security of the person

470. With reference to that issue, members of the Committee asked for a clarification of the provisions

of the Prevention of Terrorism Act of 20 July 1979 and of allegations that the safeguards included in that Act had not been strictly observed, particularly in relation to arrests of terrorist suspects. They also wished to know under what circumstances and for what periods persons might be held in preventive detention without being charged with a criminal offence; what authorities had the power to order such detention; what remedies were available to persons (and their relatives) who believed themselves to be detained wrongfully and how effective such remedies were; how quickly after arrest a person's family was informed and how soon after arrest a person could contact his lawyer; and what the law and practice were regarding detention in institutions other than prisons and for reasons other than crimes.

471. In addition, members of the Committee wished to know whether under the Prevention of Terrorism Act a magistrate could himself decide whether or not to release a person from custody; what the evidential value was of statements elicited through threats and torture; what weight was accorded to statements given in the absence of cross-examination; whether the provisions of section 18 (1) of the Act applied to the accused himself when he gave evidence as a witness or only to other witnesses; what measures had been taken to ensure that lawyers could carry out their professional responsibilities without interference; whether there had been any complaints of unauthorized arrests by members of the security forces; whether there were adequate safeguards against the unjustified extension of detention orders; whether the habeas corpus rule applied in cases of preventive detention and how the lawfulness of such detention was monitored; and whether the provisions of section 14 (2) (a) (ii) of the Prevention of Terrorism Act had led to the suppression of information concerning abuses by the security forces.

472. In his reply, the representative said that under the Prevention of Terrorism Act, a special procedure had been instituted whereby the period within which a detained person must be brought before a magistrate had been extended from 24 hours to 72 hours. The safeguards set forth in the Act could be enforced through fundamental rights applications or through habeas corpus applications to the Supreme Court. The Ministry of Defence had the authority to order persons detained in connection with terrorist activities for only three months, but such orders could be renewed, and the total length of detention could reach 18 months. Remedies for wrongful detention were available through a habeas corpus procedure, a fundamental rights application or an application to the Advisory Board. A person's family was informed of his arrest as soon as possible. Access to a detainee after his arrest might be denied during the initial investigation for a maximum period of approximately two weeks, but the reasons for and the duration of such denial could be challenged in a court of law. Persons could be imprisoned under maximum security conditions or in detention camps under less rigorous conditions. A person who was likely to commit a crime or had a criminal record might be kept in preventive detention for a limited period.

473. Responding to additional questions raised by members of the Committee, the representative said that the Sri Lankan judicial system was controlled by the principles of administrative law. No ministerial order made without jurisdiction, or made unreasonably, or expressed too broadly, would be considered valid. The notion of an "accessory after the fact" as a person criminally liable did not exist and any statement made as a result of inducement, threat or promise would be considered irrelevant. A confession implicating a co-accused could not normally be used against that co-accused, but given the nature of terrorist activity, the law had been enacted admitting such testimony. Such statements

could be used for the purpose of establishing an offence but were given only minimal evidential weight. Lawyers receiving threats had their allegations investigated and were provided with police protection if necessary.

#### Right to a fair trial

474. In connection with that issue, members of the Committee wished to know what guarantees there were for the independence and impartiality of the judiciary, particularly in respect of legal and administrative provisions governing tenure, dismissal and disciplining of members; whether there was any free legal aid and advisory scheme and, if so, how it operated; how the Bar in Sri Lanka was organized; and whether the possible conflict relating to the retroactivity of laws between articles 15 (1) and 13 (6) of the Constitution had been referred to the Law Commission and, if so, with what results.

475. In reply to questions relating to the independence of the judiciary, the representative said that the Constitution fixed salaries and tenure, and insulated appointments and tenure from interference by the executive branch. Disciplinary control was exercised by an independent Judicial Service Commission. The judiciary was controlled by the superior courts, and interfering with its independence was an offence. The legal aid scheme in Sri Lanka was administered by the Bar Association and funded by the State, the Asia Foundation and other foreign donors. Counsel was assigned at the State's expense to criminal defendants and appellants requiring assistance. The Bar Association was an independent body of attorneys at law. It maintained a dialogue with the Ministry of Justice on the administration of justice and expressed its views on legal issues of national importance. Members of the Bar had intervened in the majority of the fundamental rights and habeas corpus cases. Retroactivity of laws was applied only with extreme caution and only where an act would have been considered criminal under the laws of civilized nations.

