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SUMMARY RECORD OF THE 1438th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 25 July 1995, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

later: Mr. BHAGWATI

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Sri Lanka (CCPR/C/70/Add.6; HRI/CORE/1/Add.48)

1. The CHAIRMAN invited the Sri Lankan delegation to conclude its replies to the questions contained in section III of the list of issues.

2. Mr. GOONETILLEKE (Sri Lanka) said, in answer to question (f) of section III of the list of issues, that Sri Lanka's policies and institutions concerned with the well-being of children had developed over a long period as an integral part of major social welfare programmes, and had had a far-reaching beneficial impact through the provision of free health services, free education from primary to tertiary levels, and subsidized food rations, with special food programmes for needy mothers. The requirements of early childhood received special attention. The quality and reach of maternal and child health care services had resulted in a rapid decline in infant, child and maternal mortality to levels that were exceptional for a low-income country. By the early 1960s the primary school enrolment rate had amounted to 90 per cent, with a high level of participation by female children. The United Nations Children's Fund regarded Sri Lanka as a flagship State in the area of child care. The Government had ratified the Convention on the Rights of the Child in July 1991, and had incorporated its provisions, elaborating on some of them, in its Children's Charter. A national committee had been set up to monitor the rights of the child, and a forum of non-governmental organizations (NGOs) had been established to work with the Government and international agencies on related issues. The Government had reviewed existing legislation relating to children with the aim of removing anomalies and inconsistencies and strengthening the legal framework; the resulting recommendations had received Cabinet approval and would be presented to Parliament shortly. New offences would be incorporated in the Penal Code in respect of incest, sexual exploitation of children, cruelty to children and use of children in obscene publications and shows; heavier punishments were also prescribed in respect of such offences.

3. The law relating to the administration of juvenile justice was contained primarily in the Children's and Young Persons' Ordinance of 1939, which defined children as those under 14 and young persons as those between 14 and 16. Provision for the detention of youthful offenders - those between the ages of 16 and 22 - was to be found in the Youthful Offenders Training Schools Ordinance of 1939. The Probation of Offenders Ordinance of 1944 governed the probation of juvenile offenders. The Children's and Young Persons' Ordinance provided for the establishment of juvenile courts for the hearing of any charge against the child or young person except where the alleged offence was murder, culpable homicide not amounting to murder, attempt to murder, attempt to commit culpable homicide, or robbery. Juvenile courts were presided over by a children's magistrate who was required to explain the substance of the alleged offence in simple language. Where the offence was an indictable one, the offender was given the option of being tried either by the juvenile court or by a higher court. In deciding how to deal with an offender found guilty, the juvenile court was required to take into consideration the available

information on the circumstances of the offender, including a probation officer's report. Children and young persons were required to be detained separately from adult offenders. Young suspects not granted bail were committed to remand homes or to the care and custody of a fit person; they could not be committed to prison. Parents were required wherever possible to attend all court proceedings relating to their children, and prior to producing a juvenile offender in court the police were required to notify a probation officer, who should conduct the necessary investigations into the home circumstances, school record, health and character of the offender and make such information available to the court. The Ordinance provided for the establishment of remand homes, certified schools and approved homes for the detention of persons coming within its purview. It prohibited the imprisonment of children. Young persons might be committed to prison only if the court certified that they were of such unruly or depraved character that they could not be referred to a remand home or certified school.

4. The sentencing options available for the young offender included discharge after due admonition; delivery to the parent or guardian on execution of a bond that they would be responsible for his good behaviour; placement under probation; placement in the charge of a fit person, approved home or certified school; imposition of a fine; corporal punishment in the form of six strokes with a light cane for male juvenile offenders; detention during the President's pleasure in lieu of sentence of death; imprisonment in an adult prison subject to certain restrictions; conditional discharge; suspended sentence of imprisonment; and community service in lieu of imprisonment.

5. The Prisons Ordinance provided for the separation of juvenile prisoners from adult prisoners. The existing legislation pertaining to children in conflict with the law was in keeping with the Convention on the Rights of the Child. In practice, however, there were a number of gaps and deficiencies in its observance and enforcement. The provision that special juvenile courts dealt with the offences of children and young persons had not been put into effect on a nation-wide basis; there was only one juvenile court in the country - in Colombo. The frequent delays in the adjudication of cases had adverse consequences for juvenile offenders, notably interruption in their schooling. The separation of juveniles from adults during remand was also not always strictly observed. Another undesirable practice that was in need of urgent correction was that of placing children taken into police custody for reasons other than the commission of criminal offences together with those who had committed offences. The Government had appointed a technical committee on juvenile delinquency which had submitted recommendations; legislation was currently being prepared.

6. The rehabilitation of juvenile offenders under probation or custodial care was administered by the Department of Probation and Child Care Services. Juvenile offenders were rehabilitated in four certified schools which were State institutions and in an approved school run by the Roman Catholic Church with State assistance. Before admission, juvenile offenders were placed in remand homes, but not alongside adult offenders. The Government was considering a proposal to begin a vocational training programme in one of the certified schools. New trades had been introduced for female delinquents who had previously received training only in domestic science and handicrafts.

Children leaving such schools were provided with tool kits to enable them to start working. The area of juvenile delinquency in general needed continuous evaluation and improvement.

7. Mr. PERERA (Sri Lanka) said that he would like to deal with some issues from section I which his delegation had overlooked the day before.

