

# SRI LANKA AT THE UN HUMAN RIGHTS COMMISSION

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Sri Lanka has just been elected to membership of the UN Human Rights Commission (UNHRC) for a second term, obtaining all the possible 56 votes. The government has naturally hailed this election as a vindication of its human rights record and as an expression of the acceptance of this record by the international community.

There is also another way of reading this election.

During the last three years, with Sri Lanka as one of its members, the UNHRC has been able to exert pressure on the Sri Lankan government in a number of ways: to set up various mechanisms like the Human Rights Task Force and the Commission to look into disappearances after January 1991; to accept visits from the UN Working Group on Disappearances and to agree to implement their recommendations; to accept a visit from the UN Special Representative on the Internally Displaced; to sign the Covenant on Torture and to accept in 1994 a visit from the Special Rapporteur on Summary and arbitrary executions; to accept formal visits from Amnesty International and other International human rights NGOs and to discuss and act on their recommendations. No doubt these actions enabled the government to project a picture of sincere respect and concern for the human rights and also to evade action on a number of other issues we will deal with later; yet they also contributed to a lessening of the violations, enabled local human rights organisations a firmer base to work on and gave citizens an increased confidence to seek legal redress when their rights were violated.

Yet a great deal remains to be done on other questions on which the government has prevaricated so far and the UNHRC is well aware of this, as is evident from the record of the proceedings of its last session in Geneva in February 1994. It is therefore possible to read the re-election as a means of ensuring the continuation of pressure and of some measure of compliance.

Government and NGO statements reflect the perception that the ethnic conflict is central to human rights in Sri Lanka and that both parties to the conflict are responsible for abuses. The Swedish statement for example said:

In Sri Lanka, the violent conflict in the North must come to an end. Condemning the continuous acts of covert and overt violence by the Liberation Tigers of Tamil Eelam, we also urge the Sri Lankan government to fully implement measures for the protection of human rights.

The statement made to the Commission by the Ambassador of Greece on behalf of the European Union said:

The European Union remains concerned about continuing reports of human rights abuses in Sri Lanka, and while condemning the use of violence by the Liberation Tigers of Tamil Eelam, once again urges the Sri Lankan government to ensure that such abuses are stopped. We welcome their undertakings, given to the Commission last year, to carry out a comprehensive human rights programme. We welcome their announcement of various measures in the past year to curb human rights abuses and to invite international organizations to visit the country. Nevertheless, we are disturbed by reports of arbitrary detentions incompatible with Sri Lankan law. The European Union welcomes Sri Lanka's acceptance of the recommendations made by the UN Working Group on Enforced or Involuntary Disappearances, but notes that further efforts are needed before they have fully implemented their undertakings to the Working Group and to the Commission on Human Rights.

The statement of the Head of Mission, Canada, was very specific:

In Sri Lanka, where ethnic conflict continues to give rise to serious human rights abuses, the government last year made some important commitments to this Commission regarding concrete steps it is taking to improve its human rights situation. This process should continue. The Commission should also encourage both the government and the Tamil secessionists to engage in negotiations towards a lasting peace, while addressing the serious human rights problems and underlying ethnic tensions in the country.

The many other issues that figured in the course of discussion and debate can be inferred from the statements made by the Sri Lankan delegation. A perusal of these statements reveal that the delegation met the situation by a mixture of prevarication and conciliatory promise.

To begin with, they highlighted the government's accession to the Convention on Torture and promised that legislation will be enacted to fulfil the country's obligations under the Convention and to provide for enhanced punishment for acts of torture.

The question of investigations into cases of disappearances that took place prior to 1. 1. 1991 has been a vexed question for some time. The demand that the government set up the machinery for this has been voiced by both local and international human rights organizations. The government now claims this has been done:

With regard to pre-1991 disappearances, a unit was recently established by the Secretary, Ministry of Defence, to examine the fate and whereabouts of persons allegedly missing prior to January 1991. This unit is now engaged in examining and comparing the list of alleged missing persons supplied by the Center for Human Rights with the available records pertaining to persons reported as dead to the police, armed forces and to other governmental authori-

ties. This unit will also ascertain whether any information pertaining to those on the list of missing persons are available in records maintained at police stations and detention centers.

