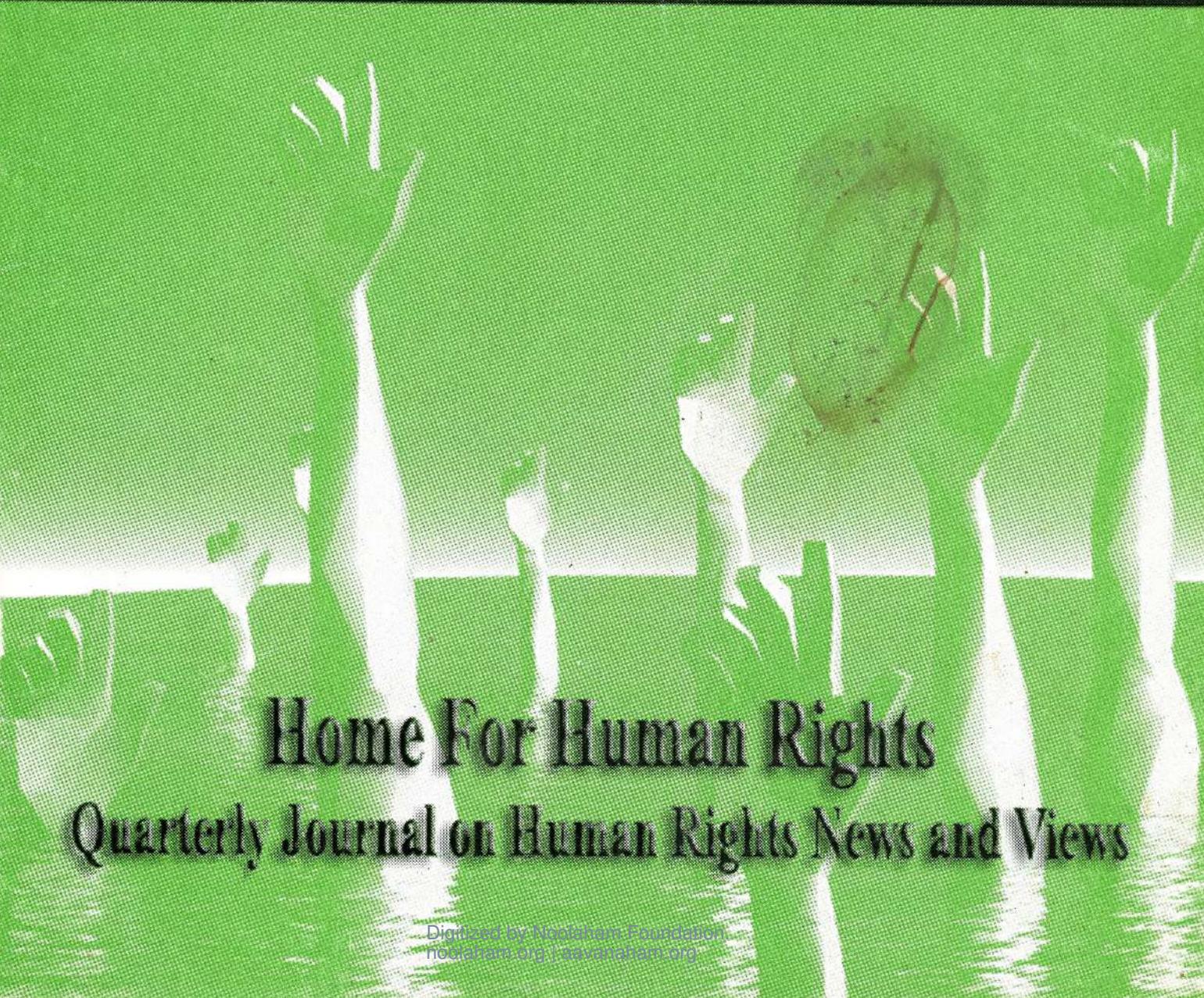


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# BEYOND THE WALL

October - December 2005



## Home For Human Rights

### Quarterly Journal on Human Rights News and Views

# BEYOND THE WALL

## Quarterly Journal

October – December 2005 Vol. III No.4

*The views expressed in the articles in this volume are those of their authors and do not necessarily reflect the views of the editorial board.*

*Beyond The Wall welcomes contributions from those involved or interested in human rights. The subject matter is restricted to news, views and academic papers on human rights issues. In addition to papers and articles, we will welcome critical comments and letters to the editor.*

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## E D I T O R I A L

# Peace is Possible

By Francis Xavier

The coexistence and confrontation of the two nations in Sri Lanka—the Sinhalese and Tamils is the history of Sri Lanka from time immemorial. The granting of independence in 1948, only gave way to mistrust and misapprehension between the two nations.

The ethnic conflict between the Tamils and Sinhalese has its origin with the disenfranchisement of the Tamils of Indian origin who were working in plantations. Series of other discriminatory acts too created animosity and discontent among the Tamils. Since independence, the political problems of the Tamils were gradually aggravated, with their smouldering discontent erupting into armed conflict and civil war between the two nations.

The Constitution promulgated in 1972 abolished Section 29 of the Soulbury Constitution that guaranteed safeguards to the minority Tamils. The agitation and non-violent movement of the Tamils for a federal state led by the pacifist leader S. J. V. Chelvanayagam was scorned and looked down with contempt by the Sinhala leaders. Thus, the young and dynamic leaders of the Tamils took to an armed struggle as the last resort. The atrocious acts, the method and means of suppression and oppression could not deter the movement. And today, though they are still to be afforded recognition by other states, they are indeed running a de facto government of their own in a specific territory.

The successive Sinhala governments that came into power all ignored the legitimate rights and grievances of the Tamils. These governments only thought of one race, one language and one religion—to the exclusion of the Tamil minority. Oppression by one nation hence prompted

the oppressed nation to resist the oppression and injustice perpetrated upon its people.

Violation of the rights of the people who are an identifiable group is a ground for self-determination. This principle of self-determination of people is well entrenched and

articulated in international law. And though international law generally regulates affairs and conduct between nation states, the modern trend is that in certain particular and specific instances it also recognizes the rights of people and groups of people—such as their right to self-determination.

The existence of the rights of such people is now entrenched

and recognized in international law and is now considered a general principle of international law. Accordingly, Article 1.2 of the Charter of United Nations states:

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of people.

Article 55 of the Charter further states that:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. Higher standards of living, full employment, and conditions of economic and social progress and development;



Geneva I: The beginning of talks in February 2006

Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the Covenant on Economic, Social and Cultural Rights (ICESCR), says that "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The same principles—principles of equal rights and self-determination of people—are entrenched in the UN Charter and the two Covenants aforementioned. Thus, all peoples have the right to determine, without external interference, their political status and economic development.

Do the Tamils fall into the definition of peoples? Certainly, under the present international law they fall within the definition of 'peoples'. This is because it is clear from legal precedents and accepted jurisprudence on international law that peoples include portions of a population of an existing state. The Tamil population in Sri Lanka certainly shares the characteristics of 'peoples'. They have a language and culture of their own as well as a traditional homeland of their own. Most importantly, they had their own kingdom before the colonial powers conquered them.

Indeed, the colonial power Portugal conquered them; the Dutch and the British followed them. That is, the Kingdom of Jaffna and adjoining vassal states of Vanni were independent entities when the Portuguese conquered the Tamils. The Portuguese ruled them separately. The Dutch and the British continued to rule the Tamils separately up to 1798-1802. Between 1798 and 1802 however they amalgamated the two states for the convenience of administration. The fact remains that even after colonial rule, the Tamil 'state' was not conquered by the Sinhalese and neither did the Tamils give their consent to the Sinhalese to rule them. Sadly, the majority Sinhalese seem bent on distorting these historical facts.

The above facts already demonstrate that the Tamils can definitely be considered as 'peoples' who are entitled to the rights guaranteed by international law vis-à-vis self-determination. What many are failing to grasp is that Tamils in Sri Lanka are only asserting their rights to re-

gain their lost independence. Theirs is not a case of secession and the territorial integrity of one state does not apply in this scenario.

There is a general feeling among the Tamils that the British rulers transferred the sovereignty of the Tamils without the consent of the Tamils. This was made more apparent, in fact obvious, after the abolition of Section 29 of the Soulbury Constitution. Even before, there was much protest and agitation with more than 60% of the Tamil population not approving the Soulbury Constitution. But even thereafter, none of the Constitutions or constitutional processes met with the approval of the Tamils.

The general principle of international law regarding self-determination is that this right operates within the principle of territorial integrity. But there are certain circumstances where the right of self-determination is allowed to be exercised by 'peoples'. The case of the Sri Lanka Tamils (North and East) falls within the exceptional circumstance in that they had their own kingdom, their race, language, culture, separate territory before the colonial powers conquered them; the most crucial element being that they only changed their political masters from Portugal, Netherlands, Great Britain and finally the Sinhala State.

The rights of external self-determination accrue where peoples are under alien domination. The North and East can be considered as being under the occupation of the Sinhala armed forces. Ninety percent of the Sinhala army and navy occupying the North

and East is alien to the population in those areas. They belong to an occupying power and flagrantly violate human rights of the Tamil population during times of war—and sometimes even otherwise.

Therefore, though a case can rather convincingly be made for a separate State or complete independence for Tamils under principles of international law—at least on a trial basis—a full-fledged federal state or a confederate State with entrenched provisions regarding land and language on similar lines of the Quebec Province in Canada should be modelled to suit the aspirations of the Tamil people. This is definitely a point to ponder in the forthcoming talks between the Sri Lanka government and LTTE.

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## H U M A N R I G H T S

# Power Sharing Essential for Peace in Lanka

By Dr. Victor Rajakulendran

*"Two different nations from a very ancient period, have divided between them the possessions of the island: First the Cinbalese (Singhalese) inhabiting the interior of the country in its southern and western parts from the river Wallowe to that of Chilaw, and secondly the Malabars (Tamils), who possess the northern and eastern districts. These two nations differ in their religions, language and manners."*

Hugh Cleghorn

*The first British Colonial Secretary to Ceylon, 1799*

British authorities made few mistakes in recording what they saw when they went into a country to colonize it. However, when they left these countries after granting independence, they failed to leave systems of governments in place that could satisfy the aspirations of all the citizens of these countries. And Sri Lanka (formerly, Ceylon) is no exception to this.

The two nations of people Hugh Cleghorn, the first British Colonial Secretary observed in 1799 in Sri Lanka (Ceylon)—the Singhalese and Tamils—did not live without political qualms in the post-independence era (since 1948). This is because the Westminster system of government left behind by the British colonialists had paved the way for the numerically superior Sinhalese nation to govern the country, discriminating against the numerically inferior Tamil nation in policies of language, land alienation, education and employment.

The Tamil nation's struggle for equal rights using non-violent democratic methods, within and outside Parliament was subjugated with brutal force by successive Sinhalese dominated governments. It was then the democratically elected leaders of the Tamil nation realised that establishing a separate State in the traditional homeland of the Tamil people—the North-East region of the country—was the only way to live in peace and dignity. This realization culminated in the Tamil United Liberation Front (TULF)—the then moderate democratic political party of the Tamils—passing a resolution for Tamils to initiate their struggle for an independent, sovereign, secular, socialist State of Tamil Eelam in their traditional homeland, the NorthEast of Sri Lanka.

The resolution calling for a separate State was passed at the TULF's convention held at Vaddukkodai in 1976—now popularly known as the Vaddukkodai Resolution. Here, Tamil people gave their mandate to the TULF for this resolution, which was the TULF's platform, in the parliamentary elections of 1977. However, when the TULF's non-violent struggle for an independent State was crushed, the Tamil youths opted for an armed struggle.

And this is the armed struggle that is today taken forward by the Liberation Tigers of Tamil Eelam (LTTE).

Until the LTTE was enabled to grow and evolve with the support of the Tamil people into an equal armed formation to that of the Sri Lankan security forces and to successfully resist the latter's occupation of the Tamil homeland, no serious ceasefire agreements (CFA) or international community involved peace processes were initiated. Such a CFA between the Sri Lankan government and the LTTE was only signed in 2002 with the facilitation of the international community, specifically Norway.

Although the CFA is still holding (after 4 years) political killings which are not in short supply, are blamed on both the Tamil paramilitary forces aided and directed by the security forces and the LTTE. Six rounds of peace negotiations, with the facilitation of Norway and the support of the other co-chairs viz. USA, Japan, and the EU of the Tokyo donor conference for Sri Lanka, have failed to produce much progress.

Even the international community initiated Post-Tsunami Operational Management System (P-TOMS), a joint mechanism between the government of Sri Lanka (GOSL) and the LTTE has been rendered un-operational by a court action initiated by Sinhalese hardliners. The P-TOMS was initiated for the purposes of sharing international reconstruction aid equitably among all those who had been affected by the tsunami devastation of December 2004.

## Tamil Resurgence

Realizing that their hopes on the CFA and the peace process seem to have evaporated, a disappointed Tamil people began to demonstrate their frustration and expectations to the Sri Lankan government and the international community by organizing resurgence rallies in the Tamil homeland. Accordingly, the first Tamil National Resurgence Conference was held on 27 July 2005 in the northern town of Vavuniya.

A conference of more than 1000 Tamil academics, religious leaders and social activists in Vavuniya on this day demanded that an environment be created to enable Tamils to decide their own political destiny and called upon the Sri Lankan armed forces to vacate the land and seas of the NorthEast. This is now known as the Vavuniya Declaration and Tamil people living in other Tamil Districts have also held similar resurgence rallies endorsing this declaration.

With the CFA coming into effect, it has been accepted in principle that, in the island of Sri Lanka, there exists an area controlled by the GoSL and another area controlled by the LTTE. The international community has witnessed, especially after the tsunami disaster, the existence of an efficient civil administration run by the LTTE in the LTTE-controlled areas, with their own judicial, police, banking, transport and tax collecting systems.

Therefore although the British and the post-independence governments in Sri Lanka have tried to erase the situation that prevailed before the British colonialists stepped into Sri Lanka as recorded by Hugh Cleghorn in 1799, Tamils have succeeded in preserving to a great extent the parameters defining their nationhood. This is why they decided to proclaim their aspirations as those of a nation through the Vavuniya Declaration.