8. Regarding the rationale for incorporating recognized rights under criminal law into the new constitutional reforms, he said the intention was to transform into constitutional guarantees those established principles of criminal law and procedure that had been enshrined in the country's Penal Code and Criminal Procedure Code since the late nineteenth century. The principles - such as arrest according to the law and by warrant, the right to communicate with relatives or friends, the right to a fair trial and guarantees relating to double jeopardy - had been acted on by Sri Lanka's courts over the years, but did not possess the sanctity that would be afforded by their presence in the Constitution. Article 13, paragraph 2, for example, made no express mention of the time-span that might elapse before an arrested person was produced before a judicial officer; although the 24-hour rule was embodied in the Code of Criminal Procedure, it had not previously found expression in the Constitution. Under the proposed reforms it would do so.

9. The various commissions inquiring into the circumstances attending specific political assassinations had been set up under the Special Presidential Commissions of Inquiry Act, and some had begun their work. Others were yet to be appointed.

10. As to the Women's Charter, he explained that the body responsible for its implementation was the National Committee on Women; the Committee, among other things, sought to promote the provisions of the Charter, which, although it might not be binding in the legal sense, had a clear de facto authority and was being put into effect.

11. The CHAIRMAN invited the Sri Lankan delegation to answer the additional questions put by members of the Committee subsequent to its replies to the questions set out in section II of the list of issues.

12. Mr. PERERA (Sri Lanka) said that corporal punishment employed against prisoners and detainees either as a punishment or as a disciplinary measure had been suspended for the past 10 years.

13. Prison visits by magistrates were provided for under the Emergency Regulations, but it had been found that their regularity was affected by magistrates' case-loads and the distance they had to travel. However, in general, the law was being adhered to and the visits took place.

14. The courts had discretion to release detainees during an emergency. In order to extend the period of detention beyond the maximum of one year, a suspect must be produced before a magistrate prior to the expiry of the period of detention. The magistrate would examine the report submitted by the Secretary to the Ministry of Defence setting out the facts on the basis of which the person was detained and the reasons for extending the period of detention, and if he was not satisfied that there were reasonable grounds for

extending the period of detention, the suspect would be discharged. Visits to detainees held in places under the authority of the Secretary to the Ministry of Defence were allowed with the Secretary's approval after verification of the identities of the visiting next-of-kin or lawyers and the stated need for the visits. In January 1992 the procedure had been changed, and visitors now had to apply directly to the officer-in-charge of the detention centre concerned. All detention camps other than prisons operating under the Emergency Regulations and the Prevention of Terrorism Act were registered under the Prisons Ordinance and had to be listed in the Official Gazette; Gazette Extraordinary No. 851/7 of 21 December 1994 listed 81 places of detention, representing a substantial reduction on the previous figure because of the large number of detainees who had been moved to prison custody.

15. As for the question of access to detainees and the legal validity of presidential directives, he said that members of the Human Rights Task Force (HRTF) or any person authorized by it was granted access to a person arrested under the Prevention of Terrorism Act or the Emergency Regulations, and was permitted to enter at any time any place of detention, police station or other place where the person was being held. The HRTF regulations were promulgated under the Public Security Ordinance, and Regulation No. 8 provided that the President might give such directions to the heads of the armed forces and to the police as in her opinion were necessary to enable the HRTF to exercise and perform its powers, functions and duties, and to ensure that the fundamental rights of persons arrested or detained were respected. The fact that the regulations and directives issued thereunder were vested with legal authority was beyond question.

16. There were no plans to repeal the Special Presidential Commissions of Inquiry Act. A number of presidential commissions had been appointed and were functioning, while others had not yet started.

17. As for the provision that an order of a commission should be final and conclusive, Sri Lankan courts had traditionally interpreted such language in statutes in a restrictive manner; when a statute expressly stated that a decision or order was final and conclusive and should not be challenged in a court of law, the courts had held that the inherent power of the courts to exercise jurisdiction in such cases was not annulled where the order or decision was manifestly bad in law.

18. Article 13, paragraph 5, of the Constitution laid down the principle of the presumption of innocence and provided that the burden of proving certain facts lay with the accused. For example, under the Bribery Act, when a public servant accepted a sum of money from a member of the public it was presumed that the money was in payment for a service to be performed by the public servant unless the latter could show legitimate cause to accept it. The burden of proof lay with the accused, but the onus of proving guilt beyond reasonable doubt always rested with the prosecution.

19. Turning to the question regarding confessions made by detainees under the emergency legislation, he said that the courts had been extremely reluctant to convict on the basis of confessions alone. A number of inquiries had been made in the courts in respect of prosecutions under the Prevention of Terrorism Act in order to ascertain whether confessions had been obtained

voluntarily or not, and in several cases the courts had categorically rejected statements when they did not meet the high standard of proof required by the law. Such cases had been given wide coverage in the media.

20. As for criminal acts committed by children, he said that no act committed by a child under the age of 8 was regarded as an offence, and in the case of children aged between 8 and 12 it was a matter for judicial determination whether, having regard to all the evidence placed before the court, a child had or had not acquired sufficient maturity of understanding to judge the nature and consequences of his acts.

21. Answering a question about the alleged reluctance on the part of Sri Lankan courts to examine the validity of detention orders made by a Minister under section 9 of the Prevention of Terrorism Act, he said the Court of Appeal had had no hesitation in awarding compensation in habeas corpus matters affecting detentions under the Prevention of Terrorism Act where there was evidence that the person had been taken into custody by a security officer and the person was not produced before the court.