#### Freedom of movement and expulsion of aliens

476. With regard to that issue, members of the Committee asked what legal provisions governed the expulsion of aliens and whether an appeal against an expulsion order had suspensive effect.

477. In reply, the representative said that an order of removal or an order of deportation was made by the Minister of Defence and could be canvassed before the Court of Appeal by invoking its writ jurisdiction. The issuance of a writ had suspensive effect.

#### Right to privacy

478. In connection with that issue, members of the Committee asked for information concerning the law and practice relating to permissible interference with the right to privacy and wished to know whether Sri Lankan legislation also afforded protection against electronic surveillance.

479. In reply, the representative said that there were no laws which embodied the provisions of article 17 of the Covenant but there were laws on such matters as defamation and the secrecy of inland revenue

declarations. The Government was studying the laws on data protection of other countries. The only available method of electronic surveillance was telephone tapping.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

480. With reference to those issues, members of the Committee wished to know whether Buddhism enjoyed privileged treatment as compared to other religious denominations; what the legal regime governing the press and mass media was; what controls were exercised on the freedom of the press and the mass media under Sri Lankan law; to what extent citizens and the press had access to government information; whether foreign journalists were subject to the same restrictions as Sri Lankan journalists in covering ethnic conflicts; whether there had been any cases where the publication of newspapers had been banned; what regulations were applicable to the production and release of programmes on State-run television; whether the Government had any plans to promote private ownership of television broadcasting facilities; in what languages programmes were aired; and whether specific measures had been taken in order to achieve harmony among the major religious groups.

481. In response, the representative stated that the freedom to manifest one's religion was guaranteed by the Constitution, which also sought to avoid religious conflict by stipulating that different religions must establish their places of worship and engage in other manifestations of religion at a certain distance from each other. The primacy of Buddhism meant, in practice, that when State functions were opened by religious ceremonies, Buddhist rituals were performed first. Freedom of speech was guaranteed by the Constitution, and the activities of the press were supervised by a Press Council. News coverage of terrorist acts was restricted only if it was liable, in the view of the Press Council, to trigger a strong backlash. There was no State control of the media. Broadcasting was in English, Sinhala and Tamil because all citizens understood at least one of those languages. The principles of the Official Secrets Act were based on British law and intended to operate in much the same way, and no distinction was made between foreign and local journalists. Government information could be provided subject to the interests of privacy, State privilege or official secrets. No affirmative action had been taken on behalf of religious amity because it would be regarded by some as interference in their religious rights.

Freedom of assembly and association

482. With reference to that issue, members of the Committee asked for information about the number, membership, organization and effectiveness of trade unions in Sri Lanka and a description of the relevant laws and practices relating to the establishment of political parties and concerning public meetings. They also wished to know what had been the impact on the exercise of the right to freedom of assembly and association, if any, of the lengthy period of the state of emergency; to what extent it had been possible to exercise the right to freedom of assembly; and whether Sri Lankan law prohibited discrimination in hiring and promotion and prescribed civil remedies in the event of violations.

483. In reply, the representative said that there were 1,004 registered trade unions and that collective bargaining was fully operational in both the state and the private sector. Any group of persons could register itself as a political party, as evidenced by the fact that even militant groups had political wings registered as political parties. Public meetings could be held freely provided prior approval had been obtained from the local police to ensure that there were no law and order or traffic problems as a result of the holding of such meetings. Notwithstanding the state of emergency, provincial council, presidential and parliamentary elections had been held recently throughout the country, and, except in certain parts of the north and east, local authority elections would be held in May 1991. Emergency regulations were temporarily suspended whenever the Commission of Elections found that they hindered the election process. Trade union activity was not restricted except in the free trade zone, where foreign companies had secured special non-trade union terms on the grounds that the wages they paid were higher than elsewhere.

