

U.C.M. Sybil.

Towards More Effective Protection of Human Rights Defenders

CONTENTS

Sri Lanka: State of Human Rights 2001 - <i>Overview - Elizabeth Nissan</i>	01
Reporting Procedure Under United Nation's Treaty Bodies - <i>Rukshana Nanayakkara</i>	09
Sri Lanka and the Global Experience - <i>Rasika Mendis</i>	15
Towards More Effective Protection of Human Rights Defenders - <i>M.C.M. Iqbal</i>	24
Human Rights Defenders - <i>Submission of allegations to the Special Representative of the Secretary-General on Human Rights Defenders</i>	30

Law & Society Trust,
3, Kynsey Terrace, Colombo 8
Sri Lanka.
Tel: 691228, 684845 Telefax: 686843
e-mail: lst@cureka.lk
Website: <http://www.lawandsocietytrust.org>

ISSN - 1391 - 5770

Editor's note

In this issue of the LST Review we publish the Overview of the *Sri Lanka: State of Human Rights 2001* by Elizabeth Nissan. In the Overview she looks at the conflict in the North and East and notes that it had provided the context and the rationale for many of the human rights violations in the country. She also notes that serious human rights violations take place independent of the conflict such as in relation to criminal investigations but points out that a lasting solution must be found to the ethnic conflict in order to radically transform the human rights climate in the country.

On the positive side, she notes the ratification of several international conventions, including the Optional Protocol to the Convention on the Rights of the Child on the use of Children in Armed Conflict. However, Sri Lanka has been remiss in submitting country reports to the relevant treaty bodies and the Overview provides a summary of the dates when these reports were due and hopes that this situation would be rectified soon by submitting the reports that are due.

While the situation with regard to elections has further deteriorated, and the level of violence has escalated, intervention by civil society groups has also increased, giving a ray of hope that at least through civil society intervention, the situation would improve. The report carries 10 chapters covering the integrity of the person, emergency rule, fundamental rights jurisprudence, elections, and internally displaced people. It also surveys two institutions – the National Child Protection Authority and the Fair Trading Commission.

We also publish an article by Rukshana Nanayakkara on the Reporting Procedure under UN Treaty Bodies where he looks at the reporting mechanisms, the objectives of the reporting procedure and notes that the reporting system under UN treaty bodies has not received the same attention that other bodies of the UN has received. He points out that the treaty bodies provide a good forum for examining the human rights situation in states and calls for the greater involvement of NGOs in the process.

Rasika Mendis looks at globalisation and its impact on Sri Lanka in her article on "Sri Lanka and the Global Experience." She looks at the liberalisation process, the impact of transnational corporations, free trade zones, the state and transnationals, and the role of international organisations, and points out that developing countries must pull together and push for equitable treatment that safeguards them from global marginalisation.

M.C.M. Iqbal looks at the effective protection of human rights defenders and summarises the proceedings of two workshops on the subject: a national level workshop on the mandate of the Special Representative of the UN Secretary General on Human Rights Defenders and a regional workshop held in Bangkok on the same subject. The national level workshop was organised by the Trust to feed into the regional workshop. The report of the national workshop was presented at the regional workshop by Mr Iqbal on behalf of the Trust. The guidelines for the submission of complaints to the Special Representative are also reproduced in this issue. The readers are kindly referred to the September 1999 issue of the LST Review in which the General Assembly Declaration on Human Rights Defenders was published.