22. Finally, referring to the question regarding the procedure for the removal of judges of the Supreme Court and the Court of Appeal, he said that under the Sri Lankan Constitution such judges could hold office only during their good behaviour and could not be removed except by an order of the President made after an address of Parliament. No resolution for the presentation of such an address could be entertained by the Speaker or placed on the Parliamentary Order Paper unless notice of such a resolution was signed by not less than one third of all MPs and set out in full the particulars of the alleged misbehaviour or incapacity on the part of the judge. Once a resolution was placed on the Order Paper, the Speaker must appoint a Select Committee comprising no fewer than seven MPs which would investigate and report to Parliament on the allegations. A copy of the allegations had to be sent to the judge, and he was required to make a written statement in his defence; he also had the right to be heard in person or through a representative. The Select Committee was required to report its findings, together with the minutes of any evidence it had taken, to Parliament, which would then adopt a resolution for the presentation of an address. The Speaker was required to submit that resolution to the President.

23. The CHAIRMAN invited members of the Committee who so wished to put additional questions in the light of the replies by the delegation of Sri Lanka to section III of the list of issues.

24. Ms. EVATT said that Sri Lanka's Bribery (Amendment) Act of 1994 extended the definition of public servant to include Ministers and MPs and augmented the offence and penalty as well. Section 18, paragraph 1, of the Act stated that the amendment was deemed for all purposes to have come into force on the date of commencement of the principal enactment. In other words, a completely new class of offenders, offences and penalties had been created retroactively. That was contrary to the provisions of article 15 of the Covenant, which was a non-derogable provision.

25. She had been informed that Tamils residing in the Colombo region were required to register that fact; if that were the case, it would seem to be a restriction on their freedom of movement, and hence contrary to article 12 of the Covenant.

26. Turning to article 19 of the Covenant, she asked what progress had been made by the four committees established in Sri Lanka the previous year to inquire into the reform of laws governing the media. She also asked if they would be examining constitutional questions, because article 14, paragraphs 1, 7 and 8, which allowed for restrictions on freedom of expression, could clearly result in limitations that went beyond those permitted by the Covenant.

27. The scope of the Sri Lankan Official Secrets Act was wider than justified under the national security restrictions permitted by the Covenant. It defined official secrets in such a manner as to include any information at all relating to a prohibited place or its contents, to the armed forces and its equipment, or to any establishment that could be used for the purposes of defence. Making public such information was presumed to be harmful to State interests, and she wondered whether the provisions of the Act were being reviewed with the purpose of narrowing them to comply with the Covenant, and to ensure that the burden of proof remained with the State.

28. She understood that the new draft Penal Code still criminalized homosexual behaviour between consenting adults, and that there was an intention to introduce into the Constitution new provisions relating to privacy. She wondered if the Sri Lankan authorities would take the opportunity to review those provisions.

29. The practice of marrying girls as from the age of 12 under Muslim law was of significant concern, in particular since, as the recent report of Sri Lanka to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) revealed, the consent requirement was often breached in that community. Having defined a child as a person below the age of 14, and set the legal age for marriage at 18, would Sri Lanka now review that practice?

30. She asked the Sri Lankan delegation to describe what actions, if any, its Government was taking to combat the sexual exploitation of children by foreign visitors. Available figures suggested that 10,000 boys and girls, particularly children of families that were burdened by poverty, were at risk. Finally, what measures, if any, was Sri Lanka taking to rehabilitate child victims of armed conflict, whether as refugees, displaced persons or witnesses to traumatizing acts of violence?

31. Mr. BUERGENTHAL said that a question he had posed remained unanswered: had the additional information submitted by the Government been shared with NGOs and, in particular, with the Human Rights Advisory Group?

32. His principal concern, however, related to children and to article 27, paragraph 13, of the Sri Lankan Constitution, which guaranteed their protection from exploitation and discrimination. Documents submitted to the Asian regional seminar on children in bondage, held at Islamabad in November 1993, and organized by the International Labour Office and the Centre

for Human Rights, indicated that Sri Lankan children were brought from rural areas to urban areas by agents and subjected to forced labour, particularly as domestic servants. Families lost contact with such children; virtually abandoned, they were left with no choice but to remain with their masters. The women and children's bureau of the Sri Lankan police force had in recent years received over 1,000 complaints to the effect that such children had been brutalized, beaten and burned; as statistics were difficult to obtain, the real figures were probably much higher. Documents submitted to the seminar also referred to bondage and child labour in fishing camps on the small islands off the western and north-eastern coasts of that country. He asked the Sri Lankan delegation to provide information on bonded children and to describe what programmes and actions it was undertaking to protect them. The seminar had recommended that the Sri Lankan Government should adopt a national programme to combat child servitude. Had that been done?

33. Mr. BÂN said the Sri Lankan delegation had stated that the rights guaranteed by articles 12, 18, 19, 21 and 22 of the Covenant were no longer subject to restriction under the state of emergency. It was inconceivable, however, that those rights could in fact be fully implemented under the current circumstances. He asked whether travel to all parts of Sri Lanka was now open to all; whether internal travel was restricted; whether Sri Lankan citizens living in the Northern and Eastern Provinces were permitted to travel abroad; what was the procedure for obtaining an exist visa for those persons; whether the right to freedom of assembly was upheld; whether all persons were permitted to exercise that right; whether street demonstrations were allowed in Colombo; whether Sri Lankans enjoyed the right to form associations; and whether they were permitted to organize trade unions and to create new political parties. With the easing of a certain number of the Emergency Regulations, some of those rights could presumably now be enjoyed in Sri Lanka, but it would be helpful if the delegation could provide further clarification on that matter.

34. As he understood it, only under the terms of article 15, paragraphs 3 and 4, of the Constitution could restrictions be imposed on the exercise of the essential freedoms enumerated in article 14. Those provisions stipulated that the fundamental rights in question could be restricted "in the interests of racial and religious harmony". He invited the Sri Lankan delegation to give an explanation of that enigmatic clause.