The description of the work that the unit is expected to do in no way measures up to "the task of examining the past" as claimed. What is even worse is that no one in Sri Lanka, no individual or organization, knew of the existence of this unit until its proclamation in Geneva. The government has still not publicized the work of this unit locally. In the circumstances, one must come to the conclusion that this too is a cosmetic exercise designed merely to save face.

Unofficial and unacknowledged places of detention have been another source of contention. A delegate at Geneva said:

The Emergency Regulations do not admit of any unofficial place of detention. Under regulation 19 (8) detention at any place other than a designated place is an offence.

This was at the same time that an Amnesty International Report disclosed an unofficial center of detention in Kollupitiya. This was an offence. Have those responsible been punished ?

The government resorted to prevarication with regard to Udugampola too.

He is referred to as a person "who was held responsible for numerous disappearances and extra-judicial executions between 1988 - 1990". I wish to inform the Commission that to-date no credible evidence has been forthcoming to substantiate this allegation.

If the government wished to test the availability of credible evidence, all they have to do is to act on the directions given in the Supreme Court decision in the Liyanarachchi case.

Let us now look at the pledges of action for this year given by the government to the UNHRC. Mr. Tilak Marapana, Attorney General and leader of the Sri Lankan delegation, promised the following measures:

To Identify and consolidate of all existing emergency regulations;

To remove at the earliest opportunity of the provisions in the emergency regulation promulgated in December 1993 which confer special powers in dealing with the offence of promoting feelings of hatred or hostility among inhabitants of Sri Lanka;

To revise of emergency regulations so as to restrict the use of preventive detention by imposing a reasonable maximum time limit for detention without judicial intervention, remove provisions which permit suspects to be held for long periods in police or military custody without access to judicial authorities, to ensure strict compliance with provisions requiring detention only at authorized places of detention by increasing the penalty, to impose heavier penalties for failure to issue receipts at times of arrests and

to remove provisions which dispense with post-mortems and inquests when deaths have occurred in custody or as a result of official action of the security forces;

Legislation for the issuance of death certificates in respect of missing persons and the establishment of provincial mechanisms for implementation;

Effective steps to prosecute human rights violators by undertaking vigorous investigations and the institution of prosecutions in court;

Instructions to relevant authorities to take all possible steps to prevent injury to innocent civilians and damage to civilian property such as places of religious worship and schools in the course of military operations conducted against terrorists;

Replacement by legislation of the emergency regulations concerning NGOs, giving due consideration to representations made by NGOs in the preparation of such legislation.

We have another six months to see how many of these pledges will be honestly carried out. There is no visible evidence of honesty in the case the legislation regarding NGOs. The President has declared on several occasions that legislation is being drafted; to date, there has been no public invitation to NGOs to make their views known.

And lastly, Mr. Marapana promised:

Efforts will be continued to seek a negotiated political solution to the problems affecting the North and the East.

Mr. Marapana was saying this in Geneva at about the same time that the President was going round the country proclaiming that there was no ethnic conflict but only a terrorist problem and implying that it had to be overcome by military means. He had also declared himself opposed to the merger of the Northern and Eastern provinces. In that context, Mr. Marapana's separation of the North and the East and his reference to "problems" was quite clever; but in totality this was merely a piece of rhetoric for the obfuscation of the world.

At this stage one may begin to wonder why the UNHRC takes government rhetoric at its face value and accepts its pledges and promises year after year and why foreign governments continue to speak of improvements in the human rights situation in Sri Lanka. The reason is that the UNHRC is composed of 56 states. And states must appear to believe what other states tell them; otherwise relationships between states would become quite impossible. The further reason is that states also have imperatives other than concern for human rights, as, for example, trade, investments, military alliances; very often these imperatives take precedence over human rights.