#### Protection of the family and children

484. With regard to that issue, members of the Committee wished to receive information on the law and practice relating to the employment of minors and illustrations of the activities undertaken by the Presidential Commission on Youth Unrest. They also asked whether children born out of wedlock had the same rights as children born in wedlock and what the impact of the Children's Charter, if adopted, would be on the enjoyment of the rights of the Child under the Covenant.

485. Responding to questions put by members of the Committee, the representative said that persons under the age of 14 years could not be employed. Children born out of wedlock would enjoy the nationality of the mother, whereas legitimate children took the father's nationality. The Children's Charter had been signed, and the Government was studying the World Declaration on the Survival, Protection and Development of Children and the Plan of Action for its implementation in the 1990s.

#### Right to participate in the conduct of public affairs

486. Regarding that issue, members of the Committee wished to know to what extent members of minority groups and persons with differing political opinions had access to public office.

487. In reply, the representative stated that there were no restrictions on citizens seeking public employment but that an ethnic recruitment quota had been introduced at the national and provincial levels. These measures had been challenged and the matter was currently before the Supreme Court.

#### Rights of persons belonging to minorities

488. With reference to that issue, members of the Committee asked for comments on measures taken to guarantee the rights of ethnic and religious minority groups and on the assistance given to them to preserve their cultural identities, languages and religions. They also wished to know whether minority groups were represented in Parliament and in Provincial Councils.

489. In response, the representative stated that within the framework of the All Party Conference (APC) a continuous, free and open dialogue had been maintained between the Government and all political parties, including those which were based on ethnic and other grounds. The APC was also considering questions relating to the redress of minority grievances. Separate ministries had been established with a view to promoting the interests, development and progress of the Muslim and Hindu religious groups. Minorities were adequately represented in Parliament.

### Concluding Observations

490. Members of the Committee, in expressing their appreciation to the Sri Lankan delegation for having engaged in a useful dialogue, acknowledged the difficult conditions facing the Government in maintaining law and order. They were of the view that certain provisions of the proposed seventeenth amendment to the Constitution should be reconsidered in the light of the Covenant and voiced concern about human rights violations such as extrajudicial executions, the use of excessive force by the police and the armed forces, and the detention of persons without trial. Other concerns expressed by members of the Committee related to the efficacy of habeas corpus, restrictions of rights due to the state of emergency, the 18-month maximum period for detention and the right to compensation and to freedom of information. It was also felt that the interpretation of terrorism, as contained in the Prevention of Terrorism Act, was too broad and that the Act lacked provisions for recourse to an impartial and independent court. Members also pointed to the usefulness of making the Covenant better known to law enforcement officers and to people in the legal profession and expressed the hope that future reports would be more substantial and prepared according to the Committee's guidelines.

491. In concluding the consideration of the second periodic report of Sri Lanka, the Chairman said that, notwithstanding the shortcomings of the report, the discussion of it had been fruitful, largely because of the competence of the delegation. He expressed the hope that the State party would take the observations made by members of the Committee into account in revising its legislation.

## CCPR A/50/40 (1995)

436. The Committee considered the third periodic report of Sri Lanka (CCPR/C/70/Add.6 and HRI/Core/1/Add.52) at its 1438<sup>th</sup> to 1440<sup>th</sup> meetings, on 24 and 25 July 1995, and adopted 22/ the following final comments:

### 1. Introduction

437. The Committee appreciates the opportunity to resume its dialogue with the State party. It regrets, however, that the State party's report was not satisfactory in that it failed to provide detailed information on the actual implementation in practice of the provisions of the Covenant. Moreover, the Committee, while welcoming the updated additional information prepared by the Government and presented to the Committee, notes that the lateness of its submission did not allow for wide distribution, including its availability in all the working languages of the Committee. Notwithstanding this point, the Committee wishes to express its gratitude to the delegation for the supplementary information it provided orally in answer to both the written and oral questions posed by members of the Committee.