35. To the concerns voiced by Ms. Evatt and Mr. Buerghenthal with respect to the protection of children, he wished to add his own: he had recently watched a heartbreaking programme on French television depicting the prostitution of young boys to foreign visitors in Sri Lanka. What measures was the Government adopting to protect such children and what criminal actions was it taking against those who so grievously violated the rights of children? Furthermore, he inquired about the accuracy of reports that Sri Lankans frequently sent children abroad for foreign adoption in exchange for payment. Was the foreign adoption of Sri Lankan children subject to any form of protection or supervision?

36. Mr. Bhagwati took the Chair.

37. Mr. KLEIN said that he was perplexed by the statement in paragraph 76 of the report that no citizen of Sri Lanka could be denied a passport to leave the country; most States, including liberal democracies, restricted the right to leave on certain grounds, such as, for example, to protect national security, or the rights and freedom of others. Those exceptions were in fact permitted under the terms of article 12 of the Covenant.

38. Mr. LALLAH said that the report of Sri Lanka contained little information about article 19 and the impact of the Emergency Regulations on the rights guaranteed thereunder. He asked to what extent censorship was practised in Sri Lanka; whether newspapers had been banned; whether any journalists had been detained, investigated or prosecuted and, if so, for what reason; and whether journalists sympathizing with the Liberation Tigers of Tamil Eelam (LTTE) were causing problems for the Government.

39. An amendment to the Constitution had been mooted which would reinforce the authority of Parliament by providing that journalists in contempt of Parliament would be subject to parliamentary adjudication. Such a provision was not in keeping with the terms of the Covenant, in particular if articles 14 and 19 were considered together. It should also be noted that article 25 established the right of an individual to choose an elected representative, who should represent his views. Furthermore, the press must be permitted to inform the electors about how their elected representatives conducted themselves. Parliament must not act as both judge and jury. It would be useful to know what punishments - whether fine or imprisonment - had been envisaged by Parliament for an offence against itself. Most essential, of course, was the question of why the courts were not empowered to try such persons, thereby according them the rights guaranteed under article 14 of the Covenant.

40. Mr. KRETZMER said that the delegation had, in answer to his query, confirmed that the Sixth Amendment to the Constitution of Sri Lanka in fact proscribed parties that advocated separatism even if they were committed to democratic and peaceful means; it had not, however, stated whether that Amendment, in the view of the Government, was consistent with article 25 of the Covenant.

41. It had come to his attention that, especially during election times, the Sri Lankan Government had on occasion manipulated radio and television in its favour. Did the new Government envisage the privatization of the electronic media and did it, concomitantly, contemplate the establishment of an independent body to oversee the media which would not be subject to direct Government manipulation?

42. Mr. ANDO recalled, with reference to article 19, that, at the time of the Committee's consideration of the second periodic report, the Sri Lankan delegation had stated that freedom of speech was guaranteed by the Constitution, and further that the Press Council oversaw press activities, peer supervision being thought preferable to governmental control. What were the procedural requirements for opening a privately owned television or radio station in Sri Lanka?

43. Concerns had been voiced about the conditions of Asian and Indian migrant workers in the free-trade zones, in consideration of articles 22 and 23 of the Covenant. If such persons were not allowed either to organize or to engage in collective bargaining, from what alternative protection did they benefit?

44. Mr. PRADO VALLEJO said that a provision which made it a crime to criticize Parliament could only be seen as unacceptable. On what basis was that parliamentary privilege established? He further noted that article 15 of the Constitution of Sri Lanka imposed considerable limitations on the right to freedom of expression. In a free, democratic society, no such limitations should exist. He found it astonishing that such restrictions should be established at the constitutional level; no parliament on earth should be considered infallible.

45. Ms. MEDINA QUIROGA said that she had wished to know not whether places of detention other than prisons existed, but whether similar safeguards were applied in such places. It was not clear to her how the right to habeas corpus was applied in Sri Lanka.

46. She shared the concerns expressed by other members of the Committee with regard to the protection of children. Some of the data supplied by Sri Lanka were striking: she inquired whether that country was contemplating legislation that would require parents to send children under the age of 14 to school, since none such existed. Furthermore, there were evidently various operative definitions of childhood, in respect of marriage, criminal responsibility, etc. She asked whether the Government of Sri Lanka had considered the possibility of adopting a standardized definition. On the basis of what objective criteria did a judge determine that a child of eight was mature enough to comprehend that he had committed a crime and should therefore be criminally liable? Finally, with regard to the right to freedom of association guaranteed under article 22, she inquired whether any action had been taken pursuant to the recommendations to emerge from the commission of inquiry concerning NGOs.

47. Mr. Aguilar Urbina resumed the Chair.

48. Mr. PERERA (Sri Lanka) said that the original Bribery Act had contained a rather limited definition of bribery. In recent years, however, instances of large-scale corruption had come to light. The relevant amendment proscribed any use of public office for private gain, and explicitly defined the term "public servant" as encompassing all governmental workers at all levels.

48. A question had been raised as to the registration of Tamil nationals in Colombo. It should firstly be pointed out that given the crisis prevailing in Sri Lanka, such persons tended to be perceived as posing a grave threat to national security. Secondly, however, not only Tamil nationals but all persons from outside Colombo who took up residence in that city had been obliged to be registered. That regulation was, however, no longer in force.