In the last parliamentary elections, Tamils gave a mandate to the Tamil National Alliance (TNA)—a coalition of all Tamil political parties of the NorthEast except two small ones—to represent them in the Sri Lankan Parliament on the basis that they recognised the LTTE as their sole representatives. This mandate also stipulated that any negotiations the GoSL wanted to conduct regarding the ethnic issue should be exclusively with the LTTE. Only one Tamil member was elected to Parliament from the NorthEast outside the TNA in this election. This indicated that the majority of the Tamil people have accepted the LTTE leader, Velupillai Prabhakaran as their national leader.

### Exploiting the Sinhalese Nationalistic Vote

Attempts by the fourth Sri Lankan President—Chandrika Bandaranaike Kumaratunge who was at the helm for the last 11 bloody years in Sri Lanka—to extend her stay in power by another year failed. As a result, an election was held to elect a new President on 17 November 2005. Although there were 13 candidates contesting this presidential election, in reality it was a contest between two candidates who represented the two major Sinhalese political parties. They were, the then Prime Minister, Mahinda Rajapakse of the Sri Lanka Freedom Party (SLFP) and the Opposition Leader and former Prime Minister, Ranil Wickramasinghe representing the United National Party (UNP).

Although the SLFP nominated Mr. Rajapakse as its presidential candidate, the leader of the party, President Kumaratunge and a few other senior members of the party did not support him openly. Aware of this in ad-

vance, and knowing that the Tamils would not vote for his party's candidate, Mr. Rajapakse decided to exploit the nationalistic Sinhalese votes. To accomplish this, he decided to depend on the two extremist Sinhalese nationalist parties the JVP (Peoples' Liberation Front) and JHU (National Heritage Party), a party represented in Parliament by 9 militant Buddhist monks.

The JVP had been a terrorist organisation that staged two armed insurrections in Sri Lanka and later entered Parliament without surrendering their weapons. No Sri Lankan government had ever asked them to do so either. Anyway, from the inception of the CFA, since both these parties had been opposing negotiations with the LTTE as well as with the facilitation of the Norwegians in the peace process, they laid out conditions for Mr. Rajapakse in return for their support. Knowing that, without their support, he could not reasonably think of winning the election, although Rajapakse is a realist with pragmatic political ideas, he decided to agree to all these conditions.

The most important of these conditions that affect the future prospect of peace in Sri Lanka are as follows:

- Any political solution will be within the unitary type of constitution only;
- The concept of self government or separate homeland for Tamils is not acceptable;
- A revision of the CFA;
- No tsunami aid sharing deal (P-TOMS) with the LTTE;
- No major role for the Norwegian peace brokers.

For the JVP and JHU, preventing Mr. Wickremesinghe from becoming the next President was more important than electing Mr. Rajapakse to the presidency. The JHU considered Mr. Wickremesinghe more conciliatory towards Tamils and, for the JVP, if Wickremesinghe became the president, where to 'hide' would have been a worry.

The Tamils, who usually do not actively participate in presidential elections, (for example, in the December 2000 presidential elections only 19% of the Tamils voted in the Jaffna peninsula), realised the futility of supporting one or the other of the candidate vis-à-vis the peace process, due to their bitter experiences of the previous 4 years. Thus, they decided to keep away from the election process and allow the Sinhalese to choose their leader. As a result, only 1-2 % voted in the North and less than half the Tamil people in the government-controlled areas in the east voted.

Hence, Mr. Wickremesinghe, who was expected to win comfortably with the support of the Tamil vote, was defeated narrowly by Mr. Rajapakse, who received the support of the nationalist Sinhalese voters. Therefore, while the Tamils have accepted and proclaimed the LTTE leader Velupillai Prabhakaran as their national leader through the last parliamentary election, President Mahinda Rajapakse was selected by the majority of the Sinhalese, at the recently concluded presidential election, to be their

national leader.

### The Leaders Address their People

On 25 November 2005, the victorious President Rajapakse delivered an hour-long speech in Parliament outlining the policies of his government. In his address to his people, he promised to usher in an era of peace by talking to all stakeholders of the peace process in Sri Lanka. At the same time, he also reiterated some of the promises made to the Sinhalese hardliners in his election manifesto.

That is, he proclaimed he would reject self-determination for the Tamils and said he was committed to a unitary state—controlled by the Sinhala-Buddhist majority. He also said that he would revise the CFA, that he would dissolve the agreed joint LTTE-government administration of post-tsunami relief (P-TOMS) and that for mediation in the peace process he would use the United Nations and all the other friendly nations that have shown interest in the past, including those in the region. He purposely omitted any specific mention of what Norway's role would be. During the campaign leading to the presidential elections, Sinhalese hardliners had been demanding that Mr. Rajapakse terminate Norway's role as the facilitator to the peace process.

Two days later, in his annual address to his people, the LTTE leader Mr. Prabhakaran emphasized the LTTE's aim of self-government in a Tamil homeland. He compared the new president's policy with that of the LTTE and pointed out the existence of vast differences between the two policies. He also warned that Tamils were losing patience and had started to express their feelings through resurgence rallies that they have been staging in various Tamil districts in recent times.

He also said that "the new government should come forward soon with a reasonable political framework that will satisfy the political aspirations of the Tamil people." If no such offer is forthcoming, Mr. Prabhakaran said, the Tigers will in the next year "intensify our struggle for self-determination." Many analysts and commentators have interpreted Mr. Prabhakaran's talk about 'intensifying the struggle for self-determination', as an ultimatum to the new President Rajapakse.

### Future Prospects for Peace

From the respective positions taken by the two leaders as stated above, and also going by past experiences of attempts at peace building, one could say that a renewal of armed conflict is inevitable in Sri Lanka unless influential

forces among the international community exert pressure on both sides.

Full implementation of the CFA is the number one priority if tension that has been building up between the two sides is to be diffused and also for resumption of the peace process. The disarming of Tamil paramilitary forces working side by side with the Sri Lanka security forces against the LTTE is a primary aspect of the CFA. And since most of the violent incidents happening during the last few months have been a direct effect of the non-implementation of this disarming, this is the subject that needs to be addressed immediately.

While power-sharing with Tamils has been previously accepted by both the UNP and SLFP governments as the basic necessity for a political solution to the conflict, President Rajapakse's insistence on maintaining the unitary state makes one wonder whether the new President is really as



The LTTE delegation at the Geneva I talks

pragmatic a politician as he is being described. President Rajapakse's policy of maintaining the structure of the unitary state also ignores the agreement, reached between the LTTE and the GoSL in Oslo during the peace talks viz. that both sides will explore the possibility of finding a solution based on a federal model.

While previous agreements made (but not implemented) between the Sinhalese leaders and Tamil leaders—including the 1987 Indo-Lanka Agreement—have recognised the NorthEast region as the traditional homeland of the Tamils, President Rajapakse's rejection of this fundamental concept is contradictory to the declaration he made in Parliament that he would usher in an era of peace that satisfies the aspirations of all communities in Sri Lanka. Therefore it seems that President Rajapakse is prepared to sacrifice even the little consensus reached during the peace talks so far, for the sake of appeasing the Sinhalese nationalist constituency, which elected him.

The last round of peace negotiations came to a standstill when the LTTE proposed an Interim Self Governing Authority (ISGA) to be established for the NorthEast of Sri Lanka for the purposes of carrying out rehabilitation and reconstruction work. The LTTE argued that rehabilitation and reconstruction could not wait until a final political solution to the conflict, which would take at least a few years for both sides to agree on. Without rehabilitation and reconstruction of the war-affected areas, it was argued, Tamil people would not reap the benefit of the CFA

and the peace process.

The LTTE also insisted that the Tamil people would have to play the major role in this interim administration. But, at that stage, the then President CBK sacked the Wickremesinghe government, went in for a general election and installed an SLFP/JVP coalition government. This government, headed by Prime Minister Rajapakse, took little initiative in renewing the peace negotiations, mainly due to the JVP's opposition to the government negotiating with the LTTE.

#### Lesson from Sudan

Any long-term conflict like the one prevalent in Sri Lanka has to go through an interim administration to reach a final settlement. The best case in point is the solution reached vis-à-vis the conflict in Sudan. The conflict in Sudan started almost at the same time as the Sri Lankan conflict. The armed conflict between the Arab dominated Khartoum government forces of the north of Sudan and the African dominated Sudanese People Liberation Army (SPLA) in the south had caused death and destruction in the south of the country for almost 21 years.

The government of Sudan in the north and the Sudanese People's Liberation Movement (SPLM) headed by its military leader General John Garang in the south signed a permanent peace accord on 9 January 2005, thereby ending Sudan's 21-year civil war. This was the culmination of more than two years of intensive negotiations between the opposing factions. The peace talks were mediated by the regional Intergovernmental Authority on Development (IGAD), led by retired Kenyan General Lazaro Sumbeiywo.

A united diplomatic front to achieve peace was also led by the United Kingdom, Norway, Kenya, and the United States, with significant involvement of US Special Envoy Ambassador John Danforth, during the past two years. The peace accord was signed in Nairobi by General John Garang on behalf of the SPLM and Sudanese First Vice President Ali Osman Taha on behalf of the government of Sudan. Importantly, the agreement provided for a federal system, with a two-chamber central government and a regional government with substantial powers for Southern Sudan.

This structure was to stay in effect for six years, after which South Sudan may choose to become independent through a referendum. During this interim period, a government of national unity was to administer the country on a national basis while the agreement also provided for an internationally monitored ceasefire with UN peace monitors. Furthermore, two separate armed forces with a joint coordinating mechanism were to be maintained in the North and South during the six-year transitional period. The agreement also addressed many contentious issues, such as power sharing in the transitional government, and administration of contested areas such as the Nuba Mountains and Blue Nile—where resource and land-based conflicts have been flaring up for years.

Another thorny issue addressed in the accord was wealth sharing, including oil revenues since, Sudan owns some of the largest proven oil reserves in the world. The agreements provided wealth-sharing formulas between the North and South and oil producing states. Also included in the agreement was that Sharia law, which was the law applicable in the predominantly Muslim North, would not apply in the predominantly Christian South or in the capital, Khartoum. This had been a major sticking point during the conflict.

An interim constitution was signed by both leaders on 9 July 2005 and General John Garang became the Vice President of this interim government. Although General John Garang died in a helicopter crash a few days later, his former deputy in the SPLA replaced him as Vice President and the interim government continues.

#### Argument for ISGA

Most of the countries in the diplomatic front that were behind the Sudanese peace accord are also behind the peace process in Sri Lanka. In Sudan, these countries have helped the two warring nations to agree to an interim federal system with a central government and a regional government for Southern Sudan with substantial powers for 6 years. This 6 year period is considered an interim period in which there is to be two separate armed forces, with a joint coordinating mechanism, to be maintained in the North and South. At the end of this 6-year interim period, people of South Sudan will be given the opportunity to decide the final settlement through a referendum vote based on their right to self-determination.

The question here is, if the international community supported and encouraged a solution to the Sudan conflict including an interim arrangement and accommodating the functioning of the armed forces of both sides, can the same international community refuse the demand of the Tamil people of the NorthEast of Sri Lanka for an ISGA in their homeland?

Considering the positions spelt out by both leaders, Mr. Rajapakse and Mr. Prabhakaran, the only possible way to avert a resumption of hostilities in Sri Lanka is for the international community to come up with a similar interim arrangement to the one they sponsored in Sudan. The only difference between the two situations may be that President al-Bashir of Sudan was not a prisoner of extremist parties like Mr. Rajapakse is to the JVP and JHU in Sri Lanka. Thus, the only way for Mr. Rajapakse to become another President al-Bashir is to hold a parliamentary election and form a stronger government with his own SLFP, leaving out the JVP and JHU.

More importantly, India is required to help Norway and the rest of the international community by playing the role Kenya played in Sudan.

## P E A C E

# Democracy in Sri Lanka: A Mocking Parody

By Fr Chandu Simmathurai

*The author begins with a description of the cycle of violence and fear that has overtaken the East of Sri Lanka and the horrifying experience of a young man at the hands of the notorious STF. He goes on to explain that according to Hebrew texts governance based on right (Tzedakah) and just (Mishpat) gives way to a righteous and just society, where economic justice is given preference over political order. Therefore economic justice—to the survivors of the tsunami devastation in the North and East—should have taken precedence over peace building initiatives in Sri Lanka. The author also argues that the defective theology of politico Buddhism is obstructing the Tamil's right to co-exist and therefore self-determination for Tamils is the only intelligent way out of the quagmire.*

Sri Lanka has an appalling human rights record since receiving independence on 4 February 1948. It is tragic that the Orwellian prophecy is being fulfilled in this island especially when it comes to freedom of thought and expression. To me, Sri Lanka functions within a framework of a racist sectarianism couched in a façade of duplicitous democracy. And as I write this article I wonder whether we are faced with the real threat of a police state with death squads meting out collective punishments to a marginalised civil society.

## Terror

Cycles of violence have overtaken the country on both sides of the divide. The East—*Tirukonnamalai* (Trincomalee), *Mattakkalappu* (Batticaloa) and the Amparai District in particular, have been transformed into largely under-reported killing fields. Involuntary disappearances, gang rapes, torture and extra-judicial killings are conducted routinely as part of a well-planned programme of seeming genocide. The strategy of the State however it seems is to divide the Easterners from the Northern Tamils.

I rang one of my relative in *Mattakkalappu* a week after the senior Tamil legislator's murder in the Cathedral. He conveyed to me that the people in Batticaloa are living in constant fear: "Any moment anything can happen—this is worse than the trauma of tsunami" he shuddered. Why don't you write about these atrocities in the newspapers and let the whole world know, I urged him. "If so," he enquired "are you willing to conduct my funeral?" Such frightening reality is an open secret. Naturally no one wants to even whisper a word about the calculated tragedy of

errors in which civilians are caught up.

## Ultimate Indignity

During my post-tsunami journey to the East in January to March 2005, I was in conversation with a fellow priest in the Amparai District. His 19-year-old brother Ravi (not his real name) had been abducted by the notorious STF (Special Task Force) in the latter part of October 2004 and was detained in their camp for nearly two weeks. Not only had Ravi been tortured mentally, emotionally and physically, the STF in a drunken stupor had not hesitated to sodomise him by gang rape—an ultimate indignity to a Tamil man.

When Ravi's parents secretly met with the local STF commander they were informed that their son was detained for interrogation as a 'suspected terrorist'. When the parents protested Ravi's innocence they were reluctantly told that they would be permitted to take Ravi home provided they agreed: (i) to sign a document that he was released in perfect health (obviously a copy of which was not issued to them), (ii) never to utter a word about the matter to anyone (iii) not to take the young man to a hospital.