### 2. Factors and difficulties affecting the implementation of the Covenant

438. The Committee recognizes and appreciates the firm commitment of the Government to a durable and peaceful solution to the conflict in the north and east of the country. In view of the considerable efforts undertaken by the Government to initiate and bring peace to the island, the Committee deeply regrets the breakdown of the negotiations and the resumption of armed conflict. The return of hostilities has given rise to serious violations of human rights on both sides, thus adversely affecting the application of the Covenant.

### 3. Positive aspects

439. The Committee welcomes the initiatives being undertaken by the Government to further the protection and promotion of human rights. In this respect the Committee notes that a package of constitutional reforms is in the process of preparation. The Committee notes that draft proposals are currently under consideration for establishing a new procedure for direct petitioning to the Supreme Court in the case of the infringement of fundamental rights and for broadening the scope of local standings in such cases so as to permit a non-governmental organization to file a petition before the Supreme Court.

440. The Committee further welcomes the enactment of Parliamentary Commissioner for Administration (Amendment) Act No. 26 of 1994, which provides for more direct public access to the Ombudsman. In addition, the Committee notes that the final report by the Committee appointed

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22/ At its 1443<sup>rd</sup> meeting (fifty-fourth session), on 27 July 1995

to inquire into matters relating to persons detained under the Prevention of Terrorism Act and the Emergency Regulations has recommended the immediate revocation of detention orders relating to 140 persons whom the Attorney General has decided not to prosecute. The appointment of a Commission to inquire into election-related violence is also noted.

441. The Committee expresses its satisfaction at the Government's stated policy of not implementing death sentences and that corporal punishment as a penalty has been suspended for the last 10 years.

442. The Committee notes with satisfaction the important role being played by non-governmental organizations in Sri Lanka in contributing to the reform of laws protecting human rights, for example with respect to the recent amendment of regulations under section 5 of the Public Security Ordinance, by which members of the armed forces and the police have been directed to issue "arrest receipts" even in the case where such information has not been requested by the interested parties, such as family members.

443. The Committee welcomes the recent adoption of an Act establishing the National Human Rights Commission of Sri Lanka. It also welcomes the establishment of the Human Rights Advisory Group.

444. The Committee expresses its appreciation at the efforts undertaken to include human rights education within the curricula of secondary schools and higher educational establishments, and that human rights training programmes are being organized for the security forces.

#### 4. Principal subjects of concern

445. The Committee considers that the domestic legal system of Sri Lanka contains neither all the rights set forth in the Covenant nor all the necessary safeguards to prevent their restriction beyond the limits established by the Covenant. It notes also that the Government does not appear to be considering the incorporation of all Covenant rights into domestic law or the ratification of the Optional Protocol; individuals are thus unable to invoke all the rights conferred under the Covenant before national courts or before the Human Rights Committee.

446. The Committee is of the opinion that the time-limit of two years proposed in the draft new Constitution for challenging the validity of enacted legislation with the Constitution is a matter of serious concern. Equally, the Committee expresses its concern with respect to the provisions of article 16 (1) of the Constitution, which permits all existing laws to remain valid and operative notwithstanding any inconsistency with the Constitution's provisions relating to fundamental rights.

447. With regard to the recent establishment of various mechanisms for protecting and promoting human rights, the Committee appreciates the undertaking of these initiatives but remains concerned as to whether sufficient attention is being given to the coordination of the work of the respective committees, commissions and the Human Rights Task Force so as to avoid any duplication of efforts and thus maximize the effectiveness of their work.

448. The Committee is concerned that the derogation of rights under the various emergency laws and regulations may not be in full compliance with the requirement of the provisions of article 4, paragraph 2, of the Covenant. It is further concerned that courts do not have the power to examine the legality of the declaration of emergency and of the different measures taken during the state of emergency. The Committee emphasizes that the obligations assumed by Sri Lanka as a State party to various international instruments must be respected even in times of states of emergency.

449. With reference to article 6 of the Covenant, the Committee is concerned that under Sri Lankan law, the death penalty may be imposed for crimes such as abetting suicide, drug-related offences, and certain offences against property. Some of these offences do not appear to be the most serious offences under article 6 of the Covenant.