50. To date, no proposals had been put forward to delete the offence of homosexuality from the Sri Lankan Penal Code.

51. Because of a shortage of time, the additional information submitted by Sri Lanka had not in fact been reviewed by the Human Rights Advisory Group. On the other hand, the Government was in constant contact with that body, and based most of its actions in the area of human rights on those consultations; the contents of the report itself had been determined in that way.

52. The Emergency Regulations stipulated that, for travel within Sri Lanka, permission must be obtained from the Ministry of Defence; travel abroad was, however, not subject to the emergency regime. An individual wishing to travel abroad must prove that he had adequate funds; individuals involved in a pending criminal action were not permitted to leave. There were no restrictions on street demonstrations, which occurred regularly in Sri Lanka.

53. In recent years, the Government had paid considerable attention to the matter of foreign adoption. After the revelations of widespread corruption in the practice of private adoption of Sri Lankan children by mostly European parents, the Adoption Act had been amended to require that all adoption requests should be submitted to the Adoption and Child Care Commission, which arrived at a decision on the basis of home study reports assessing the suitability of prospective adoptive parents, which were drawn up by recognized institutions in the country of adoption. Only applications for the adoption of children from government institutions, not from private families, were considered. It should also be noted that Sri Lanka had been the first Asian country to adopt the International Convention on the Protection of Children and Co-operation in respect of Inter-country Adoption.

54. With regard to freedom of expression, some provisions of the Emergency Regulations such as those regarding censorship and incitement to sedition had been annulled. No newspaper was banned and there was a very active press publishing in Sinhala, Tamil and English.

55. The Sixth Amendment to the Constitution was still in force. The Seventh Schedule had been added to the Constitution under the Sixth Amendment to prohibit the advocacy of secession. A person could not claim to uphold the Constitution while at the same time advocating the establishment of a separate State within the territory of Sri Lanka.

56. Article 16, paragraph 1, of the Constitution, under which all existing written and unwritten law would remain in force notwithstanding any inconsistency with the preceding provisions of the chapter of the Constitution concerning fundamental rights, was to be viewed as a transitional provision to ensure continuity of the law when a new statute or Constitution was enacted without needing to amend each and every act at once. He gave as an example the amendment of all references to "Governor-General" in the country's legislation to read "President".

57. The right of parliamentary privilege, inherited from the United Kingdom, in no way precluded valid criticism of MPs. Parliamentary proceedings were freely discussed in the press and parliamentary privilege, of which the Speaker of Parliament was the custodian, could only be breached by an act amounting to the propagation of an untruth.

58. The Emergency Regulations required places of detention other than prisons to be listed in the Official Gazette. Gazette Extraordinary No. 851/7 of 21 December 1994 enumerated 81 such places.

59. Where there was an allegation of wrongful detention, a writ of habeas corpus could be issued ordering the person concerned to be brought before a court. Failure to comply with that order without due cause could entail penal and other consequences. In the case of orders under section 9 of the Prevention of Terrorism Act, if a court was satisfied that an arresting officer was unable to produce a detained person or to provide justifications regarding the conditions of detention, it could grant compensation or other relief.

60. The Commission on Non-Governmental Organizations had made a number of recommendations. For example, Emergency Regulations introduced to control NGOs had been cancelled. The only remaining requirements were for NGOs to register under the Societies Ordinance and to enter into agreements with the Ministry of Finance and Planning.

61. Mr. GOONETILLEKE (Sri Lanka) said that a newspaper group currently under government control was to be privatized. Sri Lanka's vibrant press included several daily and weekly newspapers and numerous tabloids published by political parties and interest groups. They carried reports on the President's activities, Cabinet decisions and military strategy and even material provided by the LTTE. There were also a number of private radio and television stations.

62. There was nothing to prevent workers in the free-trade zone from joining a labour movement or taking part in labour activities. However, because of certain difficulties that he had already explained, meetings and other gatherings inside the zone were not permitted.

63. A Cabinet paper of 10 July 1995 provided for the incorporation in the Penal Code of more stringent provisions governing trafficking in persons, sexual exploitation of children, cruelty to children and the use of children in obscene publications and audio-visual presentations.

64. Some time previously, the Government had appointed a Committee attached to the State Ministry of Muslim Religious Affairs to investigate a number of matters of concern to the Muslim community in Sri Lanka. The Committee had considered proposals to raise the age of marriage for Muslim girls and boys to 18 years. The process had been intended to result in a common Civil Code for all communities governing marriage, inheritance and other family matters. The Muslim community had protested against the project and asked the Government to refrain from interfering in its personal laws. The Government had since taken the position that no amendment should be made to the Muslim personal laws until the Muslim community itself consented thereto. Although Muslim girls were allowed to marry at the age of 12, surveys conducted by Islamic research institutions had revealed that most Muslim girls married at the age of 18 or above.

65. The prevailing legislation on child labour in Sri Lanka was in conformity with the relevant articles of the Covenant. Minimum ages were stipulated for

different types of employment. The Employment of Women, Young Persons and Children Act of 1956 prohibited the employment of children before the end of the school day, for more than two hours on Sundays and in any occupation that might be injurious to their life, health or education. The regulations permitted the employment of children by parents or guardians in light agricultural or horticultural work or in employment supervised by public authorities and imparting technical training for a trade or occupation. In spite of those regulations, the labour force survey for the first quarter of 1990 had shown 82,000 children in the 10 to 14-year-old age group to be employed - 46,000 of them male and 36,000 female. About 70 per cent of male children and about 42 per cent of female children were unpaid family workers. A significant proportion of those employed outside the home were thought to be employed as domestic servants. Enforcement of the law was difficult, especially in the case of families living in extreme poverty. The Government had launched a public awareness programme to sensitize people to the human cost of child labour.