One simple example will illustrate this. The overriding issue at this year's session of the UNHRC was the Kashmiri question and the efforts of Pakistan to censure India over alleged violations in that region. Iran, which would have been normally expected to support

Pakistan, was very lukewarm and was ultimately the principal influence in persuading Pakistan to withdraw its resolution. Was Iran convinced that the record of India in Kashmir was without blemish? No. Iran could not procure from Russia spare parts and accessories for the military equipment it had bought earlier from the Soviet Union. India promised to keep this war machine going for two years with parts from their stockpile and from domestic manufactures. To the state and government of Iran, this was more important than the human rights of the Kashmiris.

One must recognize these limitations of UN human rights mechanisms. But, nevertheless, one must also accept that the greater concern for human rights shown by our government, as evidenced in various ways referred to earlier in this article, was a direct result of the pressures of UN and other international mechanisms. To that extent we have to be thankful for their existence and for the international covenants to which they owe their existence.

## Documents

*The following is the text of the oral presentation made by Jan Bauer on behalf of Article 19, the International Centre Against Censorship, at the 50th session of the UN Commission on Human Rights in Geneva in February, 1994. This presentation relates to the item 12 of the Commission's agenda on 'the Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World.'*

### FREEDOM OF OPINION AND EXPRESSION IN SRI LANKA

Jan Bauer

In July, 1993, ARTICLE 19, the International Centre Against Censorship, sent a four-person fact-finding delegation to Sri Lanka on the issue of freedom of opinion and expression.

ARTICLE 19 both welcomes and acknowledges the reduction in the incidents and degree of violence in Sri Lanka in the last two years. There remain, however, constitutional provisions, laws and practices which continue to infringe severely the fundamental right to freedom of expression, and developments in Sri Lanka in the seven months since our visit are disquieting. In addition the continuing failure of the Sri Lankan government to investigate and bring prosecutions in respect of massive violations in the recent past represents the denial to the Sri Lankan people of their right to know the truth which is a fundamental aspect of the right to freedom of expression and information.

Among our concerns is the promulgation of Emergency Regulations on sedition, which had been withdrawn in June 1993 only to be reintroduced this past December. There are two troubling aspects to these regulations ARTICLE 19 wishes to emphasize.

First, the promulgation of these laws as Emergency Regulations has meant that they were not subject to public or parliamentary debate before coming into force. ARTICLE 19 considers this side-stepping of the democratic process a serious violation of freedom of expression. It also contradicts the statement of the representative of Sri Lanka at the 49th session of the Commission, to the effect that

there is a "democratic form of governance which Sri Lanka has uninterruptedly practiced for over half a century."

Second, the Emergency Regulations restoring laws on sedition violate international and comparative standards, not least because their wording is board and vague. It must also be noted here, as has been pointed out by ARTICLE 19 to President Wijetunge, that courts throughout the Commonwealth have condemned sedition laws that purport to punish speech short of incitement to violence. The Sri Lankan Emergency Regulations do not require incitement to violence. The law also makes it a crime to display posters or distribute leaflets "the contents of which are prejudicial to public security". In addition, the regulations make civil disobedience a crime of sedition with a penalty of up to 20 years' imprisonment.

ARTICLE 19 acknowledges that a change to the regulations, introduced on 5 January 1994, removed an earlier provision making it an offence to "bring or attempt to bring the President or the government into hatred or contempt". This change will have little impact, however, on the manner in which the law is interpreted and charges preferred against journalists and others seeking to exercise their right to freedom of opinion and expression.

A number of the recommendations in our report, which will be published shortly, call for changes in laws which continue to restrict freedom of expression and which contradict article 19 of the International Covenant on Civil and Political Rights. These changes