

A DISMAL RECORD

Charles Abeysekera

There is one word that has been considerably and consistently overused in discussions about human rights in Sri Lanka in 1992 and that is the word "improved." Government spokespersons, from the President downwards, have claimed that this improvement, as shown by various indicators is primarily due to certain positive actions taken by them.

The evidence cited by them is diverse. Disappearances are down from the massive 20,000 referred to by the UN Working Group on Disappearances; the number of detainees has been reduced from over 10,000 to about 5,000; there have been no large-scale massacres or reprisals by the security forces against Tamil civilians; there have been no publicised cases of extra-judicial executions or of police brutality.

The government also points to the various mechanisms instituted to deal with human rights violations: the Human Rights Task Force, the Presidential Commission to Investigate involuntary Disappearances, the Commission to investigate the Kokkadicholai massacre, various high-level committees or one man inquiries set up to investigate specific instances. These are cited as evidence of the government's serious and sincere concern to stop violations of human rights and its commitment to respect and honour its obligations in terms of international covenants and conventions.

The acceptance of visits by various organs of the United Nations - the Working Group on Disappearances, the invitation to the Special Rapporteur on Torture (not yet implemented) for example - and missions from international human rights groups such as Amnesty International are also brought forward as instances of the government's openness and concern for human rights. The invitation to the International Committee of the Red Cross to work in the country is also construed in the same way.

This is, however, a very selective picture. It contrives to keep the searchlight on specific and particular instances and to keep in the shadow the structures and institutions that make continued violations possible and which still continue to be maintained in place by the government. It is, in effect, a picture produced by the

government for international consumption, an exercise in image-building.

Reality Behind the Picture

Let us look at some of the main violations.

Disappearances still continue. The commission on disappearances, with the mandate to inquire into disappearances that have taken place since 11.1.1991, had received, upto September 1992, about 3000 complaints, of which it had accepted 453 cases as falling within its mandate for investigation; of these about 275 were reported from the Eastern Province and were a direct consequence of the ethnic conflict. But disappearances also continue to occur, with alarming regularity, in the South too; during the first half of the year, the Commission had recorded and accepted for investigation 45 cases from the South, nearly 8 cases per month.

To cite a few illustrative cases: one night in August 1992, 8 youth were abducted by armed men in civilian clothes from a few villages in the Anuradhapura district. Four of them were later discovered in police custody; the others have disappeared. Sonny de Zoysa 'disappeared' from police custody at Urugasmanhandiya, also in August.

Extra-judicial killings continue to occur. A few cases have been reported from the South but the large majority takes place in the Eastern province, where about 125 deaths of civilians and 'suspected' LTTE cadres have been attributed to the security forces. A particularly telling example was the discovery of 5 bodies, handcuffed and shot in the head, in June in the Batticaloa district; they had been among many arrested earlier in the course of a cordon and search operation. Over a 100 deaths have been attributed to Muslim homeguards and anti-LTTE Tamil militants, who nominally are under army or police control. Muslim homeguards have killed Tamil civilians in reprisals against LTTE attacks on Muslims, which increased in frequency and savagery during 1992.

Physical harassment and torture by the police, leading sometimes to **death in custody** continue. The case of Juse Appuhamy, 60 years old, of Kuliypitiya who died while in police custody is one example; his relatives have



declared that assaults by the police caused his death. There are numerous reports of inhuman treatment and torture of Tamil prisoners taken into custody by the security forces in the Eastern province; many of them are documented in Report No. 10 of the University Teachers for Human Rights (Jaffna).

The problem of **detainees** still remains. At the year's end there were in the three detention centres at Boossa, Pelawatta and Weerawila, in the prisons in Colombo and Kalutara and in Rehabilitation centres a total of 3208 persons; besides, there were an unknown number of persons being held in various police stations and army camps. It is true that large numbers have been released, based apparently on the recommendations of the Jayalath Committee which had classified detainees in terms of the degree of their involvement in terrorist activity. However, the problems of detainees do not end even with their release. Many have complained of continued harassment by the police after they have returned to their homes. At least 14 of them have been rearrested and are being prosecuted on the basis alleged new evidence.

Thus violations of basic human rights—the right to security, to freedom from arbitrary arrest, to freedom from inhuman and degrading treatment, to legal process—continue to be a part of our life. The government's argument, basically, is that some violations did occur in the face of violent insurgencies in the north and the south in the past, that in the circumstances it was forced to condone or grant immunity for these acts, that the present acts are not government policy but the aberrant acts of individuals and that these acts are now being investigated and punished. Some of these arguments will be examined later and their truth questioned. For the present, we shall look into the mechanisms set up by the state to record, investigate and punish violations and see how effective they have been.