66. The employment of children in the fishing industry was no longer a problem, since the authorities had taken effective action against offenders.

67. The Government and the general public were greatly concerned by the increasing incidence of child prostitution. One of the main causes was the rapid growth of tourism. The victims were mainly male children. The Department of Probation and Child Care, acting in collaboration with the Ministry of Education and the Tourist Board, had implemented public information programmes for parents and children to combat prostitution. NGOs had also been active in controlling child prostitution. The Penal Code and the Children and Young Persons Ordinance referred only to prostitution of female children. A man who had sexual intercourse with a girl under 12 years of age would be convicted of rape and sentenced to up to 20 years' imprisonment. Sexual intercourse with a girl aged between 12 and 14 was a criminal offence carrying a prison sentence of up to 12 years. The Penal Code also punished procurement of a female under 21 years, with or without her consent, for the purpose of prostitution. The Technical Committee appointed by the Government to propose amendments to the legislation on child abuse had submitted recommendations designed to remedy existing shortcomings by expanding the relevant section of the Penal Code. It expressly recommended that child victims of sexual exploitation should be treated as protected persons and should not be placed with offenders. The Government had accepted the main recommendations, and appropriate legislation was being drafted. A Children's Act consolidating all laws pertaining to children was also being prepared.

68. Approximately 600,000 displaced persons, including some 400,000 children, had been registered with the Ministry of Rehabilitation, Reconstruction and Social Welfare. They were housed in welfare centres in various parts of the country. Some of the children were orphans or separated from their parents and many had been victims or witnesses of brutal acts of violence. A significant proportion of displaced families would be unable to return to their homes. The Government was working in close collaboration with international NGOs and agencies such as the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Refugees to improve conditions for the displaced persons, ensuring a regular supply of

foodstuffs and pharmaceuticals, providing facilities for infants, pre-school children and children traumatized by violence, and seeking to restore separated children to their families.

69. Mr. PERERA (Sri Lanka), referring to article 15, paragraphs 2 and 3 of the Constitution, which placed restrictions on the rights of freedom of speech and expression and freedom of peaceful assembly, in the interests of racial and religious harmony, explained that those provisions reflected Sri Lanka's multi-ethnic, multiracial and multi-religious society. There could be situations in which the exercise of those rights by a particular group could impinge on the rights of others, leading to conflict. As long ago as 1915 such a situation had arisen when a Buddhist procession had passed close to a Muslim mosque.

70. The CHAIRMAN invited members of the Committee to make their concluding observations.

71. Mr. MAVROMMATIS noted that Sri Lanka was seeking to deal with an emergency while at the same time offering an olive branch. It should ensure that its actions on both fronts were in conformity with the Covenant and its other international obligations. Information from all sources indicated that, notwithstanding the Government's efforts to improve the situation, human rights abuses, particularly extrajudicial executions, disappearances and torture, were assuming alarming proportions. There should be better coordination of action to protect human rights instead of the existing proliferation of mechanisms. The independence of the machinery established should be acknowledged by all and immediate effect should be given to its recommendations. Culprits should be punished and all immunity laws abolished.

72. The country should reduce the number of instances in which the death penalty was imposed. Those instances should certainly not be expanded, even in an emergency.

73. He trusted that the next periodic report would cover matters only partly answered or not addressed at all in the current report and would be submitted on time.

74. Mr. LALLAH said that there had clearly been an improvement in the human rights situation in Sri Lanka since the previous report. He hoped that the peace process would prove fruitful.

75. However, when the army took over a large proportion of the work of the police, there was an increasing need for training and disciplining to forestall unacceptable behaviour.

76. The independence of the judiciary was best secured by the creation of a special tribunal to monitor the conduct of judges. It was highly undesirable for Parliament itself, which was inevitably politically motivated, to pronounce on the conduct of an independent mechanism of the State.

77. There should also be clear laws to give effect to articles 7 and 10, paragraph 1, on humane treatment in prisons and other places of detention, and there should be independent machinery to monitor their implementation.

78. There had been many improvements in regard to freedom of the press, but he doubted whether parliamentary adjudication on whether a person had committed an offence against Parliament was the right solution. Such matters were best left to the judiciary.

79. Mr. PRADO VALLEJO said that the proposed National Human Rights Commission would not, in his view, have sufficient powers and machinery to implement its decisions.

80. The Emergency Regulations had been used to detain people for up to five years without a court order. There was apparently no limit on the period of time for which a person could be held.

81. According to paragraph 23 of the report, there were restrictions on the right to practise a religion and the right to choose one's residence.

82. The police had been guilty of excesses and arbitrary acts, which had apparently not been properly investigated.

83. Under the Emergency Regulations, the Minister of Defence had special powers that could determine whether a person should remain in custody or be released. Such powers were obviously of an arbitrary nature and liable to lead to abuses.

84. The right to freedom of expression was unfortunately limited by the right of parliamentary privilege. That restriction was not compatible with article 19 of the Covenant.

85. Mr. KLEIN said that disappointment with the printed report had been somewhat compensated by the oral replies to the Committee's questions. It now seemed clear that, under the new Government, the human rights situation had taken a turn for the better: he commended the progress made in teaching about human rights, the endeavours made to bring the rights guaranteed under the Constitution into closer harmony with the obligations assumed under the Covenant, and the remarks by the delegation on the subject of self-determination.

86. As to the future, he recommended concentration on the establishment of a truly effective human rights implementation mechanism, accompanied by less decentralization and fragmentation of responsibilities in that domain. It was greatly to be hoped that the debilitating internal strife in Sri Lanka would soon be brought to an end.