450. The Committee is seriously concerned about the information received of cases of loss of life of civilians, disappearances, torture, and summary executions and arbitrary detention caused by both parties in conflict. The Committee notes with particular concern that an effective system for the prevention and punishment of such violations does not appear to exist. In addition, concern is expressed that violations and abuses allegedly committed by police officers have not been investigated by an independent body, and that frequently the perpetrators of such violations have not been punished. The Committee notes that this may contribute to an atmosphere of impunity among the perpetrators of human rights violations and constitute an impediment to the efforts being undertaken to promote respect for human rights.

451. With respect to the functions of the three Presidential Commissions of Inquiry into Involuntary Removals and Disappearances, the Committee is concerned that the Commissions are not mandated to inquire into such human rights violations allegedly committed between 1984 and 1988 nor into summary executions.

452. The Committee is concerned that the undetermined detention which may be ordered by the Secretary of the Ministry of Defense violates the Covenant, particularly when such detention can be challenged only one year after detention. In view of this, the Committee remains concerned about the effectiveness of the habeas corpus remedy in respect of those arrested under the Prevention of Terrorism Act.

453. The Committee is concerned that the rights under article 10 of the Covenant of persons deprived of their liberty in prisons and other places of detention are not fully respected. It regrets that conditions in places of detention other than prisons are not regulated by law and that prisons and other places of detention are not regularly visited by magistrates or other independent bodies.

454. With respect to the independence of the judiciary, the Committee expresses its concern about the procedure set forth under article 107 of the Constitution read with standing orders made by Parliament.

455. The low age of criminal responsibility and the stipulation within the Penal Code by which a child above 8 years of age and under 12 years of age can be held to be criminally responsible on the

determination by the judge of the child's maturity of understanding as to the nature and consequence of his or her conduct are matters of profound concern to the Committee.

456. The provisions of the Special Presidential Commissions of Inquiry Act which permit the acceptance of evidence otherwise inadmissible in a court of law and which stipulate that any decision adopted by a Commission established under the Act is final and conclusive and may not be called into question by any court and tribunal are matters of serious concern to the Committee in view of the fact that the findings of these Commissions can lead to a penalty of civic disability being imposed by Parliament on those subject to an investigation.

457. The Committee is also concerned that Article 15 (2) of the Constitution allows the right to freedom of expression to be restricted in relation to parliamentary privilege, particularly in view of the fact that the Parliament (Power and Privileges) Act as amended in 1978 gives Parliament the power to impose penalties for breaches of this Act. The Committee is also concerned with the proposed amendments in the Constitution which seek to restrict the right to freedom of expression, "in the interest of the authority of Parliament", which would be in violation of article 19 of the Covenant. It is equally concerned that government ownership and control over much of the electronic media might undermine the right of everyone to seek, receive or impart information and ideas of all kinds.

458. The Committee notes that the workers employed in the free trade zones, 80 per cent of whom are women, are unable, in practice, to enjoy fully the rights set forth in articles 21 and 22 of the Covenant.

459. While the Committee welcomes the proposed changes to legislation for offences committed against children, such as incest and the sexual exploitation of children, it is concerned about the situation of the economic and sexual exploitation of children both with respect to the use of children in domestic service and the prostitution of boys.

460. The Committee notes that reforms are in place to raise the marriageable age for girls to 18. However, the current legislation permits the marriage of girls from the age of 12 and contains discriminatory provisions with regard to property between men and women, thus preventing women from fully enjoying the rights protected under articles 3, 23, paragraph 3 and 26 of the Covenant.

##### 5. Suggestions and recommendations

461. 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.

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

463. The Committee notes the efforts being undertaken by the Government to establish various mechanisms to promote and protect human rights, including with respect to the National Human Rights

Commission. In this regard, the Committee would like strongly to recommend that the proliferation of bodies with parallel competences 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 offences should be carried out by the judiciary.

464. 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 the constitutionality of enacted legislations should be abolished.

465. The Committee recommends that the provisions of the Covenant be fully respected in the areas where a state of emergency has been proclaimed. The Committee also urges the State party vigorously to investigate 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.

466. 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 further to 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.