Surely the parents were overjoyed to hear that their son was alive. They promptly signed this 'official document' without a murmur. When two masked soldiers brought Ravi from an underground cellar, the parents noticed Ravi could hardly walk or talk—he was bent down owing to the repeated battering on his spinal cord. His genitalia were swollen and his face was disfigured with cigarette burns. Literally he had been beaten black and blue. So, the parents and relatives virtually carried Ravi to their village *Pariyari* local medicine man who was

also sworn to secrecy.

But Ravi's condition hardly improved. Even after several months of trauma, his parents refrained from taking their son to a government hospital, because they feared for their lives. I urged Ravi's mother, "*Amma*, why don't you at least now report this horrible incident to the authorities..." and I struggled to contain the emotions of pain and deep anguish I felt within me when I heard this noble lady's tearful response. "*Pothagar*, I've chosen to forgive these men", she said and continued, "I will not allow them to steal my humanity (*manuseekam*). They have at least spared my son's life and for that I am grateful." Ravi's *Amma* then raised her face delicately and patting her chest firmly said, "We will keep our word of honour. We won't talk to anybody about this incident. It is a disgrace (*avamarnam*)"<sup>1</sup>.

The tsunami was however a blessing in disguise to Ravi. He received medical treatment from a visiting *Médecins Sans Frontières* team and his health gradually began to improve. The doctors had also prescribed antidepressants for Ravi and recommended that he be treated by a psychiatrist as he was diagnosed as suffering from post traumatic depression and suicidal tendencies. In fact Ravi's *Amma* used the word "*Uyir picchai*" in her conversation which translates as 'the powers that be' have chosen to offer them a favour—'an alms-giving of her son's life'—owing to their incessant 'begging'.

And *Amma* wanted to be grateful. "Grateful?"—Yes, that is what she said. And as I ponder upon her words, they conjure in my mind stark images and naked emotions. And I think, such is the obscene breach of inherent birth-right and the real threat of state terror that gags our fellow beings. Even as I write under the Palmyra hut, we hear about the abductions of 10<sup>2</sup> TRO (Tamil Rehabilitation Organisation—a humanitarian group) staff members in Batticaloa. Life is such in these dangerous times. None is safe.

### Moral Basis

Rabbi Sacks in his exploration into concepts of the moral basis of fundamental rights explains that human rights is

like a cheque. It has value only if there is a bank and an account against which it can be drawn. Without that, he concludes, it is mere expectation without delivery. To me, the Rabbi's analysis seems to fit the moral bankruptcy and depravity currently in existence in Sri Lanka.

It is against this backdrop that I focus on a couple of ideas from the Hebrew text. These ideas conceptualise the different forms of justice practised by the ancient Hebrews. The moral under girding of justice arises from the theology of justice and peace which emphasises keeping the way of the Lord by doing that which is **right** [*Tzedakah*] and **just** [*Mishpat*] (Genesis 18:17-19). Such governance, no doubt, produces both a righteous and a just society. The Buddhist might call such social ordering a Dharmista society. The Tamils would invoke the ancient Dravidian dictum, "*Tharumum thalai kakkum*"<sup>3</sup>.

*Mishpat* means redistributive justice or the rule of law. Law governs all free society. By impartial administration of law, the guilty are punished, the innocent are acquitted and in due process human rights are secured. In a just society people ought to be concerned first with economic justice and only then in the political order. The tsunami calamity taught us all a good lesson in this regard. The government of Sri Lanka (GoSL) failed to address the economic right and the welfare of the Tamil survivors by not adhering to the commitment made in the so-called joint mechanism, which would have administered, in all probability, an equitable distribution of international aid.

Evidence would suggest that the GoSL not only ignored the aid commitment, it also chose to breach the Ceasefire Agreement (CFA) by surreptitiously engaging its Military Intelligence Wing in numerous post tsunami assassinations and escalating violence primarily targeting civil society. Now with such credentials, it is

reported, that the GoSL is pushing the talks with the LTTE on political agenda. One would think that affording economic justice to the tsunami devastated Tamils should have taken precedence over peace-building initiatives—not the other way round.

Redistributive justice focuses especially on those who, because they lacked power, or a voice, become victims of

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*During my post-tsunami journey to the East in January to March 2005, I was in conversation with a fellow priest in the Amparai District. His 19-year-old brother Ravi (not his real name) had been abducted by the notorious STF (Special Task Force) in the latter part of October 2004 and was detained in their camp for nearly two weeks. Not only had Ravi been tortured mentally, emotionally and physically, the STF in a drunken stupor had not hesitated to sodomise him by gang rape—an ultimate indignity to a Tamil man.*

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injustice and inequity. The Hebrew Psalms speaks of God as having a preferential option for the oppressed and is portrayed by the psalmist as follows:

*He upholds the oppressed,  
And gives food to the hungry  
The Lord sets prisoners free  
The Lord gives sight to the blind  
The Lord lifts up those who are bowed down  
The Lord loves the righteous  
The Lord watches over the stranger  
And sustains the fatherless and the widow  
But He frustrates the way of the wicked. (Psalm 146:7-9)*

The aforementioned text projects an image of God who identifies Himself with the downtrodden and acts as the voice for the voiceless. Most social scientists, including both sociopolitical theologians and behavioural psychologists agree, at least theoretically, that the vision portrayed and projected as an object of worship (our religious universe) does indeed impact our moral universe. In other words, the vision that we adhere to inevitably mirrors our nurture and nature, value systems and the way we respond and react to socio-moral issues. Hence scholars agree that the right view of God or the right understanding of the object of worship is essential. Even for an atheist an idea or a philosophy could be the object of 'worship'. The corollary of a deviant theology or system of thought they rightly argue, would eventually lead to defective moral choices and ethical stance. Such a position has a way of ultimately impacting upon ground realities.

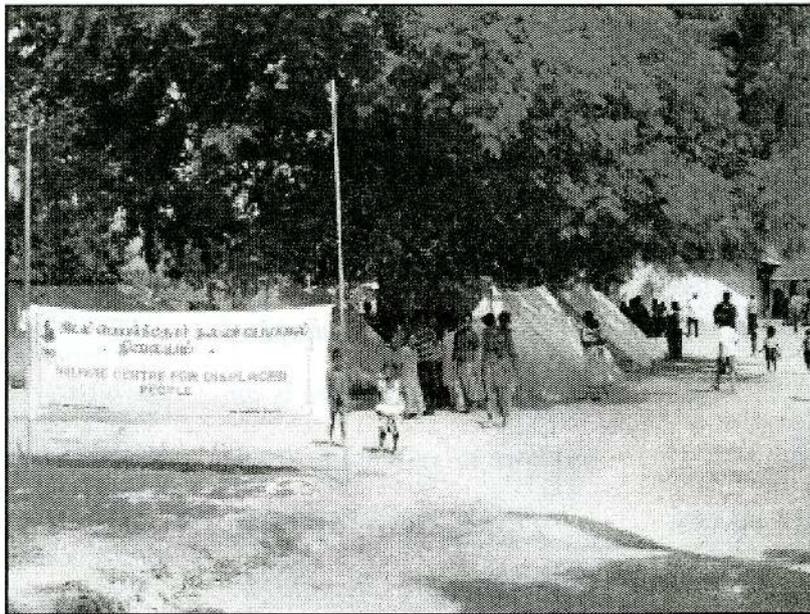
**Politico-Buddhism**

Tragically in Sri Lanka, the fundamental issue is locked within the defective theology of politico-Buddhism. Such a belief system is underpinned by an emotive sectarian idea that the Sinhala Buddhists are a divinely chosen-race ordained to be the 'sole sons of the soil' (*Pumi putras*). This lethal ideology finds its articulation in the flawed formula of Sinhala supremacy. Certain sections of the Bud-

dhist *Sangha* acting as the guardians of state religion comprehend the ideology of ruling "*apey rata*" (our promised land) as their divine right.

Such divisive priestly mandate results in rhetorical violence and ideological strife, which ensues against the *Kalu Demelu* (dark-skinned Tamils) who are viewed as traditional adversaries. Obviously in the scheme of things, the Tamil's right to co-exist is on a collision course. Schalk nonetheless in his deconstruction of such ideological pillars concludes that, racism was made part of Sinhala consciousness in post-vamsa tradition, in the 19<sup>th</sup> and 20<sup>th</sup> centuries and Tamils were excluded as a result of their race. Racism in Sri Lanka, Schalk points out, "was an ideological expression of a policy of segregation."<sup>14</sup>

Influential scholars in political science, as well as policy analysts and opinion-makers in the field of international relations are only now beginning to accommodate the principle of self-determination for Tamils within the idea of a viable autonomous Tamil Eelam. The primacy of reason suggests that this seems to be the intelligent way out of the quagmire. Thus, instead of focussing on the gathering momentum of shifting paradigms,



**Refugees still languishing in tents**

if the adherents to Oslo overture were to play the second-fiddle on the rugged tune of 'exploring the federal systems', I don't think it would help anyone's desire to win the Nobel peace prize!

What our Hebrew texts insist on is this: There is a 'shared graciousness' of the community, which should be an in-built element for a society to be fair and just. However, a free society cannot be built on *Mishpat*, the rule of law alone. There needs to be, in a wholesomely peaceful *shalom* society, *tzedakah*—a just distribution of resources. That also incorporates, all would agree, a basic human right.

**Social Justice**

*Tzedakah* often signifies what is generally termed in modern times as social justice. Every section of society has the right to a dignified life and to be equal citizens. The text of the covenant code quotes God's liberation manifesto as follows:

*Do not ill-treat a stranger (foreigner) or oppress, for you were foreigners in the land of Egypt. Do not take advantage of a widow or orphan. If you do, and they cry out to Me; I will hear their cry for sure... If you lend money charge no interest... If you take your neighbours cloak as a pledge, return before sunset, because that cloak is the ONLY covering for the body. (Exodus 22)*

The aforementioned is a caveat to any society where few prosper but the many starve. Absence of constraints however, Isaiah Berlin argued, only produce, a 'negative liberty'. On the contrary, true liberty would mean much more than the absence of coercion or violence. It should ideally put an end to all forms of violations.

The moral dimension of *tzedakah* would propose that all sections of free society must have access to good education, health care, and other essential amenities without any racial, social, creedal, caste or colour discrimination. The concept of *Tzedakah* is therefore an antidote to systematic social deprivation, adverse poverty, and intolerance that thrives in a repressive State like Sri Lanka.

#### Conclusion

The dispossessed Tamils including the hill country Tamils have been struggling for their emancipation for more than half a century. One cannot be duped by thinking that the national question could be solved within a unitary Constitution. Colombo's strategy is buttressed by a no-war-no-peace policy. Such posturing, they wrongly assume, would trap the Tigers into a stumbling illusion.

From the standpoint of interested foreign players, the peace concession is designed to consign the Tamils into a limbo-state indefinitely while their geo-political/mercantile interests are achieved. History is fraught with such examples, the recent one being Iraq. Such tactical prolongation on the one hand would permit, contradictory interpretations that might act as a contributing factor to divide Tamil public opinion both here and in the Diaspora.

On the other hand, while the US is sending mixed signals, India and Sri Lanka are engaging in joint patrol of the

high seas and are protecting all harbours, *Tirukonnamalai* in particular. In this contemporary environment one cannot totally disregard a submarine warfare.

It is imperative therefore, unlike previous talks where there was a lot of beating about the bush, the current negotiations advance the principle of autonomy without any ambiguity as a *quid pro quo*. If push becomes shove, as the case might be, the Tamils have the right to be prudently involved in the Oslo overture only to state their case convincingly before the international community failing which no doubt, disaster is always a single bad decision away.

One can only hope and pray that the emerging modern State of Tamil Eelam will be a place where the concepts of *Mishphat* and *Tzedakah*—right and justice, would make their home comfortably. Once the goal of a free and fair society is well established within our borders, then of course, we would have truly emancipated ourselves not only from the tyranny, suppression and exploitation of internal and external forces but also have recovered the humanity of our Sinhala neighbours. That will indeed be the humanitarian dimension of our liberty and freedom.

It is only in such a transformative context can the Tamils freely dialogue about beating swords into ploughshare. And the pen will be mightier than the sword, the plough and the ploughshare!

Truth must be told—with tact perhaps—however brutal it is.

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<sup>1</sup> Must be read in conjunction with footnote iii. "avamarnam" means dishonour which is a core value of Dravidian culture. The ancient wisdom-couplet carried the meaning beautifully "Mayir neepin varlak kavariima annar; Uyir neepar marnam varin" Manam, Chapter 97 - Kurral 969. Thirukurral.

<sup>2</sup> Reports are emerging that two abducted staff members have been released with a 'gag-order'. 02/02/06

<sup>3</sup> Honest and honourable charitable /humanitarian deeds would in the end protect your head - meaning safeguard your honour - marnam.

<sup>4</sup> Schalk, Ham<Sihala? An Assessment of an Argument: Uppsala University, 2004. p.198.

T S U N A M I

# Squandered Opportunities for Peace

By Sarosh Syed

*Sarosh Syed is a student at Georgetown University's Masters in Foreign Service Programme in the US. He worked with HHR as an intern last year and helped in HHR's post-tsunami relief efforts in the Eastern Province. Here, he argues that the Sri Lankan governments lackluster and discriminate tsunami relief effort and the LTTE's belligerence effectively closed the window of opportunity that presented itself with the tsunami catastrophe. The much-discussed P-TOMs would have benefited all Sri Lankans in the short- and long-term. He argues that currently the only way to control Sri Lanka's intractable conflict is to return a sense of basic humanity and a respect for human rights to the country.*

Sri Lanka saw a unique opportunity for lasting peace after the 2004 tsunami. By establishing a joint mechanism for tsunami relief, Sri Lanka's warring parties could have established the trust necessary to end the war that has stalled Sri Lanka's development for more than two decades. Unfortunately, the government's biased distribution of tsunami aid and the LTTE's belligerent response have squandered this opportunity. Instead, Sri Lanka is in danger of sliding into the spiral of violence that has already claimed twice as many lives as the tsunami.

The unprecedented destruction of the tsunami provided a brief window of opportunity for the government and the LTTE to forge a constructive relationship. The much-discussed Post-Tsunami Operational Management Structure (P-TOMS) would have had enormous short- and long-term benefits for all Sri Lankans. In the short term, it would have allowed much-needed tsunami aid to flow into the remote areas such as Vaharai North, a division that, until August 2005, had not seen any substantial relief efforts. In the long term, it would have opened a new era of cooperation between the government and the LTTE and would have gradually eased tensions between the two parties.