87. Mrs. CHANET praised the oral contribution by the Sri Lankan delegation, which had enriched the dialogue, demonstrated the political will to achieve peace and progress and highlighted a number of positive developments. If questions remained in the minds of Committee members, they were - at least in her own case - related to the methodology adopted in protecting the rights guaranteed by the Covenant. The fragmented and uncoordinated approach reflected in the proliferation of different bodies had the disquieting effect, inter alia, of relieving the State of its responsibilities in the matter and creating what she found to be a disturbing institutional imbalance, which was worsened by the virtual domination that Parliament enjoyed over the judiciary.

88. Many reforms, announced or under way, in numerous domains had been described. Satisfaction in that connection did not, however, alleviate concern at the persistence of disappearances, summary executions and extrajudicial killings, as well as torture; there were also grounds for preoccupation with the existing conditions of detention and the continuing practice of corporal punishment, notably of children in detention. In that connection, she commended to the delegation's attention the Committee's general comment 7 on article 7 of the Covenant. She very much hoped that significant improvements in those areas would be demonstrated in the fourth periodic report.

89. Mr. BHAGWATI commended the lucid oral presentation made by the Sri Lankan delegation, expressed his confidence that the dialogue would help the country in improving the observance of human rights, notwithstanding all the present impediments, and praised President Bandanaraike Kumaratunga's bold peace initiative, to which the LTTE had regrettably failed to respond. Renewed recourse by the authorities to the military option was understandable, but the exercise of that option must always remain within the parameters of human rights.

90. Citing the provisions of article 107, paragraph 3, of the Constitution of Sri Lanka and the Standing Orders relating to the parliamentary investigation and determination of alleged misbehaviour or incapacity of judges, he said that the effect of such a measure was to undermine the independence of the judiciary; he commended to the Sri Lankan Government as a far preferable alternative the institution of an independent tribunal, such as that adopted in India.

91. The intention to retain in the new Constitution the provision that existing legislation should not have to meet the challenge of fundamental rights troubled him. To his mind, all legislation without exception should be in compliance with human rights. He was also disturbed by the idea of establishing a time-limit of two years in which to challenge the validity of new laws: it should be possible to challenge any laws at any time.

92. Further, he feared that the power accorded to the special presidential commissions of inquiry to make findings as to guilt could undermine the principle of fair trial and have the effect of imposing civic disabilities on the person or persons concerned and violating articles 14, paragraph 1, and 25 of the Covenant.

93. Finally, he was anxious about the proposed right of parliamentary privilege in relation to freedom of expression, a principle that was at variance with article 19 of the Covenant. In India, the Supreme Court had ruled that the freedom of expression of a journalist could not be restricted by the exercise of that privilege.

94. Mr. BÁN observed that the dialogue had been fruitful and mutually informative. The new Government's deep commitment to bringing the recent turbulent period to a close was greatly to be welcomed, and its declared priorities in that connection were commendable. Also encouraging was its determination to apply remedies for past human rights violations, notably

through the review of detention under the Emergency Regulations, the investigation of disappearances and extrajudicial killings, the prosecution of perpetrators and the award of compensation to victims.

95. He also welcomed the creation of a series of human rights monitoring institutions, but like earlier speakers cautioned against the possibly counterproductive effect of excessive multiplication and parallelism.

96. The internal armed conflict in Sri Lanka remained the principal cause for concern and the major source of harm to human rights, inflicting grave suffering on the people irrespective of where responsibility for the resumption of hostilities lay. He did not deny the right of a Government to bring order to a country, if necessary by force. And Governments indeed had an obligation to prevent human rights violations as a result of public disorder. But they must always act in conformity with international law and their obligations under international treaties: he hoped that the Sri Lankan authorities would bear those principles in mind as they continued to address the situation in the Northern and Eastern Provinces.

97. Mr. FRANCIS joined in expressing appreciation of the dialogue and, in particular, endorsed Mr. Lallah's remarks. He added that the Sri Lankan authorities should take account not only of the Committee's comments and recommendations but also of the submissions by NGOs based in Sri Lanka and other credible statements from outside sources.

98. On the matter of parliamentary privilege and the freedom of expression, he concurred with other speakers who had voiced considerable concern at the risks inherent in according primacy to the former. Some means other than transforming it into judge and jury must be found in order to buttress Parliament's authority.

99. Ms. EVATT said that she, too, had not found the written report to be altogether satisfactory, but had been impressed by the serious contribution of the Sri Lankan delegation to the dialogue. It was clear that the Government was committed to repairing some of the damage of the past, and much had already been achieved, although much remained to be done.

100. It was to be hoped that the reform process under way would be conducted with due regard for the Covenant and for the rights not currently provided for in the Constitution. Special care should be taken to ensure that the limitations placed on rights did not exceed those permitted by the Covenant.

101. The possibility of challenging both existing and future laws as well as administrative acts on the grounds of incompatibility with the Constitution was another important matter. In that connection, ratification of the first Optional Protocol might be of considerable service.

102. Greater efforts should be made to ensure that every sector of the population enjoyed the opportunity of participating fully in public life and the conduct of public affairs. The integration of communities required further encouragement.

103. Positive developments had occurred in regard to the treatment of women, but personal laws - especially the marriage laws of the Muslim community - called for further attention. It was unacceptable in the modern age to have laws permitting the marriage of 12-year-olds. The new laws on rape and violence should be supported by measures ensuring that law enforcement authorities adopted supportive attitudes towards women as victims and witnesses: the trauma that followed violence was often hard to bear. Outstanding inequalities that should be addressed related to citizenship matters and residence visa requirements for the husbands of Sri Lankan women.