467. Noting that the definition of torture given in the Convention against Torture Act passed by Parliament on 25 November 1994 is somewhat restrictive, the Committee recommends that the Act be amended to bring it into conformity with article 7 of the Covenant, taking into account the Committee's General Comment No. 20 (44). It further recommends that in view of the statement by the Government that corporal punishment has been suspended the provisions of the domestic legislation allowing this form of punishment be revoked.

468. 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.

469. 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 Appeal with a view to its amendment as a means of ensuring the greater independence of the judiciary.

470. The Committee recommends the amendment of the Special Presidential Commissions of Inquiry Act to bring it into conformity with the provisions of articles 14 and 25 of the Covenant.

471. 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 the electronic media by the Government.

472. 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.

473. 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.

474. 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.

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

476. 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.

## **CCPR CCPR/CO/79/LKA (2003)**

1. The Human Rights Committee considered the combined fourth and fifth reports of Sri Lanka (CCPR/C/LKA/2002/4) during its 2156th and 2157th meetings, held on 31 October and 3 November 2003 (see CCPR/C/SR.2156 and 2157) It adopted the present concluding observations during its 2164th meeting (CCPR/C/SR. 2164), held on 6 November 2003.\*

### Introduction

2. The Committee notes that the report was submitted after considerable delay and combines the fourth and fifth periodic reports of Sri Lanka. It notes that the report contains detailed information on domestic legislation and relevant national case law in the field of civil and political rights, but regrets that it does not provide full information on the follow-up to the Committee's concluding observations on Sri Lanka's previous report. The Committee expresses its appreciation for the discussion with the delegation, and notes the answers, both oral and written, that were provided to its questions.

### B. Positive aspects

3. The Committee welcomes the conclusion, on 24 February 2002, of a ceasefire agreement between the Government of Sri Lanka and the LTTE (Liberation Tigers of Tamil Eelam), and expresses the hope that the implementation and monitoring of the agreement will help to achieve a peaceful and lasting solution to a conflict which has given rise to serious violations of human rights on both sides.

4. The Committee welcomes the establishment of the National Human Rights Commission in March 1997. It notes that the Commission has begun to play an active role in the area of promotion and protection of human rights in the peace process. It expresses the hope that the Commission's monitoring and educational activities, including those projected under the Strategic Plan for 2003-2006, will receive appropriate resources.

5. The Committee notes the measures taken by the State party to improve awareness of human rights standards among public officials and members of the armed forces, and to facilitate the investigation of human rights violations. These measures include improved human rights education for all law enforcement officers, members of the armed forces and prison officers, the establishment of a central register of detainees in all parts of the country and the creation of the National Police Commission.

6. The Committee welcomes the State party's ratification of the Optional Protocol to the Covenant in October 1997, and the training workshop on the procedure under the Optional Protocol to the Covenant co-organized by the National Human Rights Commission and the United Nations Development Programme in December 2002.

### C. Principal subjects of concern and recommendations

7. While taking note of the proposed constitutional reform and the legislative review project currently being undertaken by the National Human Rights Commission, the Committee remains concerned that Sri Lanka's legal system still does not contain provisions which cover all of the substantive rights set forth in the Covenant, or all the necessary safeguards required to prevent the restriction of Covenant rights beyond the limits permissible under the Covenant. It regrets in particular that the right to life is not expressly mentioned as a fundamental right in chapter III of the Constitution of Sri Lanka, even though the Supreme Court has, through judicial interpretation, derived protection of the right to life from other provisions of the Constitution. It is also concerned that contrary to the principles enshrined in the Covenant (e.g. the principle of non-discrimination), some Covenant rights are denied to non-citizens without any justification. It remains concerned about the provisions of article 16, paragraph 1. of the Constitution, which permits existing laws to remain valid and operative notwithstanding their incompatibility with the Constitution's provisions relating to fundamental rights. There is no mechanism to challenge legislation incompatible with the provisions of the Covenant (arts. 2 and 26). It considers that a limitation of one month to any challenges to the validity or legality of any "administrative or executive action" jeopardizes the enforcement of human rights, even though the Supreme Court has found that the one-month rule does not apply if sufficiently compelling circumstances exist.