Unfortunately, both parties—the government and the LTTE—have wasted these opportunities. The government has not been equitable in its distribution of tsunami aid and the LTTE has been far too belligerent in its response to this inequity.

## Sorely Lacking

The government's tsunami relief efforts in Tamil areas were sorely lacking. Tamil and Muslim populations—the populations most affected by the tsunami—did not receive a fair proportion of tsunami aid. There is a vast disparity between relief efforts on the southern coast and those on the northern and eastern coasts. In the Galle district, for

example, the government long ago shifted attention from providing immediate relief efforts to long-term reconstruction. But in the north and east, in Tamil divisions such as Vadamadachi East, a negligible number of fishermen have even received boats to resume basic livelihood activities.

Muslims have not fared any better under government programmes. Despite the relative wealth of many Muslim areas, many people in the Katthankudy district are still living in dismal conditions. In Manmunai, for example, Muslim families displaced by the tsunami are living in cramped quarters without access to hospitals, schools, or even water. I visited one tent in Manmunai—barely more than 2 square meters in size—that was home to 3 families.

Earlier, the government's policies regarding coastal buffer zones were also ambiguous and unfair. The fact that the government had mandated a 200-meter buffer zone in Tamil areas, as opposed to a 100-meter buffer zone in the Southern and Western districts, disproportionately affected the ability of Tamils to resume livelihood activities, especially fishing.

These were the government's actions in a time when it could have demonstrated its commitment to all Sri Lankans, built trust with the LTTE, and established grassroots support in Tamil communities. But the government's inadequate and unjust policies have given Tamils little reason to believe that the government will ever respect their basic human rights. Many Tamil communities, especially the LTTE, have therefore become increasingly hostile towards the government and have turned away from peaceful means to secure their rights.

As Sornam, an LTTE commander in Trincomalee told the BBC, "We lost faith in the Sri Lankan government after it failed to set up the tsunami joint aid body to help the affected people."

## Not Without Fault

Sornam's frustration with the government's failure to help Tamil communities does reflect a popular resentment among many Tamils. However, the LTTE's response to the government's shortcomings has not helped matters. The LTTE's election boycott and their alleged involvement in attacks on the government are devastating the remaining hopes for peace.

The LTTE boycott of November's presidential election, though understandable, may have been a mistake. There is every reason to believe that a strong turnout in uncleared areas would have favoured Ranil Wickramasinghe and would have allowed continued peace talks. Instead, Mahinda Rajapakse the current President was elected into power, and the basic rights of Tamils appear even more fragile. The November elections presented Sri Lanka's Tamils with an opportunity to affect substantial change in Colombo, but the LTTE boycott robbed them of it.

The subsequent spate of attacks on the government, which many international monitors attribute to the LTTE, is now creating further problems for Sri Lanka's Tamils. These attacks not only killed 60 civilians in December, they also gave Mr. Rajapakse's government the excuse it needs to ignore the basic rights of Tamils.

The government has become increasingly abusive in response to these attacks. In December, 900 Tamils were arrested without charge in Colombo alone, many of whom run the serious risk of being tortured, if not killed. According to Amnesty International, government forces have caused the disappearance of at least ten people in and around Jaffna. About 1,000 families in Trincomalee have been robbed of their livelihoods by a navy ban on fishing in response to an alleged LTTE attack.

While the LTTE's frustration with government discrimination after the tsunami is justified, sponsoring violent attacks is not furthering the cause of Tamil independence or autonomy. It is only giving the government an excuse to further trample human rights and hurting the Tamil population.

## Respect Rights, Peace Will Come

The only way to control Sri Lanka's seemingly intractable conflict is to return a sense of basic humanity and a respect for human rights to the country. The country's cur-

rent impasse could easily have been avoided if both sides of the conflict had respected Sri Lankans' basic human rights. The LTTE, and indeed a majority of the Tamil population, would not have reason to lose faith in the government had it been just and equitable in its distribution of tsunami aid, dispensing aid based on needs and rights instead of ethnicity and religion. The Sri Lankan government would have been a more moderate one had the LTTE respected the right of Tamil populations to vote for the government that so profoundly affects their lives.

It is too late to turn the clock back on these events.

However, moving forward, it is imperative that all parties refrain from belligerence and take a rights-based approach to resolving Sri Lanka's protracted conflict. First and foremost, the government cannot continue to invade scores of Tamil homes and detain hundreds of Tamils without charge or suspicion as it did in Colombo in December. Such draconian measures are not only a violation of human rights; they are also ineffective and create more hostility towards the government. Unlawful attacks on the government must be prosecuted, but such prosecutions will only be beneficial if they are conducted in a civilized manner.

Second, the LTTE must scale back its attacks on the government. Such attacks kill more civilians than soldiers and cannot be allowed to continue. Further, as the fishing ban in Trincomalee shows, these attacks ultimately hurt Tamil lives more than the government.

Finally, the LTTE must also allow freedom of political expression in the areas under its control. As mentioned earlier, there is good reason to believe that the Tamil population could have brought

Ranil Wickramasinghe's more reasonable government into power. The LTTE's actions negated this eventuality and contributed significantly to the resumption of open hostilities. It hardly seems appropriate for an organisation dedicated to restoring the rights of Sri Lanka's Tamils to be violating these rights themselves.

These simple steps are principled as they are pragmatic. Both the government and the LTTE must begin respecting the rights of *all* Sri Lankans. Unless they do, this beautiful country risks sliding back into open warfare—warfare that can and has wreaked more havoc than any tsunami ever could.

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## ECONOMIC RIGHTS

# Making Sense of Economic Rights

By Iain Guest

*Despite the outpouring of generosity from governments and private persons in the aftermath of the December 2004 Tsunami, many survivors in Sri Lanka were overlooked by aid donors because of their caste or social standing in their communities. Over the past year, HHR has worked with six Tamil villages on the East Coast, near Batticaloa, that were badly hit by the Tsunami. The project allowed HHR to expand its mandate from civil and political rights and address the social and economic rights of survivors. In this article, the writer looks at how HHR and its partners have used the disaster to bridge the gap, and put human rights to practical use.*

When the tsunami hit Sri Lanka, mandates were the last thing on anyone's mind. Mandates and missions are dry concepts that find their way into reports. Nothing could have been further from the waterlogged villages, refugee shelters, morgues, and trail of destruction left by the tsunami.

Still, in deciding to respond to the tsunami, the Home for Human Rights (HHR) was taking an important decision. Ever since it was established in the late 1970s, HHR has worked on civil and political rights. It has won its worldwide reputation by investigating cases of torture, and holding the authorities accountable before the United Nations. HHR has taken several landmark cases before the UN's Human Rights Committee.

But the tsunami posed a new challenge, as I saw during a visit to Sri Lanka last year. One young woman in the village of Periyaneelavanai lost three daughters to the tsunami. A 66-year-old woman in another village, Nasivanteevu, told me how her husband had been fishing in the lagoon when the wave swept him away. When they found his body, he was holding an umbrella. Before the tsunami, S. Nagalingam worked on a fishing boat out of the village of Cheddipalayan. The wave swept away his boat and put him out of a job. In another village, Poonichimunai, young women made baskets from wood they collected from the nearby forests. The tsunami destroyed the forests, and their jobs.

## Why get involved?

These are all tragic stories. But are they examples of human rights abuse? Natural disasters are sometimes described as acts of God, but human rights are all about human agency—and accountability. What rights were abused in the tsunami, and by whom? How does a human

rights organization hold God accountable before the laws of man? What, indeed, is the connection between the tsunami and human rights—and why did HHR decide to get involved?

I have asked these questions often over the past year, as we helped HHR to build up a programme of support for six tsunami-affected villages. Our task has been to help HHR develop its activities, visit the villages, report on the work, post HHR's reports, and act as an intermediary with the Dutch Refugee Foundation (Stichting Vluchteling), which is funding HHR's tsunami activity.

As a long-time human rights activist, I have asked myself many times whether this is a legitimate activity for a human rights organization like HHR. I know that HHR staff has also asked the same question. Does emergency relief fall within their mandate? If so, how? If not, why are they expending their precious resources when so many other agencies are available to help? These are vital questions for anyone interested in human rights, and HHR's own response deserves careful study.

In the immediate aftermath of the disaster, there was a strong practical argument for HHR's Batticaloa office to take action. HHR staff knew the villagers well. These people were HHR's "clients," for want of a better term. Suddenly, the client had lost everything. It was totally understandable for HHR officials to collect some money, clothes, food—anything—and take them off to the Batticaloa Technical or Music colleges, which served as refugee shelters.

But Francis Xavier, the director of HHR, decided to take it a step further. He visited the colleges and began to interview people who had lost their homes, their livelihoods and their families. He then visited some of the villages, and waded through the water in Poonichimunai and Cheddipalayan. Everything he heard convinced him that he was confronting a legitimate human rights crisis.

## Difficult to comprehend

Ever since the adoption of the Universal Declaration of Human Rights, in 1948, scholars and activists have struggled with the fact that there appeared to be two “sets” of rights. On the one hand, there are civil and political rights, like the right not to be tortured, the right to free speech, and the right to practise one’s religion. On the other hand, there are economic, social and cultural rights, like the right to food, shelter, and health.

We learn that all these rights are “universal,” in that they belong to everyone; that they are “indivisible” in that they cannot be separated, and applied selectively; that they are “inalienable” in that they belong to us forever and cannot be taken away. But many find this difficult to comprehend. It makes intuitive sense to say that everyone has the right not to be tortured. If someone is tortured, their right is violated and they can claim that right from the torturer in a court of law—whether it be Sri Lanka or the United Nations. The notion of accountability is central to the notion of human rights.

But who or what is to be held accountable if someone is not in school, is homeless, or goes hungry? Some might blame the victims for not working hard enough. Others will blame the government for failing to provide a school or home—but that suggests that the poorest governments are most at fault. And if accountability is so important for human rights, how does one ascribe responsibility when it comes to an act of God, like the tsunami? Who or what could be held accountable for wiping out the forest near Poonichimunai, or the fishing boats at Cheddipalayan?

These were some of the questions that faced Francis Xavier and his colleagues in the days following the tsunami. On the one hand, he wanted to help, as did everyone. On the other hand, it was far from clear whether this fell within HHR’s mandate as a human rights organization.

There were also practical reasons not to intervene. Millions of rupees of emergency aid were flowing into Sri Lanka, and the East Coast was awash with experienced NGOs. HHR visited some villages, and found that they had been promised large sums of money by NGOs—on condition that they did not work with anyone else. HHR itself has limited resources, and needed to use them where it could do most good.

There was one final consideration. If HHR were to embark on a project, it would likely only get funding for a limited time, because the donors were using emergency aid that would only be available for a year or two.

## Discrimination

All of this suggested that HHR would be wise to take a step back and resist the temptation to plunge into the troubled aftermath of the tsunami. Mr. Xavier and his col-

leagues decided otherwise. After talking to survivors, and conducting extensive investigations in the villages, they began to discern an entirely new feature of the crisis that demanded the attention of human rights advocates. It was, quite simply, discrimination.

Mr. Xavier began to understand that those who had been worst hit by the tsunami were the poor, the weak and the underprivileged. In Cheddipalayan, HHR found several families that washed clothes for their livelihood. Before the tsunami, they worked near the sea, partly because there was water available but also because the villagers did not want to be close to dirty clothes. Originally, the families had lived near the main road, but the security forces had seized the land and forced the washing families to move nearer the sea. This meant they were directly in path of the tsunami.

Their problems did not stop there. These washing families were from a lower caste, and they told us that they were denied dried rations during the three months they spent in the refugee shelters. Was that due to caste discrimination? They thought it was, but of course they could not prove it. Whatever the reason, they left the shelter. They were tired of the discrimination.

HHR interviewed many groups like the washing families of Cheddipalayan. They found that scores of men had worked on fishing boats in the same village, and were now out of work. But when the foreign relief agencies arrived to help, they gave money to the owners of boats (*mudulalis*), not the workers. This reinforced a very unfair system under which the owners exploited their workers. So the workers organized and asked the relief agencies not to make the mistake of trying to return Cheddipalayan to the status quo ante. HHR was the only agency to respond. The fishing men faced discrimination.

And so it continued. Every time HHR teams visited a village and inquired more deeply, they found examples of injustice, prejudice and discrimination. In the village of Periyaneelavanai, 42 women remained severely traumatized for months after the tsunami, after losing their children. But none of the 65 agencies that offered “psychosocial help” came to visit them. When we met with two of these traumatized women in October last year, it was also clear that many of these women had been abandoned by their husbands and ostracized by the other villagers. They faced discrimination.

Nasivanteevu is a village that lies far from Batticaloa on the edge of a dangerous and conflicted area. It is surrounded on three sides by water, and this makes it easy to isolate. This village had been repeatedly targeted by both sides in the war. It was then devastated by the tsunami, but its location and background made it inaccessible. As a result, it was all but ignored by the relief agencies, even though its needs were great.

Was this, another example of discrimination? The villagers certainly thought so. And within the village community,

widows were especially vocal. They had special needs. They had lost their husbands and many were too old to work. They had rights. They faced their own kind of discrimination.

One group of families in the village of Manalchenai told us that they were viewed as outcasts in the village, and denied relief aid, because they had originally worked on tea estates before being driven from their homes by ethnic troubles fighting and forced to move to Manalchenai.

### Practical steps

After meeting with such groups, HHR teams focused on three key facts. First, while the tsunami had been a natural disaster, there was nothing "natural" about its impact. The wave had fallen on groups that had faced discrimination because of their caste, their gender, their age, or their background. This had left them vulnerable to the wave. Incredibly, many of them continued to face discrimination during the relief operation.

Second, all of these communities were aware of the fact, and had taken steps to claim their rights. Several groups in six villages mobilized, drew up petitions, and presented them to HHR. Third, HHR had to act. This might mean delivering food, buying fishing nets, providing sewing machines and training (which HHR has done for more than seventy men and women), or developing micro-credit schemes for widows. What mattered was to take practical steps. This was not a theoretical exercise.