Response of the State

Let us take the case of disappearances first. The Presidential Commission of Inquiry into the Involuntary Removal of Persons (PCIRP), set up on 11.1. 1991, continued its work right throughout the year. It has concluded hearings in five of the cases accepted for investigation; reports have been submitted to the President but have not been released to the public. PCIRP is a fact finding investigation; if its facts indicate a prima facie case against any person, then the Attorney-General is expected to file a case. A case has been filed only in one instance, against Assistant Superintendent of Police K.Sugathadasa concerning the disappearance of police constable Basnayake in January 1991; the Magistrate discharged the accused and stated that he was doing so

on the basis of the findings of the PCIRP. This gives rise to a curious situation - of a man being accused and then discharged on the basis of the same findings; since the PCIRP reports are not available to the public this curiosity is one that cannot yet be satisfied. However, after two years of work, one cannot but come to the conclusion that it is a time consuming exercise that may accomplish very little.

The **Human Rights Task Force** is another highly publicised mechanism set up to deal with the problem of detainees. Set up in August 1991, its primary tasks were to prepare and maintain a central register of all detainees and to monitor the conditions of detention to ensure that the fundamental rights of detainees were not violated. It has made some improvement in the conditions of detention, but, in 16 months of work, it has failed in its task of preparing a complete register of detainees. It has compiled a partial listing, based on its visits to some prisons, detention camps, rehabilitation centers and police stations. This situation arises because there is no legal compulsion on officers arresting or taking anyone into custody to inform the HRTF promptly. In the absence of such regulations, the HRTF is reduced to discovering detainees.

As a response to sustained pressure, the government set up a **Commission of Inquiry into the Kokkadicholai Incidents** in June 1991. The Commission concluded its hearings in January 1992 and found, in very restrained language, that the deaths of 67 Tamil civilians had been caused by the "unrestrained behaviour of certain soldiers who were provoked by the deaths of two of their colleagues." The offenders were subsequently brought up before a Military Court; it acquitted the 17 army men implicated in the killings but found the officer in charge, Captain Kudaligama, guilty on two counts—failure to control his subordinates and the disposal of dead bodies. The army announced in December 1992 that the officer had been dismissed.

The state has consistently sought to deflect criticism by appointing committees of inquiry or one-man investigations into incidents, for example, the Alanchipotana massacre of April 1992, the Kirankulama bus bomb of July 1992, the Palliyagodella killings of October 1992. However, no reports have been published; nor has the public being made aware of any subsequent remedial action.

It is this recurrent pattern of activity—the establishment of seemingly acceptable mechanisms, the unwillingness or incapacity to arm them with sufficient powers and resources, the non-publication of their findings and the totally inadequate punishments in the very few cases



that have come up to that stage—cannot but lead to the conclusion that these are only part of an image building exercise.

Structures that Permit Violations

We spoke earlier of the government's attempt to depict violations as the acts of a few aberrant individuals and to hide the perpetuation of structures that not only permit but encourage violations.

The maintenance of emergency regulations throughout the country is the chief of these; Sri Lanka has been governed under a state of emergency in 1992, in terms of which state authorities have been granted wide powers of arrest and detention for long periods, acquisition of property, restriction of the rights of association, assembly and publication. Another facet of these powers is that no one, not even lawyers, are really aware of the emergency regulations in force at any given time; there is no central place in the government machinery at which one can find out the whole of the regulations in force. However, it is these emergency powers which enable the state and its officials to violate human rights with impunity.

There are also other indications that the government is taking for granted the restrictions on fundamental rights brought into being by the emergency regulations; it is using them in areas totally irrelevant to the needs of 'national security' and in order to serve its political interests. In March 1992, School Development Boards were set up under Emergency regulations, bypassing the need for Parliamentary debate. Proper legislation was promised but had not been presented by December 1992. In August 1992, Emergency Regulations were briefly used to deprive trade unions and labour organisations of their fundamental rights of action in those sectors of the economy producing for export.

The maintenance of the emergency is justified on the basis of the ethnic conflict; this, of course, is also the basis for the denial of their fundamental and democratic rights to the Tamil people. The conflict which pits the state and a few armed Tamil groups against the LTTE has resulted in massacres perpetrated by both sides; thousands on non-combatants have been killed and lakhs of people have been displaced. There is talk of a political settlement but there have been no signs, in 1992, of any serious attempt to end this conflict. However, it is increasingly clear that such a settlement is an absolute pre-requisite for the creation of a climate within which the respect for human rights can be affirmed.