The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonized with the obligations undertaken under the Covenant.

8. The Committee is concerned that article 15 of the Constitution permits restrictions on the exercise of the fundamental rights set out in chapter III (other than those set out in articles 10, 11, 13.3 and 13.4) which go beyond what is permissible under the provisions of the Covenant, and in particular under article 4, paragraph 1, of the Covenant. It is further concerned that article 15 of the Constitution permits derogation from article 15 of the Covenant, which is non-derogable, by making it possible to impose restrictions on the freedom from retroactive punishment (article 13, paragraph 6, of the Constitution).

The State party should bring the provisions of chapter III of the Constitution into conformity with articles 4 and 15 of the Covenant.

9. The Committee remains concerned about persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces, and that the restrictive definition of torture in the 1994 Convention against Torture Act continues to raise problems in the light of article 7 of the Covenant. It regrets that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, have been inconclusive due to lack of satisfactory evidence and unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers have been found guilty and punished. The Committee also notes with concern reports that victims of human rights violations feel intimidated from bringing complaints or have been subjected to intimidation and/or threats, thereby discouraging them from pursuing appropriate avenues to obtain an effective remedy (art. 2 of the Covenant).

The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 7 and 9 of the Covenant, and ensure effective enforcement of the legislation. It should ensure in particular that allegations of crimes committed by State security forces, especially allegations of torture, abduction and illegal confinement, are investigated promptly and effectively with a view to prosecuting perpetrators. The National Police Commission complaints procedure should be implemented as soon as possible. The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases. The capacity of the National Human Rights Commission to investigate and prosecute alleged human rights violations should be strengthened.

10. The Committee is concerned about the large number of enforced or involuntary disappearances of persons during the time of the armed conflict, and particularly about the State party's inability to identify, or inaction in identifying those responsible and to bring them to justice. This situation, taken together with the reluctance of victims to file or pursue complaints (see para. 9 above), creates an environment that is conducive to a culture of impunity.

The State party is urged to implement fully the right to life and physical integrity of all persons (arts. 6, 7, 9 and 10, in particular) and give effect to the relevant recommendations made by the United Nations Commission on Human Rights' Working Group on Enforced or Involuntary Disappearances and by the Presidential Commissions for Investigation into Enforced or Involuntary Disappearances. The National Human Rights Commission should be allocated sufficient resources to monitor the investigation and prosecution of all cases of disappearances.

11. While noting that corporal punishment has not been imposed as a sanction by the courts for about 20 years, the Committee expresses concern that it is still statutorily permitted, and that it is still used as a prison disciplinary punishment. Moreover, despite directives issued by the Ministry of Education in 2001, corporal punishment still takes place in schools (art. 7).

The State party is urged to abolish all forms of corporal punishment as a matter of law and effectively to enforce these measures in primary and secondary schools, and in prisons.

12. The Committee is concerned that abortion remains a criminal offence under Sri Lankan law, except where it is performed to save the life of the mother. The Committee is also concerned by the high number of abortions in unsafe conditions, imperilling the life and health of the women concerned, in violation of articles 6 and 7 of the Covenant.

The State party should ensure that women are not compelled to continue with pregnancies, where this would be incompatible with obligations arising under the Covenant (art. 7 and General Comment 28), and repeal the provisions criminalizing abortion.

13. The Committee is concerned that the Prevention of Terrorism Act (PTA) remains in force and that several of its provisions are incompatible with the Covenant (arts. 4, 9 and 14). The Committee

welcomes the decision of the Government, consistent with the Ceasefire Agreement of February 2002, not to apply the provisions of the PTA and to ensure that normal procedures for arrest, detention and investigation prescribed by the Criminal Procedure Code are followed. The Committee is also concerned that the continued existence of the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court (sect. 7), and thereafter for up to 18 months on the basis of an administrative order issued by the Minister of Defence (sect. 9). There is no legal obligation on the State to inform the detainee of the reasons for the arrest; moreover, the lawfulness of a detention order issued by the Minister of Defence cannot be challenged in court. The PTA also eliminates the power of the judge to order bail or impose a suspended sentence, and places the burden of proof on the accused that a confession was obtained under duress. The Committee is concerned that such provisions, incompatible with the Covenant, still remain legally enforceable, and that it is envisaged that they might also be incorporated into the Prevention of Organized Crimes Bill 2003.