It is these three key facts that defined the tsunami relief as a legitimate human rights "problem" and made HHR's engagement not only legitimate but imperative. Whether we define the rights as "political and civil," or "economic, social or cultural," is irrelevant because both "sets" of rights share these three features in common. Non-discrimination is the basis for all human rights, political or economic. Second, rights mean nothing unless they are claimed. Third, defining rights ("standard-setting") must be followed by action ("implementation"). When HHR takes up the case of a torture victim, it seeks to free that person from torture and repair the damage. That is why HHR pursues the two avenues of legal represen-

tation and rehabilitates torture victims.

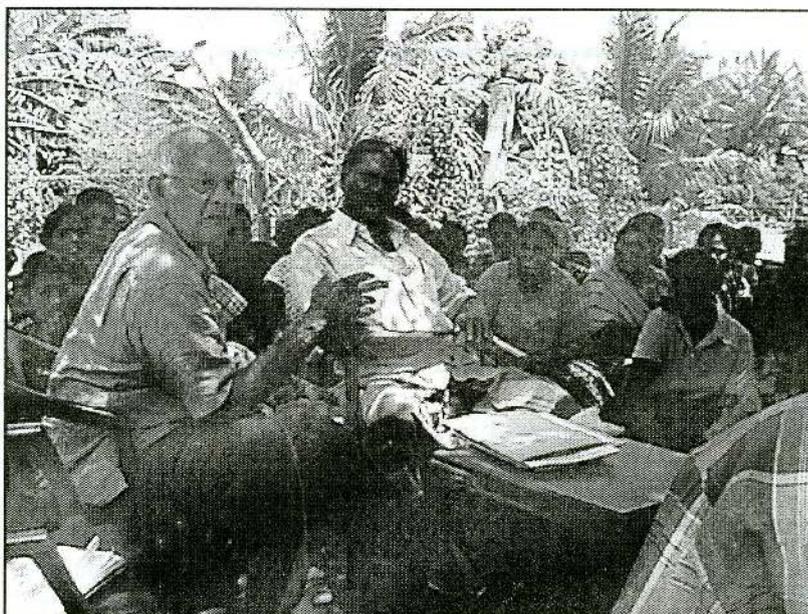
### Bridging the gap

By developing a series of small projects to help these six Sri Lankan communities, HHR has bridged the traditional gulf between the two "sets" of rights. HHR has shown that human rights are indeed universal, inalienable and indivisible.

Of course this sort of work presents many challenges. HHR and its partners like the Advocacy Project will have to ensure that we are able to sustain whatever we start with these tsunami survivors. A promise has been made

and it must be kept. That will not be easy, because emergency aid has a short memory and is not interested in long-term solutions.

HHR must make sure it has the skills and resources to do the job, and hand over to others if it does not. For example, HHR can help the fishermen of Cheddipalayan to form a legal society and lobby for their rights, but it cannot get drawn into buying their boats or selling their fish. HHR can find a trainer to teach



**Challenging the status quo: Francis Xavier (L) and Arulanandam listen as the Manalchenai villagers make their**

the women of Poonichimunai to sew clothes, but it cannot organize micro-credit or sell their clothes. That would not be one of its competencies. The success of this project will be decided largely by whether we can involve others.

But one thing is already clear. The Home for Human Rights has shown the importance of a "rights-based" approach to disaster relief. In the process it is enriching and expanding its own mandate, and helping to break down the conventional distinction between the two sets of rights. That distinction has bedeviled the human rights movement for over sixty years. In Sri Lanka at least it is being laid to rest in the tragic and messy aftermath of the tsunami.

<sup>1</sup> Iain Guest is the director of Advocacy Project and adjunct professor at Georgetown University, Washington DC where he teaches human rights. His reports from Sri Lanka can be found on the web site of the Advocacy Project at [http://www.advocacynet.org/cpage\\_view/AsianStruggle\\_page2\\_56\\_286.html](http://www.advocacynet.org/cpage_view/AsianStruggle_page2_56_286.html). The Advocacy Project has posted HHR's reports on its Tsunami relief work. These can be visited at [http://www.advocacynet.org/cpage\\_view/Tsunami\\_newintro\\_34\\_104.html](http://www.advocacynet.org/cpage_view/Tsunami_newintro_34_104.html)

## HUMAN RIGHTS VIOLATIONS

# Misery at Manalchenai

By K.N. Tharmalingam

*At the time of the tsunami devastation in December 2004, a settlement of about 140 families lived in Manalchenai—within the limits of the Komari Grama Sevaka Division, under the Pottuvil Divisional Secretariat. This village in the Amparai District suffered near-total destruction from the tsunami waves. The people of Manalchenai, having suffered loss of lives, homes and property however lament that they were then discriminated against by corrupt state officials. They were deprived of most forms of assistance and govt. officials did not visit them. Even when relief goods were brought, these goods never reached them. Therefore people of Manalchenai allege that their fundamental right to equality and equal protection before the law guaranteed by the Constitution of Sri Lanka has been grossly violated.*

The name 'Manalchenai' was formed out of the word Timitar—which in turn is popularly believed to be a corruption of the word 'TIRZHA' denoting location that pleases the mind, feelings and the senses through its pleasant temperature, climate and environment. TIRZHA is said to have been coined from the Semetic Language by an Irish planter, Mr. O' Grady whose memory as a philanthropist is cherished by the people of Karativu. They thus, named a portion of their village as 'Karadi-Tottam.'

Anyway, the village of Manalchenai is situated in a natural surrounding, close to the sea, the Bay of Bengal and the south east of Komari. When the British planters began their coconut plantations in the East during the 19<sup>th</sup> Century, Timitar was established as a weekend holiday retreat for the planters.

## Superabundance

Mr. O'Grady bought 636 acres of prime land in Panamapattu Komari for the "Timitar Estate", but planted only 350 acres. He allowed the rest to remain as jungle. He built a beautiful bungalow with a sea frontage and dug an artificial lake where birds of different hues and cries nestled in the mangrove. It was a place where migratory birds visited during the season and wild life like deer freely roamed. The O' Gradys wanted Timitar to be the weekend retreat for the coconut planting community of Britishers and established facilities for boating, fishing and games. They had a beautiful garden with varieties of flowers and also maintained a vegetable plot while paddy was cultivated on about twenty acres.

Of the 26 coconut estates established by the British planters in the East, Timitar was exceptionally fertile. And, together with the Timitar, two other estates called Tirukovil Estate (830 acres in extent) and the New Tirukovil Estate with 277 acres gave superabundant yields.

At the height of World War II, the British planters engaged in coconut planting in the East decided to sell their estates. The establishment of the second Air Base in the East, at Komari, (the first was in Trincomalee) accelerated the process of selling the three estates, viz. Tirukovil, New Tirukovil and Timitar to Ceylonese entrepreneurs. A successful businessman named M.I.A. Rasool from Trincomalee agreed to buy the three estates for a mere 200,000 rupees.

Later Mr. Rasool had told friends that he recovered the Rs. 200,000 paid for the three estates within one year of purchase that is, from the first five pluckings. P.R. Joseph of Tannamunai became the first Superintendent for the three estates, while C.J. Seevaratnam from Batticaloa and Mr. Poopalapillai of Pandirruppu were the Conductors at Timitar and New Tirukovil respectively. They all worked diligently and with commitment, even establishing their curing sheds for copra. Several families in the employment of the management lived in the Estate line rooms and the workers seemed content with the wages they earned. Thus, a community of estate workers happily lived and worked for the betterment of the Estate.

## Neglect

But these pleasant times did not last long. Mr. Joseph died in an accident, Mr. Rasool died intestate and the Public Trustee took over the management of the three estates. Subsequently, Mr. Seevaratnam left to become the Sub Post Master at Komari. C.J.T. Senadhirajah became the Conductor of the Estates, after 70% of the Tirukovil Estate was acquired by the State for a village expansion scheme viz. the creation of Vinayaga puram. Later people fleeing from other parts of the district due to ethnic cleansing encroached upon New Tirukovil Estate.

Manalchenai Estates suffered further neglect when workers employed on the check roll, left the services of the Es-

tate. The soil of the estate was not enriched with nutrients for long periods of time, as a result of which there was a serious drop in the production of coconuts. It was at this time the government brought legislation limiting the ownership of land or land ceiling.

The Land Reform Law of 1972 came into operation on the 26 August 1972, and the State took over the Timitar Estate in its entirety and left the management of the Estate to the Public Trustee. The Estate continued to be neglected and suffered added ruin from rampaging wild elephants. With the palms destroyed, gradually the jungle tide took over.

The neglect of the Estate and the buildings therein soon brought about the destruction of all permanent structures, the copra kilns and the bridge leading to the bungalow. Trees that withstood time were uprooted and this witnessed the sad end of the once prosperous Estate. Times were also fast changing and the entire country was at cross roads with new ideologies of the political parties, their leaders and politicians.

### Ethnic violence

Soon after the United National Party (UNP) won the general elections in 1977 ethnic violence—similar to that of 1958—was lashed out against the Tamils of the country. the 1977 violence saw the expulsion of Tamils from the South after those who had lived for generations at places like Tissamaharama, Moneragala, Kataragama, Matara and Hambantota were reportedly attacked and their homes looted and torched. These victims of violence from the South fled in large numbers and arrived at Pottuvil as refugees. From there, they moved into the jungle land—now known as Manalchenai.

Since then, these folk have lived side-by-side with the families from Komari who had previously occupied part of Timitar and were engaged in growing vegetables. The new arrivals from the South, cleared the shrub jungle, erected huts and began cultivating the land with a variety of crops. And though some of the pioneers at Manalchenai were

killed by wild animals, particularly elephants, the community continued to live in the area actively engaging themselves in food production.

Many were the years the new settlers lost both their capital and the wages of their hard labour, when their efforts became unproductive. They suffered from hunger and want when their crops failed from an unrelenting drought, or a heavy rainfall. They named the place Manalchenai, for the soil was all sandy. Thus amidst their trials and tribulations the people driven away by ethnic violence from Sinhala majority areas in the Uva,

Sabaragamuwa and Southern Provinces lived in Manalchenai since their expulsion way back in 1977.

The people from Manalchenai however allege that their fundamental right of equality and equal protection before the law had been grossly violated by the State and its officials at the Divisional Secretariat at Pottuvil. They say that though they have been living in



**Students in the North-East suffer with little state funds allocated for their education**

Manalchenai since 1977 they were discriminated on grounds of racial bias for the following reasons:

Why? True these people had been occupying Crown land, but they had been in possession of these lands for well over 25 years without any interference. However while elsewhere in the District people had been fortunate to receive land permits qualifying them for ownership of land they encroached upon, land in Manalchenai has yet to be regularized. For instance, those persons at Pottuvil who had encroached upon state lands had been included in the Encroachment Surveys for the issue of land permits—for all such encroachment occurring up to 2001. but the people at Manalchenai who had occupied land from 1978 remained as illegal occupants, deemed ineligible to receive any form of assistance after the tsunami.

Human Rights activists have thus paused to ask: "Is it not a case of discrimination against the Tamils?" because though their continued occupation of the land confers upon them a prescriptive right, they are still termed 'encroachers' by the officials. It seems government officials entrusted with the responsibility of implementing state poli-

cies regarding state lands have somehow opted not to implement those policies vis-à-vis these unfortunate people.

### **Tsunami devastation and discrimination**

Anyway, at the time of the tsunami devastation of December 2004, a settlement of about 140 families lived in Manalchenai—which was within the limits of the Komari, Grama Sevaka Division, under the Pottuvil Divisional Secretariat. And it was one of the villages in the Amparai District that suffered near-total destruction from the tsunami waves.

When the tsunami struck the people of Manalchenai, the people fled into the jungles and saved their lives, but they lost all their belongings to the sudden upsurge of the waves. They lost their homes, their lives' possessions including clothes, their crops, farm implements and their animals tethered to posts. Horrifically, despite their devastation, these people had been deprived of most forms of assistance including dry rations and temporary shelters offered under the Temporary Assistance Programme. According to them, relief goods were refused to the people of Manalchenai not because they were encroachers, but due to the corruption of officials (indeed several public servants from Pottuvil had been subsequently arrested for bribery and corruption).

So these people were left with no shelter. When night fell they climbed the rocks to save themselves from the roaming wild elephants and when dawn broke they came down and found shelter under the trees. Deprived of food and shelter and exposed to the elements, they suffered from hunger, heat and cold.

The villagers lament that those officials responsible for the provision of relief did not visit their village after the tsunami. And since the people had lost everything they subsisted on jungle fruits and leaves for nearly forty days with no other forms of foods. They had no clothes and were exposed to the elements until relatives from Sangaman Gramam came to their help. Shri T M Ramaji

of Malaysia was the first to bring relief goods to the community. Reports to the government agent about the plight of the people brought some relief in the form of food stamps, and the writer too was able to provide 120 tents to the most needy.

But what is most scandalous is that, relief goods had been brought in several lorries to provide food and clothing to the people devastated by the tsunami. However those

goods never reached the tsunami victims at Manalchenai. So, what prevented the Divisional Secretary of Pottuvil from supplying the food-aid provided by the international community and local donors to feed the hungry who had lost everything from tsunami? When a landless family occupies crown land for their dwelling, does that disqualify them from receiving dry rations at a time of great calamity?

These were the questions posed to officials, to which the people never received answers. Hard-hearted men without human consideration seem to be holding positions of responsibility to serve the needy, the humble and the illiterate, but those needy do not receive the sympathy they deserve, from those in power and authority. Good alone must save them!

Manalchenai is in urgent need of humanitarian aid to restore even a semblance of normalcy back into people's lives. They require homes, clean water and sanitation. International NGOs had informed the writer that they were unable to help the people from Manalchenai as the Pottuvil Divisional Secretary had not recommended any programme of rehabilitation at Manalchenai. Despite this shameful lacuna however, CARE and ZOA have repaired roads de-

stroyed by the tsunami and IOM had built some transient homes—ironically not for those who lost their homes.

Finally, appeals made to the Divisional Secretariat at Pottuvil to recommend relief to the tsunami victims at Manalchenai did not bring any response and to me, this is indeed proof of the old adage, "the crown does not yield to the mitre."

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## R E L I G I O U S R I G H T S

# UN-HRC Upholds the Freedom of Religion

A Catholic Order of nuns went before the UN-HRC claiming a violation by the State of its members' right to freedom of thought, conscience and religion [A18(1)] and equality before the law, and equal protection of the law without discrimination (A26) guaranteed by the ICCPR. The Supreme Court of Sri Lanka had earlier held that the Bill to incorporate the religious Order was unconstitutional and inconsistent with Article 9 of the Constitution, which ensured the foremost place to Buddhism and cast a duty upon the State to protect and foster the Buddha Sasana. After accepting the admissibility of the Communication the UN-HRC found inter alia that: The State Party had not sought to justify the infringement of rights other than by relying on the reasons set out in the SC decision itself.