104. The resumption of violent conflict in Sri Lanka was to be deplored. Each and every violation of human rights as a consequence of the renewed hostilities must be independently investigated; and an independent agency must be responsible for bringing perpetrators to justice.

105. Mr. KRETZMER, commending the usefulness of the dialogue, welcomed the commitment of the Government fully to investigate all disappearances and urged that the mandate of the commission of inquiry should be extended to cover cases dating back to 1984, rather than to 1988. There must be an independent investigation of all allegations of maltreatment or torture at the hands of the police; in that connection, it was important that Sri Lankan legislation should be fully consistent with the definitions contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and he invited the Government to consider making declarations under articles 21 and 22 of that instrument.

106. Concerning Government policies with regard to women, he referred to the free-trade zones and his understanding that people there were entitled to join general trade unions but not to engage in locally organized labour activity; given that most labour in those zones was female, he feared that such a restriction might constitute discrimination against women in the labour market; mechanisms should be found to permit the effective organization of labour within those zones.

107. Concerning article 19, he recalled his earlier question with regard to Government pressure on television and radio, and urged that ways and means should be found to prevent any interference with or manipulation of State-controlled media.

108. Mr. EL SHAFEI commended the constructive exchange with the Sri Lankan delegation. Difficult conditions persisted in Sri Lanka, but the present Government's policy of peace, reconciliation, promotion of respect for human rights and introduction of legal and institutional reforms was praiseworthy. Obviously, the breach of the cease-fire agreement by the LTTE and the resumption of hostilities complicated the Government's task. The steps already taken to strengthen the monitoring of human rights should be pursued, attention being paid to the behaviour of all the parties to the ongoing conflict.

109. He noted with some concern the very broad interpretation of "terrorism" for the purposes of the Prevention of Terrorism Act, and the absence from that

instrument of provisions for recourse to an independent and impartial tribunal. The Covenant should be publicized more widely, notably among law enforcement officers and members of the legal profession.

110. Mrs. MEDINA QUIROGA noted with regret that the dialogue with the Sri Lankan delegation had taken place against the background of resumed internal conflict that inhibited full compliance by Sri Lanka with its obligations under the Covenant; many positive developments had, however, been described by the delegation. She had been particularly pleased by the reference to teaching in human rights, to concern with discrimination against women and to the planned modification of the provisions relating to the death penalty in the Emergency Regulations.

111. She urged Sri Lanka to ratify the Optional Protocol and voiced regret that summary executions were not the subject of a commission of inquiry. She also echoed Mr. Kretzmer's call for the investigation of disappearances prior to 1988 and requested the Sri Lankan authorities to reconsider amending article 16 of the Constitution, especially since it had been described as a "transitional" provision. In addition, she asked why, if article 13, paragraph 5, did not infringe the presumption of innocence, it figured in the Constitution. She echoed the concern of other members of the Committee with regard to article 19 of the Constitution, the removal of judges and parliamentary privilege in respect of the freedom of expression, and called for a review of the habeas corpus provisions in Sri Lankan law.

112. Mr. ANDO expressed appreciation of the Sri Lankan delegation's response to the Committee's questions, adding that he shared the concerns expressed by other speakers, notably in regard to the issue of parliamentary prerogative and judicial independence.

113. It had emerged during the dialogue that torture and extrajudicial killings persisted, despite the Government's endeavours. In his view, greater efforts should be made to eliminate the root causes of such actions.

114. According to the delegation, the rights of freedom of movement, expression, association and assembly, and the protection of privacy at home and in family life, were in general adequately safeguarded. He hoped that such was indeed the case, and that any shortcomings would be remedied.

115. Much had been said about different aspects of the protection of children. Notwithstanding the Government's efforts in that connection, a comprehensive programme which addressed all the issues involved seemed to be called for.

116. According to the delegation, article 16, paragraph 1, of the Constitution - which he had believed to be wide-reaching - was only designed for temporary application. In that case, he would ask what "temporary" signified, and urged that steps should be taken to prevent any unintended effects.

117. Obviously, human rights could not be dissociated from economic and social conditions. He believed that, with external help if necessary, the Sri Lankan Government would indeed strive to create conditions to ensure that those rights were better protected.

118. The Tamil insurrection was a most disturbing factor. However, the Government was undoubtedly doing its best to bring that unhappy state of affairs to an end, and it should be wished every success in such a difficult undertaking.

119. Mr. GOONETILLEKE (Sri Lanka) first stated, on a point of detail, that although the provision for corporal punishment remained on the statute books, it had not been implemented for almost a decade, and could thus be considered as suspended de facto.

120. His delegation had appreciated the opportunity to present its report; the valuable and varied observations by Committee members had been duly noted and would be taken into account during the preparation of the next periodic report.

121. The views expressed, notably with regard to the reform of the Constitution, would be accorded respectful attention by those responsible for drafting new legislation. He was happy to announce that the establishment of a Human Rights Commission, which had been mentioned on various occasions during the discussion, had been formalized by the Government on 21 July; he had handed a copy of the relevant bill to the Chairman of the Committee; the text would be made available to members upon request.

122. He had been particularly gratified by the favourable remarks concerning the Government's peace initiatives and comforted by recognition of the intransigence of the LTTE in preferring violence and confrontation to democracy and peace. The Committee's encouragement would help the President and Government in pursuing their objective, which was a negotiated solution to problems involving the Northern and Eastern Provinces.

123. The CHAIRMAN thanked the delegation of Sri Lanka for its cooperation and wished those of its members who were returning to the island a safe journey home.

The meeting rose at 1 p.m.