The State party is urged to ensure that all legislation and other measure enacted taken to fight terrorism are compatible with the provisions of the Covenant. The provisions of the Prevention of Terrorism Act designed to fight terrorism should not be incorporated into the draft Prevention of Organized Crime Bill to the extent that they are incompatible with the Covenant.

14. The Committee is concerned about recurrent allegations of trafficking in the State party, especially of children (art. 8).

The State party should vigorously pursue its public policy to combat trafficking in children for exploitative employment and sexual exploitation, in particular through the effective implementation of all the components of the National Plan of Action adopted to give effect to this policy.

15. The Committee notes with concern that overcrowding remains a serious problem in many penitentiary institutions, with the inevitable adverse impact on conditions of detention in these facilities (art. 10).

The State party should pursue appropriate steps to reduce overcrowding in prisons, including through resorting to alternative forms of punishment. The National Human Rights Commission should be granted sufficient resources to allow it to monitor prison conditions effectively.

16. The Committee expresses concern that the procedure for the removal of judges of the Supreme Court and the Courts of Appeal set out in article 107 of the Constitution, read together with Standing Orders of Parliament, is incompatible with article 14 of the Covenant, in that it allows Parliament to exercise considerable control over the procedure for removal of judges.

The State party should strengthen the independence of the judiciary by providing for judicial, rather than parliamentary, supervision and discipline of judicial conduct.

17. While appreciating the repeal of the statutory provisions relating to criminal defamation, the Committee notes with concern that State radio and television programmes still enjoy broader dissemination than privately owned stations, even though the Government has taken media-related initiatives, by repealing the laws that provide for State control of the media, by amending the National Security Act and by creating a Press Complaints Commission (art. 19).

The State party is urged to protect media pluralism and avoid state monopolization of media, which would undermine the principle of freedom of expression enshrined in article 19 of the Covenant. The State party should take measures to ensure the impartiality of the Press Complaints Commission.

18. The Committee is concerned about persistent reports that media personnel and journalists face harassment, and that the majority of allegations of violations of freedom of expression have been ignored or rejected by the competent authorities. The Committee observes that the police and other government agencies frequently do not appear to take the required measures of protection to combat such practices (arts. 7, 14 and 19).

The State party should take appropriate steps to prevent all cases of harassment of media personnel and journalists, and ensure that such cases are investigated promptly, thoroughly and impartially, and that those found responsible are prosecuted.

19. While commending the introduction since 1995 of legislation designed to improve the condition of women, the Committee remains concerned about the contradiction between constitutional guarantees of fundamental rights and the continuing existence of certain aspects of personal laws discriminating against women, in regard to marriage, notably the age of marriage, divorce and devolution of property (arts. 3, 23, 24 and 26).

The State party should complete the ongoing process of legislative review and reform of all discriminatory laws, so as to bring them into conformity with articles 3, 23, 24 and 26 of the Covenant.

20. The Committee deplores the high incidence of violence against women, including domestic violence. It regrets that specific legislation to combat domestic violence still awaits adoption and notes with concern that marital rape is criminalized only in the case of judicial separation (art. 7).

The State party is urged to enact appropriate legislation in conformity with the Covenant without delay. It should criminalize marital rape in all circumstances. The State party is also urged to initiate awareness-raising campaigns about violence against women.

#### D. Dissemination of information about the Covenant (art. 2)

21. The fifth periodic report should be prepared in accordance with the Committee's reporting guidelines (CCPR/C/66/GUI/Rev.1) and be submitted by 1 November 2007. The State party should pay particular

attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that the text of the State party's fourth periodic report and the present concluding observations be published and widely disseminated throughout the country.

22. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 8, 9, 10 and 18. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.

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\* These concluding observations do not address events in Sri Lanka that occurred after the examination of the report.