- The decision failed to provide evidential or factual support that the Order's activities would improperly propagate religion.
- The decision provided no justification for the conclusion that the Bill, would impair the very existence of Buddhism or the Buddha Sasana".
- The State Party had not provided reasons why the authors' Order was different from other religious bodies provided incorporated status with objects similar to the author's Order.
- The State Party had not justified why in other cases proceedings were notified to affected parties while in this case they were not.

Thus the UN-HRC found the State Party had violated Articles 18(1) and 26 of the ICCPR. The State was directed to provide the author with an effective remedy and inform the Committee within 90 days of the measures taken to give effect to the Committee's views.

**Communication No. 1249/2004 : Sri Lanka. 18/11/2005.CCPR/C/85/D/1249/2004.**

Views of the Human Rights Committee under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights  
- Eighty-fifth session -

**Communication No. 1249/2004**

Submitted by: Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka (not represented by counsel)

Alleged victims: The authors

State Party: Sri Lanka

Date of communication: 14 February 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 21 October 2005,

Having concluded its consideration of communication No. 1249/2004, submitted to the Human Rights Committee by Sister Immaculate Joseph and 80 Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, and the State party:

Adopts the following:

**Views under article 5, paragraph 4, of the Optional Protocol**

1. The author of the communication, initially dated 14 February 2004, is Sister Immaculate Joseph, a Sri Lankan citizen and Roman Catholic nun presently serving as Provincial Superior of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka ('the Order'). She submits the communication on her own behalf and on behalf of 80 other sisters of the Order, who expressly authorize her to act on their behalf. They claim to be victims of violations by Sri Lanka of articles 2, paragraph (1); article 18, paragraph (1); article 19, paragraph (2), article 26 and article 27 of the Covenant. The Optional Protocol entered into force for Sri Lanka on 3 January 1998. The authors are not represented by counsel.

**Factual Background**

2.1 The authors state that the Order, established in 1900, is engaged, among other things, in teaching and other charity and community work, which it provides to the community at large, irrespective of race or religion. In July 2003, the Order filed an application for incorporation, which in Sri Lanka occurs by way of statutory enactment. The Attorney General, who the authors maintain is required by article 77 of the Constitution to examine every Bill for consistency with the Constitution, made no report to the Presi-

dent. After the Bill was published in the Government Gazette, an objection to the constitutionality of two clauses of the Bill, when read with the preamble, (1) apparently by a private citizen ("the objector"), was filed on 14 July 2003 in the original jurisdiction of the Supreme Court.

2.2 Without advice of the objection or hearing to the Order, the Supreme Court heard the objector and the Attorney General on the matter. The authors state that the Attorney General, who was technically the respondent to the proceedings, supported the objector's arguments. On 1 August 2003, the Supreme Court handed down its Special Determination upholding the application, for inconsistency with articles 9 and 10 of the Constitution. The Court held that the challenged provisions of the Bill "create a situation which combines the observance and practice of a religion or belief with activities which would provide material and other benefits to the inexperienced [sic], defenceless and vulnerable people to propagate a religion. The kind of [social and economic] activities projected in the Bill would necessarily result in imposing unnecessary and improper pressures on people, who are distressed and in need, with their free exercise of thought, conscience and religion with the freedom to have or to adopt a religion or belief of his choice as provided in article 10 of the Constitution." The Court thus considered that "the Constitution does not recognize a fundamental right to propagate a religion". In reaching its conclusions, the Court referred to article 18 of both the Universal Declaration of Human Rights and the Covenant, as well as two cases decided by the European Court of Human Rights. (2)

2.3 The Court went on to examine the application in the light of article 9 of the Constitution, which provides that: "The Republic of Sri Lanka shall give Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the *Buddha Sasana*, while assuring all religions the rights granted by articles 10 and 14(1)(e)." The Court held, "the propagation and spreading Christianity as postulated in terms of clause 3 [of the Bill] would not be permissible as it would impair the very existence of Buddhism or the *Buddha Sasana*". In addition, subclauses 1(a) and (b) of clause 3 concerned spreading knowledge of a religion, and were thus inconsistent with article 9 of the Constitution.

2.4 The authors point out that in reaching these conclusions the Court referred to decisions in two previous cases where similar Bills for the incorporation of Christian associations had been found to be unconstitutional. The result of the decision, against which no appeal or review was possible, was that Parliament could not enact the Bill into law without a two-thirds special majority and approval by a popular referendum.

### The Complaint

3.1 The authors claim that the above facts disclose violations of article 2, paragraph 1, read with article 26, article 27, article 18, paragraph 1, and article 19, paragraph 2.

As to article 2, paragraph 1, read with article 26, the authors argue that the Attorney General's submissions in opposition to the Bill and the Supreme Court's determination violated these rights. The Attorney General, not having recognized any constitutional infirmity under article 77, was obliged as a matter of equality of law to take the same position before the Court, doubly so given that the Order, although the affected entity, was neither notified nor heard. The determination that Clause 3 of the Bill was incompatible with article 9 of the Constitution was moreover so irrational and arbitrary as to breach fundamental norms of equality protected by article 26. With reference to the Committee's decision in *Waldman v Canada*, (3) the authors argue that to reject the Order's incorporation while many non-Christian religious bodies with similar object clauses have been incorporated violates article 26. In support, the author provides a (non-exhaustive) list of 28 religious bodies that have been incorporated and their statutory objects, of which most have Buddhist orientation, certain Islamic, and none Christian.

3.2 In terms of article 27, the authors invoke the Committee's General Comment 22 to the effect that the official establishment of a State religion should not impair the enjoyment of others' Covenant rights. The Court's reliance on the Buddhism primacy clause in article 9 to reject the Bill's constitutionality thus violated article 27. The authors emphasize that, like the lengthy list of other religious bodies receiving incorporation, the Order combined charitable and humanitarian activities (labelled social and economic activities by the Court) with religious ones, a practice common to all religions. To require a religious body's adherents to limit good works would be discriminatory, and contrary also to the objects of the other religious bodies that received incorporation. Propagation of belief, moreover, is an integral part of professing and practising religion; indeed, all major religions in Sri Lanka (Buddhism, Hinduism, Islam and Christianity) were introduced by propagation. In any event, the authors state that in the seventy years of the Order's existence in Sri Lanka, there has neither been evidence nor allegation of inducements or allurements to conversion. This aspect of religious practice is thus protected by the rights of the Order's members under article 27 Covenant.

3.3 In terms of article 18, paragraph 2, and 19, paragraph 2, the authors argue that the Court's restrictions on social and economic activities of the Order breach its members' rights under these provisions. The right to propagate and disseminate information about a religion is similarly covered by these articles, and is not limited to a State's "foremost" religion. None of the Order's activities are coercive, and thus paragraph 2 of article 18 has no application to the Order's legitimate activities. Invoking article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief as a guide to Covenant interpretation, the author

goes on to argue that the inability to hold property in the name of the Order sharply limits its effective ability to establish places of worship and charitable and humanitarian institutions. The Attorney General's submissions and the Supreme Court's ascription to the Order of potentially coercive activities as a result of incorporation were wholly unsubstantiated and unfounded in fact.

### **The State Party's Submissions on Admissibility and Merits**

4.1 By submissions of 15 April 2004 and 21 March 2005, the State party contested the admissibility and merits of the communication. At the outset, the State party described its understanding of the allegations as three-fold: a) that the author was not afforded an opportunity of being heard before the Supreme Court prior to the Court making its determination, b) that the Attorney General supported the petitioner's submissions before the Supreme Court, and c) that the Supreme Court's determination itself violated the author's Covenant rights.

4.2 As to the allegation that the authors were not afforded an opportunity of being heard before the Supreme Court prior to the Court making its determination, the State party explains that under article 78 of the Constitution, any Bill shall be published in the Government gazette at least seven days before being placed on the Order paper of Parliament. The Constitution then lays down the procedure to be followed when a Bill is placed on the Order paper in Parliament. The Supreme Court is vested, under article 121 of the Constitution, with sole and exclusive jurisdiction to determine whether a Bill or any provision thereof is inconsistent with the Constitution. This jurisdiction may be invoked by the President by written reference to the Chief Justice, or by any citizen addressing the Court in writing. Either application must be filed within a week of the Bill being placed on the Order paper of Parliament.

4.3 When the Court's jurisdiction has thus been invoked, no Parliamentary proceedings may be held in relation to the Bill until three weeks have elapsed or the Court has determined the matter, whichever occurs first. The Court's proceedings take place in open court, and any person claiming to be interested in the determination of the question can make an application to the Court for intervenor status. The Court communicates its determination to the President or the Speaker within three weeks of the application. In the event that the Court finds an inconsistency, a special majority of two-thirds of all members of Parliament must pass the Bill, while if the Bill is in relation to articles 1 to 3 or 6 to 11, a people's referendum must also approve the Bill. The members of Parliament are aware when any Bill has been placed on the Order paper in Parliament.

4.4 The State party explains that the current Bill was presented as a Private Member's Bill. As such, it had not

been examined by the Attorney General under article 77 of the Constitution, and the Attorney General expressed no view on it. If the authors had wished to intervene in the proceedings, they should have been vigilant to check with the Court's Registry if any application had been filed with the Registry within a week of the Bill being placed upon the Parliamentary Order paper. Had such due diligence been exercised and an intervenor application been made, there is no apparent reason why the Court would have refused the application, which would have been unprecedented. Rather than being a situation of denial of an opportunity to be heard therefore, it was a clear case of an author not taking proper steps to avail herself of the opportunity and the authors are now estopped from claiming otherwise.

4.5 As to the allegation that the Attorney General supported the petitioner's submissions before the Supreme Court, the State party observes that when article 121 of the Constitution is invoked, the Constitution provides for the Attorney General to be notified and to be heard. At that point, s/he is expected to consider the objections raised to the constitutionality of the item under reference and assist the Court in its determination. While the Attorney General had not previously expressed a view on the Bill's constitutionality, the Bill being a private Bill, even if s/he had, it would be manifestly wrong and untenable to suggest s/he would be bound by that earlier determination when addressing the issue in article 121 proceedings.

4.6 As to the contention that the Supreme Court's determination itself violated the authors' Covenant rights, the State party argues that the Supreme Court is not empowered to change the Constitution but only to interpret it within the framework of its provisions. The Court considered the submissions made, took into consideration previous determinations and gave reasons for its conclusions. In any event, the authors, having failed to exercise due diligence to secure their right to be heard, are estopped from contesting the Court's determination in another forum. As a result, with respect to all three allegations, the State party argues that the authors have failed to exhaust domestic remedies.

4.7 The State party goes on to argue that the Supreme Court's determination does not prevent the authors from carrying on their previous activities in Sri Lanka. The State party argues that the Court's determinations in article 121 proceedings do not bind lower courts, and thus lower courts will not be compelled to restrict their right to engage in legitimate religious activity. Nor, for its part, does the Supreme Court's determination do so.

4.8 Moreover, the Court's determination does not prevent Parliament from passing the Bill, which, while inconsistent with articles 9 and 10 of the Constitution could still be passed by a special majority and referendum. Alternatively, the constitutionally impugned provisions of the Bill could be amended and the Bill resubmitted.

## Authors' comments on the State party's submissions

5.1 By letter of 30 May 2005, the authors argue that the State party has confined itself to responding to three incidental allegations which do not form the core of the author's case. The authors argue that the issue is not whether the Court's determination prevents her from carrying on her activities, but rather whether there was a violation of Covenant rights, for the reasons detailed in the complaint. There is no remedy in domestic law against the Supreme Court's determination, which is final and thus the merits thereof are appropriately before the Committee.

5.2 As to the State party's response concerning the opportunity of being heard, the authors emphasize that only the Speaker and Attorney General receive mandatory notice of an article 121 application, with there being no requirement to notify affected parties such as, in the present case, those involved in a Bill to incorporate a body. In some cases of Private member's Bills, the Supreme Court has adjourned the hearing and notified the concerned member of Parliament if s/he wishes to be heard. (4) In the present case, neither the relevant member of Parliament nor the authors were notified, amounting to a violation of article 2, paragraph 1, in connection with article 26 of the Covenant.

5.3 The authors argue that if the Attorney General could deviate, in article 121 proceedings, from constitutional advice earlier provided, the whole purpose of the earlier advice would be rendered nugatory. The ability to change such opinions at will would leave room for gross abuse and undoubtedly affect the rights of individuals, contrary to article 21, in connection with article 26 of the Covenant. The authors go on to argue that the State party's response to the Covenant challenge to the Supreme Court's determination, to the effect that the Court made determination within the applicable legal framework, is insufficient answer to her complaint.

## Issues and Proceedings before the Committee

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 With respect to the exhaustion of domestic remedies, the Committee notes the State party's argument that the authors did not exercise due diligence with respect to confirming through the Parliamentary order paper and then Supreme Court's registry whether an application under article 121 of the Constitution had been lodged, and accordingly filing a motion wishing to be heard. The Committee considers that, exceptional *ex parte* circumstances of urgency apart, when a Court hears an application di-

rectly affecting the rights of a person, elementary notions of fairness and due process contained in article 14, paragraph 1, of the Covenant require the affected party to be given notice of the proceeding, particularly when the adjudication of rights is final. In the present case, neither members of the Order nor the member of Parliament presenting the Bill were notified of the pending proceeding. Given not least that in previous proceedings the Court, on the information before the Committee, had notified members of Parliament in such proceedings, the authors thus cannot be faulted for failing to introduce an intervenor's motion before the Court. The Committee observes that there may in any event be issues as to the effectiveness of this remedy, given the requirement that complex constitutional questions, including relevant oral argument, be resolved within three weeks of a challenge being filed, the challenge itself coming within a week of a Bill's publication in the Order paper. It follows that the communication is not inadmissible for failure to exhaust domestic remedies.

6.3 As to the claim that the authors' rights under articles 2 and 26 of the Covenant were violated by the Attorney General contesting the constitutionality of the Bill before the Court in circumstances where s/he had previously expressed no view of constitutional infirmity, the State party has explained without rebuttal that the Attorney General's duty to pass on the constitutionality of Bills at the initial stage does not apply to Private member's Bills such as the present. Accordingly, the Attorney General's views expressed in the article 121 proceedings were his or her first formal views on the matter and were not precluded by a previously taken view. As a result, the Committee considers that this claim is insufficiently substantiated, for purposes of admissibility, and is accordingly inadmissible under article 2 of the Optional Protocol.