The continuing conflict has also led to a growing prevalence of violence in society, helped along by the easy availability of arms. The state has yet found it impossible to recall all the arms distributed to politicians and their body guards in 1988 and 1989. Deserters from the armed services who have left with their arms adds to this number. It is difficult to estimate the number of unauthorised arms but there is no doubt that they are being used to settle political disputes and add to the number of violations. Further evidence of this climate of violence is the large number of police and army personnel who were being tried for crimes such as theft, extortion, rape and murder.

The maintenance of the emergency, the lack of political will to seek a settlement to the ethnic conflict, the lack of a serious drive to remove arms from unauthorised civilians and the seeming condonation of violations and violators, all deriving from the political imperatives of the government are part of what we refer to as structures that permit and even encourage violations.

Also very disturbing in this context are some recent government statements arguing that human rights are primarily an internal matter and protesting that attempts to link human rights with aid issues are a violation of the country's sovereignty. The concept that human rights are 'Western' in origin and have to be adapted to our cultural needs is also part of this argument. This kind of attitude is common to many developing country regimes; it is a subject that will be pursued in a subsequent article.

1992 has also seen serious attacks on other rights such as association and expression to which we shall refer briefly.

Freedom of Association

Trade unions and organised groups of workers have been violently deprived of their rights; many pickets, demonstrations and leaflet distributing campaigns have been disrupted by the police, with tear gassing and baton-charging in many instances.

Meetings organised by human rights groups on December 10 were violently broken up by the police.

The Presidential commission of Inquiry into Non-Governmental Organisations has continued its sittings throughout the year. The thrust of its inquiries into several NGOs has raised fears that its findings may lead to a regime of regulation that will interfere with the rights of free association.



Freedom of Expression

There have been attacks on the media and on media personnel right through the year. A previous issue of *Pravada* has documented these attacks.

Several newspapers and editors have been charged with attempting to bring the government into disrepute for publishing the affidavits purporting to be from former Deputy Inspector of Police Udugampola and detailing alleged death squad activities. In one of these cases, the Colombo High Court held that the press was "free to publish news and opinion that may be distasteful to the government"; the Attorney-General has now appealed against this decision.

Attempts have also been made to forcibly prevent the distribution of papers. The weekly tabloid, *Yukthiya*, has, for example, filed a fundamental rights case alleging

forcible seizure and destruction of the paper in Nuwara Eliya by the mayor.

These attacks have brought many journalists and other media personnel to form the **Free Media Movement** in an effort to beat back attempts to muzzle the media.

Conclusion

It is difficult, in the light of what has been said above, to see any signs of improvement in the human rights picture in 1992. The legal regimes and other structures that permit and encourage violations are still in place. The government's commitment to respect human rights and to punish violators is dubious. The ideology of human rights is subject to constant attack. While the magnitude of violations of some rights has decreased, other rights appear in greater danger than ever before. All in all, it is still a situation where human rights are being violated with impunity.

Conclusion of the T.B. Davie Academic Freedom lecture, 1991, delivered by Edward Said, the first part of the text of which appeared in the previous issue of Pravada.

IDENTITY, AUTHORITY, AND FREEDOM: THE POTENTATE AND THE TRAVELLER

Edward Said

What kind of authority, what sort of human norms, what kind of identity do we then allow to lead us, to guide our study, to dictate our educational processes? Do we say: now that we have won, that we have achieved equality and independence, let us elevate ourselves, our history, our cultural or ethnic identity above that of others, uncritically giving this identity of ours centrality and coercive dominance? Do we substitute for a Eurocentric norm an Afrocentric or Islamo- or Arabocentric one? Or, as happened so many times in the post-colonial world, do we get our independence and then return to models for education derived lazily, adopted imitatively and uncritically, from elsewhere? In short, do we use the freedom we have fought for merely to replicate the mind-forged manacles that once enslaved us, and having put them on do we proceed to apply them to others less fortunate than ourselves?

Raising these questions means that the university - more generally speaking the academy, but especially, I think, the university - has a privileged role to play in dealing with these matters. Universities exist in the world,

although each university, as I have suggested, exists in its own particular world, with a history and social circumstances all of its own. I cannot bring myself to believe that, even though it cannot be an immediately political arena, the university is free of the encumbrances, the problems, the social dynamics of its surrounding environment. How much better to take note of these realities than blithely to talk about academic freedom in an airy and insouciant way, as if real freedom happens, and having once happened goes on happening undeterred and unconcerned. When I first began teaching about thirty years ago, an older colleague took me aside and informed me that the academic life was odd indeed; it was sometimes deathly boring, it was generally polite and in its own way quite impotently genteel, but whatever the case, he added, it was certainly better than working! None of us can deny the sense of privilege carried inside the academic sanctum, as it were, the real sense that as most people go to their jobs and suffer their daily anxiety, we read books and talk and write of great ideas, experiences, epochs. In my opinion, there is no higher privilege.