6.4 In the absence of any other objections to the admissibility of the communication, and recalling in particular that the Covenant guarantees in articles 18 and 27 freedom of religion exercised in community with others, the Committee considers the remaining claims as pleaded to be sufficiently substantiated, for purposes of admissibility, and proceeds to their consideration on the merits.

### *Consideration of the merits*

7.1 The Human Rights Committee has considered the present communication in the light of all the information made available to it by the parties, as provided in article 5, paragraph 1 of the Optional Protocol.

7.2 As to the claim under article 18, the Committee observes that, for numerous religions, including according to the authors, their own, it is a central tenet to spread knowledge, to propagate their beliefs to others and to provide assistance to others. These aspects are part of an individual's manifestation of religion and free expression, and are thus protected by article 18, paragraph 1, to the extent

not appropriately restricted by measures consistent with paragraph 3. (5) The authors have advanced, and the State party has not refuted, that incorporation of the Order would better enable them to realize the objects of their Order, religious as well as secular, including for example the construction of places of worship. Indeed, this was the purpose of the Bill and is reflected in its objects clause. It follows that the Supreme Court's determination of the Bill's unconstitutionality restricted the authors' rights to freedom of religious practice and to freedom of expression, requiring limits to be justified, under paragraph 3 of the respective articles, by law and necessary for the protection of the rights and freedoms of others or for the protection of public safety, order, health or morals. While the Court's determination was undoubtedly a restriction imposed by law, it remains to be determined whether the restriction was necessary for one of the enumerated purposes. The Committee recalls that permissible restrictions on Covenant rights, being exceptions to the exercise of the right in question, must be interpreted narrowly and with careful scrutiny of the reasons advanced by way of justification.

7.3 In the present case, the State party has not sought to justify the infringement of rights other than by reliance on the reasons set out in the decision of the Supreme Court itself. The decision considered that the Order's activities would, through the provision of material and other benefits to vulnerable people, coercively or otherwise improperly propagate religion. The decision failed to provide any evidentiary or factual foundation for this assessment, or reconcile this assessment with the analogous benefits and services provided by other religious bodies that had been incorporated. Similarly, the decision provided no justification for the conclusion that the Bill, including through the spreading knowledge of a religion, would "impair the very existence of Buddhism or the *Buddha Sasana*". The Committee notes moreover that the international case law cited by the decision does not support its conclusions. In one case, criminal proceedings brought against a private party for proselytisation was found in breach of religious freedoms. In the other case, criminal proceedings were found permissible against military officers, as representatives of the State, who had proselytised certain subordinates, but not for proselytising private persons outside the

military forces. In the Committee's view, the grounds advanced in the present case therefore were insufficient to demonstrate, from the perspective of the Covenant, that the restrictions in question were necessary for one or more of the enumerated purposes. It follows that there has been a breach of article 18, paragraph 1, of the Covenant.

7.4 As to the claim under article 26, the Committee refers to its long-standing jurisprudence that there must be a reasonable and objective distinction to avoid a finding of discrimination, particularly on the enumerated grounds in article 26 which include religious belief. In the present case, the authors have supplied an extensive list of other religious bodies, which have been provided incorporated status, with objects of the same kind as the authors' Order. The State party has provided no reasons why the authors' Order is differently situated, or otherwise why reasonable and objective grounds exist for distinguishing their claim. As the Committee has held in *Waldman v Canada*, (6) therefore, such a differential treatment in the conferral of a benefit by the State must be provided without discrimination on the basis of religious belief. The failure to do so in the present case thus amounts to a violation of the right in article 26 to be free from discrimination on the basis of religious belief.

7.5 As to the remaining claim that the Supreme Court determined the application adversely to the authors' Order without either notification of the proceeding or offering an opportunity

to be heard, the Committee refers to its considerations in the context of admissibility set out in paragraph 6.2. As the Committee observed in *Kavanagh v Ireland*, (7) the notion of equality before the law requires similarly situated individuals to be afforded the same process before the courts, unless objective and reasonable grounds are supplied to justify the differentiation. In the present case, the State party has not advanced justification for why, in other cases, proceedings were notified to affected parties, whilst in this case they were not. It follows that the Committee finds a violation of the first sentence of article 26, which guarantees equality before the law.

7.6 In the Committee's view, the claims under articles 19 and 27 do not add to the issues addressed above and do need to be separately considered.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International

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*The Committee considers that, exceptional ex parte circumstances of urgency apart, when a Court hears an application directly affecting the rights of a person, elementary notions of fairness and due process contained in article 14, paragraph 1, of the Covenant require the affected party to be given notice of the proceeding, particularly when the adjudication of rights is final.*

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Covenant on Civil and Political Rights, is of the view that the facts as found by the Committee reveal violations by Sri Lanka of articles 18, paragraph 1, and 26 of the Covenant.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is under an obligation to provide the authors with an effective remedy giving full recognition to their rights under the Covenant. The State party is also under an obligation to prevent similar violations in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, and to provide an effective and enforceable remedy in case a violation has been established, the Committee expects to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the Committee's Views.

\* \* \*

Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.

\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Edwin Johnson, Mr. Walter Kälin, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Mr. Michael O'Flaherty, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer, Mr. Hipólito Solari Yrigoyen and Mr. Roman Wieruszewski.

### Notes

1. The contested clauses of the Bill were clauses 3 and 5, read with the preamble. These provided:

#### Preamble.

"WHEREAS the Teaching Sisters of [the Order] have established themselves as a Congregation for the propagation of Religion by establishing and maintaining catholic schools and other schools assisted or maintained by the State and engaged in educational and vocational training in several parts of Sri Lanka and in establishing and maintaining orphanages and homes for children and for the aged:

AND WHEREAS it has become necessary for the aforesaid purposes to be more effectively prosecuted, pursued and attained to have the incorporation of the [the Order]:

AND WHEREAS it has become expedient to have

[the Order] duly incorporated"

#### Clause 3.

- (a) The general objects for which the Corporation is constituted are hereby declared to be –
- (b) to spread knowledge of the Catholic religion;
- (c) to impart religious, educational and vocational training to youth;
- (d) to teach in Pre-Schools, Schools, Colleges and Educational Institutions;
- (e) to serve in Nursing Homes, Medical Clinics, Hospitals, Refugee Camps and like institutions;
- (f) to establish and maintain Creches, Day Care Centres, Homes for the elders, Orphanages, Nursing Homes and Mobile Clinics for the infants, aged, orphans, destitutes and sick;
- (g) to bring about society based on love and respect for one and all; and
- (h) to undertake and carry out all such works and services that will promote the aforesaid objects of the Corporation.

Clause 5 gave the authority to the corporation to receive, hold and dispose of movable and immoveable property for the purposes set out in the Bill.

2. *Kokkinakis v Greece* Appln. 14307/88, judgment of 19 April 1993, and *Larissis v Greece* Applns. 23372/94, 26377/94 and 26378/94, judgment of 24 February 1998.
3. Case No 694/1996, Views adopted on 3 November 1999.
4. The authors cite the example of a Bill entitled "Nineteenth amendment to the Constitution" presented by a private member inter alia to make Buddhism the State's official religion as an example.
5. See *Malakhovsky et al. v Belarus*, Case No 1207/2003, Views adopted on 26 July 2005, and Article 6 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, GA Resolution 36/55 of 25 November 1981, which provides: "... the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms: ...
- (b) the right to establish and maintain appropriate charitable or humanitarian institutions".
6. *Op.cit.*
7. Case No 819/1998, Views adopted on 4 April 2001.

# Plight of the Sri Lankan Woman

By K. Wijayarathnam

Women had been active in public life in Sri Lanka, even before the country gained its Independence in 1948. Religion and cultural traditions of the country gave equal place to women, with Buddhism and Hinduism the two major religions placing women and men on an equal pedestal.

Historical traditions speak of a 'Yakka' princess called Kuveni, ruling the country, when the 'founding father' of the Sinhala race Vijaya landed in the North Western coast of Ceylon (as Sri Lanka was known before the introduction of the Republican Constitution in 1972) together with 700 outlaws in the 3<sup>rd</sup> century B.C. The Mahawamsa, the historical chronicle, which gives a narration of historical events, since the time of Mahinda—that great missionary, who brought Buddhism to Sri Lanka from neighbouring India—to recent days, speaks of several women who were prominent in public life.

Unlike many countries in the SAARC region, Sri Lankan women have occupied an unusually favourable position in public life and in the political field. From Viharamaha Devi to Chandrika Kumaratunge, the former President of Sri Lanka, the country has seen many women play dominant roles in its history. Sri Lankan women also gained the right to vote and to elect representatives to the legislature long before women in neighbouring countries. In the first elected State Council in 1931 there were two elected women members — Mrs. Adeline Molamure and Mrs. N. Saravanamuttu.

Today Sri Lankan women also contribute the bulk of the country's foreign exchange earnings, and this is done at great sacrifice and often to the detriment of their families and themselves. The garment industry and the plantation sector, where most of the workers are women, together with the remittances from the migrant workers—where too the large majority are women engaged in menial jobs abroad—bring in the largest slice of the country's foreign earnings. The financial contribution of these unskilled and semi-skilled workers is indeed much more than many on whom Sri Lanka has spent fortunes in skills development.

All avenues of employment including service in the armed forces and police as well as in the judicial services are equally open to both men and women. The gender gap in earnings has whittled down during the last four decades. There are today many women in high positions in the public, medical and judicial professions.<sup>1</sup>

## Legal Recognition of Equality

Existing labour laws also make no distinction between men and women as regards their rights. The Sri Lankan Constitution in Article 12 stipulates that all persons are equal before the law and are entitled to the equal protection of the law. It also states that no citizen shall be discriminated against, on grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds. Distinctions that existed in the Wages Boards decisions with regard to wages between men and women have been removed and today both women and men get equal pay for work of equal value.

However, though women's share of positions as employers or as self employed persons has shown improvement during the last two decades, this has still not reached the 30% target set by the Beijing Platform for Action. The gender gap thus still remains wide with the 'glass ceiling' almost intact and 'equality in the world of work still out of reach' for women.

The literacy rate of Sri Lankan women also compares favourably with that of men and is high compared with other countries in the region. Women in paid employment have shown an appreciable increase since the opening of the economy in 1977. However most working women are at the lower order of work or engaged in peripheral jobs, and have little prospect of advancement. To address problems specifically related to women a separate Ministry for Women Affairs was created about two and a half decades ago (1983) with a woman as the Minister in charge.

Despite the numerous efforts made to remove existing discrimination of women including the creation of a separate ministry for women, they are yet to enjoy benefits in full measure. And though both men and women are equal according to the Sri Lankan Constitution, there exists contradictions between the rights guaranteed under the Constitution and what is available in reality.

Also, discriminatory laws such as the Thesawalamai, the Kandyan law and the Muslim law based on Sharia still remain in our statute books and are continued to be administered. These 'inherited legal values have rarely been reexamined' after Independence.<sup>2</sup>

## Economic and Cultural Role

Women's economic roles have expanded over the years. The free educational system has fostered high aspirations regarding employment, but household work is still perceived almost exclusively as 'women's work' by both men and women. According to some studies conducted, women in paid employment have a daily workload of 14 hours coping with their economic, social and domestic roles, while men work for about 9 hours a day.

Furthermore, cultural inhibitions still prevail and impede the progress of women. Society still looks to a woman, as a wife and mother who is duty bound to look after the home, elderly parents and in-laws in spite of her other duties. If she is employed, upon returning from a hard day's work she is still expected to do the cooking and cleaning as well as attend to her children's needs while the man watches TV, reads the newspapers or drinks or discusses politics with friends. Domestic work is still considered a woman's domain, whether she is in paid employment or not.

Male superiority is still accepted by both women and men, and is nurtured and enhanced by social and cultural norms. Because of these onerous responsibilities almost 90% of the women are not keen on career development, with even highly qualified women preferring easy jobs or staying at home to look after children and the home. Priority is also still given to the male child in education, and in feeding. It is generally believed that 'caring for a son is good economics whereas caring for a daughter is like watering the neighbour's garden'.<sup>3</sup> Few realize that educating a girl is actually educating the whole family.

In Sri Lanka the ancestral home is still given to the male child and men are served food before the females, who sometimes have to make do with the leftovers. It could therefore be said that much of the discrimination and violence against women are rooted in the reprehensible customs and traditions that are sexist, biased and patriarchal and that which the country has inherited.

## Effects of Globalization

Women experienced globalization in several ways. For the majority of them, the poor women especially, it has intensified some of the existent inequalities and insecuri-

ties. But for others—i.e. the educated professionals, globalization has opened up new opportunities, permitting them to achieve greater personal autonomy albeit in an increasingly unequal environment. It had caused, to a large number of women, economic and psychological stress leading to break up of families, to growing suicide rates, drug abuse and violence. It has disturbed the traditional environment and brought women into the labour market.

For instance it has killed the handloom industry where most of the workers were women, but created new opportunities for them, especially in the service, information technology, and informal sectors as well as in labour intensive industries. Poverty, unemployment and the spiraling cost of living in the 80s drove more and more women into vulnerable economic activities in the informal sector and pushed them overseas to traumatic experiences as domestic workers in West Asia. In Sri Lanka women's participation in employment increased from 31.7 % in 1981 to 53.7% in 1993.<sup>4</sup>

The opening up of the Free Trade Zones led many women to migrate from rural areas to urban cities, but at great social cost. This internal migration from village to city has caused the loss of traditional values and has affected society profoundly. Employment opportunities afforded to most of them were in low income, high insecurity categories, characterized at times by more informal arrangements outside the protection of labour and social legislation and often under mis-

erable working conditions. In the factories within the three Export Processing Zones and outside, the perception of planners of the comparative advantage of low cost female labour and the minimal transfer of technology has resulted in the concentration of secondary educated women in semi-skilled assembly line operations. They were afforded little opportunity for upgrading their skills and for achieving upward occupational mobility. Also in the interests of 'industrial peace' labour laws are sometimes soft-pedalled and trade union activities are discouraged.

In the sub-contracting industries, which are proliferating at an ever increasing rate, entrepreneurs sometimes, in order to reduce costs, force women employees to work long hours for minimum piece rate wages and without overtime pay. Also, in a highly competitive job market, opportunities available to women are conditioned by the comparative cost of women's labour as perceived by the

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employer. By virtue of the legislation in force, the restricted working and overtime hours for women and the conditions governing work at night—i.e. the Factories Ordinance & the Employment of Women and Children Act—there may arise an increase in the direct costs of employing women. Some employers attempt to bridge the gap by lowering wages for women, recruiting childless women or forcing women workers to undergo pregnancy tests quite ignoring their higher productivity, in some industries. They also forget that the reproductive function is a social function which cost should be footed by society as a whole.

### Women in the Free Trade Zones

The employees in the Zones are often subject to sexual harassment at the workplace and outside, whilst on their way to their boarding houses and at times in the boarding houses themselves. Sexual harassment, which is an expression of power, authority, or control through sex, adversely affects an individual's work. It is offensive to the worker involved, causes her to feel insecure, threatened, humiliated, patronized, or harassed, interferes with the worker's job performance, undermines job security, and creates an unpleasant working environment. Sexual harassment can take a number of different forms and maybe expressed in visual, verbal, physical, or psychological terms. Leering looks, a 'friendly' pat on a sensitive part of the body, a squeeze, or an off-colour joke, are all forms of sexual harassment. Also included are pin ups of women in pornographic poses placed in work areas, or in the lunch room, catching a woman alone and making advances, exposing a male's private parts, barraging a woman with sexist remarks, pinching or making lewd remarks. The victimized women often do not complain due to the shame and stigma attached as well as possible repercussions.

The female employees in the Zones are very often looked upon as women of low virtue and are subject to sexual harassment both in the work place and outside. Men from the city and those in the vicinity prey on them and many are the reports of illegal abortions. The lack of security in the nights for women working night shifts, due to the ill lit roads and alleys, contribute to the incidents of rape and abuse. Most of the boarding houses are unhygienic and are overcrowded and unfit for human habitation. Thus, it may be said that women face substantially more challenges in the workplace than men.

A promising development is the introduction of 'codes of conduct' by some of the leading buying houses as well as the practice of some trade unions and NGOs to gather

facts about unfair labour practices of truant companies and publicize them within the country and abroad through International Trade Unions. This had raised awareness among the employers about their obligations and among the women working in the zones vis-à-vis their rights. It has also alerted the government and the BOI on the need to pay more attention to trade union rights compliance with the core ILO Conventions.

### Women and Migration

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Migration is an important aspect of globalization and contributes to changing role patterns. It is a recent but widespread phenomenon in Asia. It is said that 50% of the Continent's migrant workers are women.<sup>5</sup> Earlier cultural norms forbade female formal employment and migration, but rising male unemployment, increasing demand for female employment, especially for housemaids as well as growth of the transnational immigration industry have facilitated this mobility.

Migration for employment became a major feature in the Sri Lankan economy from the mid 70s with the increase in demand for foreign labour in West Asian countries. The growing affluence and improvements in living standards of the local population in these countries after the 1970 oil hike and the resultant increase in demand for housemaids and nannies as well as the introduction of the 'free flow migration policy' by the Sri Lankan government led to an exodus of women housemaids to those countries. Today it is estimated that there are about one million Sri Lankan migrant workers working overseas. Of this, an estimated 80% are in West Asian countries, with 75% of them being women, and the majority employed in household work.

For many Sri Lankan women, migration is viewed as an escape mechanism from the poverty trap—the only hope they foresee to better themselves in material terms. In a developing country with high unemployment, low per capita income and an escalating cost of living, the desire to satisfy day to day needs and to escape indebtedness are strong motivational factors for women to leave their homes in search of greener pastures.

However, the large exodus of mainly active female counterparts in the household units of production has affected the entire socio-economic and cultural milieu. Mothers who have hitherto played a critical role in caring and educating their children have left their families to fend for themselves, creating post migration adjustment difficulties for those families. We often hear stories of hus-

bands squandering the money sent by their wives abroad, taking to alcohol, indulging in adulterous relationships, neglecting the children—or far worse—committing incest or rape.

Often the migrant woman too is suffering at her workplace. Very often she realizes that the Eldorado which she had visualized before she left the shores of Sri Lanka is only a fantasy and life in the workplace is miserable. Most of them are subject to harsh working and living conditions as well as to sexual harassment, but due to shame and fear of loss of reputation, rarely complain. Despite the reports of miserable working conditions and sexual harassment, migration of women workers for household employment continues.

### Violence against Women

Violence against women and girls is the most pervasive human right violation in the world, according to UNICEF. The scale of violence and discrimination against women is quite chilling and often goes unnoticed or, in some societies even passively accepted by women as part of their plight as women. The UN Declaration by the General Assembly in 1993 recognizes that violence against women within the family and society is pervasive and cuts across lines of income, class and culture.

It takes many forms, from violence within the family, to ethnic conflicts, civil wars and to political and economic violence. According to Article I of the Vienna Declaration violence means “any act of gender based violence against women which results or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.

The catalogue of horrendous forms of violence against women includes rape in marriage, female genital mutilation, and dowry related violence. Over 10,000 women a year are murdered due to dowry disputes in India, while thousands of female fetuses are aborted in the same country. In neighbouring Pakistan, thousands of ‘honour’ killings of women take place as punishment for contracting marriages outside the family, caste or clan, while in West Asia husbands are often exonerated for killing an unfaithful, disobedient or wilful wife on grounds of honour. In Africa, millions of girls are genitally mutilated and even in the ‘civilized’ US it is said that every nine seconds, a woman is physically abused by her male partner. In Bangladesh, Thailand, Nepal and Burma thousands of young girls and women are illegally trafficked to other countries as sex

workers. The cultural environment, social values and the legal systems too in many countries are biased against women.

The different forms of violence—rape, torture, humiliation, anger and anguish—are all familiar to women around the world. And despite the several Declarations on women’s rights, World Conferences on Women, the UN Decade for Women and the ‘Action Plans’ adopted in many of the forums, girls and women continue to suffer at the hands of men.<sup>6</sup>

In Sri Lanka there are hardly any reports of illegal trafficking, but there are plenty of reports of domestic violence especially among the low-income groups. This appears to be on the increase as seen from the reports in daily newspapers of killings, abductions and rape of women. “Domestic violence, incest, rape and other forms of violence are the outcome of male dominance in sexuality, which has been engendered by the social value system and can be best be countered by the education system and the media and their outreach to men and women.”<sup>7</sup>

The World Conference on Human Rights (1993) stressed on the importance of working towards the elimination of violence in public and private life of women. In Sri Lanka the Penal Code had been amended to impose severe punishments for some crimes but violence against women continues unabated, as most of the affected women do not complain due to cultural and social inhibitions.

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### Effects of the Civil War

The ‘civil war’ in the NorthEast has rendered many women widows, made life miserable and created psychological problems for many of them. The increase in the number of single parent families makes it imperative for women to turn towards income generating activities, but the lack of training, and access to credit in the un-cleared areas where the government and private lending agencies do not function, constitute major handicaps. The Sri Lanka experience has been that training is the most neglected aspect of income generating programmes.

According to Professor Swarna Jayaweera,<sup>8</sup> “the dichotomous perceptions of economic and social development as well as of education and training and development programmes have militated against the integration of women in development planning. Underpinning this approach of women in development planning are the myths, and gender role assumptions that influence perceptions i.e. that of (a) exclusive male breadwinner, and dependent house wife, (b) women as secondary or supplementary earners, (c) gender appropriate jobs and (d) women as consumers of



services and not agents of development”.

The Women’s Charter formulated in 1992 by the women’s forum and the Ministry of Women Affairs, and accepted by the government of Sri Lanka reiterates the provisions of the UN Convention on the Elimination of All Discrimination Against Women (CEDAW). It spells out comprehensive responsibilities of the State, to ensure that women are protected against discrimination as well as assured of their rights whether political, civil, within the family in education and training, in economic activity and its benefits, and in health care and nutrition. The Charter also specifies the State’s obligation to protect women from discrimination in society and from gender based violence. But these aspirations remain a dream to many women of our country.

**ILO**

Concern about women workers in the tradition of the ILO is manifested in women being integrated into the world of work as a whole and not considered as a separate group. However the ILO has enacted specific Conventions and Recommendations on the protection of the role and maternal function of women as well as the promotion of equality of opportunity and the treatment of women in accordance with the changing need of societies.

For example, the Conventions focus on night work — Convention 89, on work underground — Convention 45, on maternity protection — Conventions 103 & 183, on discrimination and on Equal Remuneration and Discrimination in Employment — Conventions 100 & 111. Sri Lanka had ratified all the Conventions except the one on night work, which was denounced in 1979.

**Women’s Movements**

The UN’s Year of Women in 1975 and the subsequent Decade of Women (1976 – 1985) was fundamental for the newly transnational women’s movements. Gradually, more and more governments too felt obliged to recognize these movements in one way or other. The Decade of Women was marked by a spurt of activities, which helped to increase the ‘visibility’ of women and bring their issues and organizations to the forefront. Inclusion of women’s movements under the UN also gave a fillip for progres-

sive changes to be adopted by many a government.

With the emergence and strengthening of NGOs, women’s organizations and feminist groups, various attempts have been made to change the legal structure and state policies in favour of feminist movements and against gender subordination and oppression. The UN had made a number of Declarations and Conventions to promote political and social rights of women and towards the elimination of discrimination and violence against women. In its foundation Charter the UN declared itself committed to

“promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religion.”

The 1945 Universal Declaration of Human Rights, the 1949 Convention against Trafficking in Persons, the 1952 Convention on the Political Rights of Women, the 1966 Covenant on Civil and Political Rights as well as the 1967 Declaration on the Elimination of All Forms of Discrimination against Women and the establishment of VFDW — the first development Fund for women (1976) are some of the steps taken by the UN towards eliminating violence against women and promoting social and political rights of women. To this list could also be included the Declaration of March 8 as Women’s Day, the 1993 Human Rights Conference and the subsequent appointment of a Rapporteur for violence against women. These are also milestones in terms of advancing our understanding of the crucial role of women in development and focusing attention of the international community on issues concerning the role of women in the workplace and society.

Based on the UN Declarations and Conventions the government of Sri Lanka approved a Women’s Charter on 3 March 1993, embodying the rights, principles and policies on women. But to date, most of its provisions remain to be implemented by Parliament.

**Beijing Platform for Action**

The UN also promoted a number of Conferences on women, beginning from the Conference in Mexico in 1975, to the second Conference in 1980 in Copenhagen and the third Conference in Nairobi. The 4<sup>th</sup> World Women’s Conference in the Chinese capital of Beijing in 1995, adopted a consensus ‘Platform of Action’ on 15 September that year. The Beijing Platform for Action is the central docu-

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ment that incorporates a comprehensive dialogue of actions to be taken to eliminate worldwide discrimination against women.

Inspired by the Beijing process, many national and local women's groups changed their character and their operating methods. They changed their approach from one of meeting basic needs to fulfillment of basic rights, which they claimed as human rights. Women's NGOs systematically began to apply the strategy of mainstreaming, propagated by the Platform. They no longer limited themselves to women's interests as special topics, but sought to bring women's interests and women's prospective, into all areas of political action. They switched from mere protesting to lobbying approaches. Beijing Platform of Action appears to have had fruitful results as evidenced from action taken by various governments regarding violence on women, rape and sexual harassment. In Sri Lanka the Penal Code was amended to enhance the punishments for such offences against women.

### Conclusion

Despite numerous positive moves in terms of policies and new legislation, the overall condition of women across the developing world including Sri Lanka, has not changed much, nor have gender disparities been reduced significantly. Instead, discrimination against women is seen to manifest itself in many traditional as well as modern societies amounting to a structural failure of these societies. In short, nowhere in the world are women treated 'as good' as men and most countries slip on the scale of human development when equality between the sexes is measured.

Differences between the life situations of and opportunities afforded to women and men still arise from numerous factors such as unequal opportunities of access to employment, disparities in income, economic resources, healthcare, food, education, training as well as traditional and cultural inhibitions. However there have been a number of progressive changes regarding women during the last decade.

In some countries women have been able to push binding legislation to guarantee their strong participation in political administration and trade unions. With programme slogans such as 'empowerment' and 're-distribution of

power', women have successfully organized themselves into self-help organizations, NGOs, associations, networks and political parties. They are now demanding participation in the political decision-making process and access to political institutions. And they are striving for social power in a bid to influence the factors that cause discrimination against them.

The rise in religious fundamentalism, male chauvinism and cultural factors tends to have an inhibiting impact upon these new approaches and progressive policies on women. Thus, even where the legal position has improved, women have still been unable to assert their social, economic, and political rights to their fullest.

According to the ILO,<sup>9</sup> "equality in the world of work is still out of reach" for women. Although more women are working today and their participation in employment has grown during the last three decades, this explosive growth has not been accompanied by true socio-economic empowerment; neither has it led to equal pay for work of equal value nor balanced benefits which would make women equal to men across nearly all occupations"

Good intentions and legal amendments are not enough to improve women's living and working conditions. Instead, what is required is the elimination of the causes for such discrimination. Attitudes have to change and this could only be achieved by education and awareness raising that women are also human beings and have the same rights as men. Therefore, the education process should be consciously used

to empower women to challenge the antiquated practices and rituals that perpetuate their subordination in their public and private lives. Finally, women themselves must learn to value their self-esteem and outgrow some of the antiquated customs, beliefs and traditions that perpetuate their subjugation

ILO Directory General, Juan Somavia, "Raising incomes and opportunities for women lifts whole families out of poverty and drives economic and social progress"

<sup>2</sup> Savitri Goonesekera, Colonial Legislation and Sri Lankan Family Law, 1990.

<sup>3</sup> Kumudini Rosa, Women in Asia - a FES publication, 1995.

<sup>4</sup> Labour Force Survey of the Dept. of Labour.

<sup>5</sup> The Feminization of Migration, Piper 2003, Ehrenreich & Hochschild.

<sup>6</sup> UN, Department of Information.

<sup>7</sup> Swarna Jayaweera, Economic Review, March 1995.

<sup>8</sup> Women, Education and Development, Economic Review, No 12 of March 1995. Peoples Bank Publication.

<sup>9</sup> Global Trends for Women, 2004.

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*Good intentions and legal amendments are not enough to improve women's living and working conditions. Instead, what is required is the elimination of the causes for such discrimination. Attitudes have to change and this could only be achieved by education and awareness raising that women are also human beings and have the same rights as men.*

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