WE WISH OUR READERS A HAPPY AND PEACEFUL NEW YEAR

SRI LANKA: STATE OF HUMAN RIGHTS 2001

Overview

*Elizabeth Nissan**

1. Introduction

Commentators on human rights in Sri Lanka have often observed that the conflict in the North and East provides both the context and the rationale for many of the worst violations of human rights in the country, and that its impact is not confined within these areas but felt island-wide. Certainly, serious violations of human rights also take place in Sri Lanka in contexts which are independent of the conflict – such as in the context of ordinary criminal investigation and in the abuse of defamation laws to silence critical journalists – and these violations need to be urgently addressed in themselves. But if the human rights climate in the country is to be radically transformed, it remains essential for a just and durable solution to be found that accommodates the very broad range of group and individual rights issues involved. Many obstacles have prevented such a solution being reached over the years, not least of which has been the polarised nature of parliamentary politics in Sri Lanka. Party political interest has rendered impossible the development of a national consensus on reconciliation, with the result that the government has been unable to introduce the kinds of far-reaching constitutional reforms that it first proposed soon after coming to power. While deep mutual distrust remains a major obstacle in any communications between the government and the Liberation Tigers of Tamil Eelam (LTTE) on the one hand, the inability of the government to reach a workable consensus with the main parliamentary opposition party, the United National Party (UNP), among others, has certainly not helped.

The conflict, and the failure of all parties concerned to find pathways that might lead to reconciliation and resolution, remain crucial factors in understanding Sri Lanka's human rights performance. Reports of people disappearing in the custody of the security forces, for example, continue from the conflict zones; torture and rape by security forces remain endemic (although it must be said that torture remains a deplorable feature of the criminal investigation process, too). The enjoyment of many other rights, also, is deeply affected by the conflict: the rights to freedom of movement, to shelter, to education, to health care and even to food are but a few of the rights which are compromised for many civilians living in the conflict zones, and particularly for those who are displaced from their homes. Emergency rule, however, affects the lives of all. This volume examines these and other human rights issues. Some chapters – on emergency rule,

* Freelance Human Rights Consultant; Specialist on Sri Lanka

integrity of the person, fundamental rights jurisprudence, freedom of expression, labour migration and the rights of internally displaced people – discuss issues that have been regularly included in *Sri Lanka: State of Human Rights* volumes, focusing particularly on developments during 2000. Others touch on new or currently pertinent themes. The chapters on the National Child Protection Authority and the Fair Trading Commission continue Law & Society Trust's scrutiny of the work of key institutions responsible for protecting and promoting human rights. In both cases, despite their important mandates, these institutions are found to have been granted too limited scope and to be under-resourced. With the tasks of "promoting effective competition and consumer protection," the Fair Trading Commission, for example, is found to be understaffed and ill-equipped to fulfil its mandate. The creation of such institutions with inadequate powers and resources to fulfil their tasks is already becoming a familiar theme in these critiques. It is to be hoped that by continuing to air these shortcomings in a constructive light – as is done in these chapters – some momentum for change might be generated.

2. Attacks on the Right to Vote

The political system was again put to the test in parliamentary elections in October 2000, which produced a coalition government under the People's Alliance (PA) with a majority of only three parliamentary seats. Again, as described in the chapter on "The Right of Franchise," the elections were held amid high levels of violence and intimidation, including seven murders on election day alone, as well as allegations of numerous instances of other kinds of malpractice. It is a great irony that the public is placed at greater risk of violence and intimidation during election periods than at other times, violating the right to free expression through the vote. This fundamental democratic moment has become a time of fear, whether because of bomb attacks launched on election rallies by the LTTE or thuggery and intimidation by elements within parties contesting the elections, and particularly from within the ruling PA. The parliamentary elections were held under emergency rule, which included emergency powers to censor military news, thus denying voters information on a fundamental issue of national importance. The misuse of state resources by the ruling party during the election campaign – including of the state-owned media – also continued unabated. Furthermore, many displaced people are in practice disenfranchised, unable either to register as voters or to reach a polling station. The need for an independent, non-partisan and competent election authority was again raised, together with a review of existing electoral law.

Of particular concern, and linked to the wider issues of impunity that are discussed below, is the fact that election monitors found that, "as in previous elections, the violence erupted in particular pockets of particular districts." Yet the party authorities take no action to investigate these complaints effectively and to discipline those responsible. The cycles of political violence are

allowed to continue unchecked, despite the PA's claim when it came to power that it would not tolerate such behaviour within its ranks.

There is, however, a more positive dimension to election periods that has strengthened since the elections of 1994, and that is the role of civil society organisations in monitoring and publicising their findings on all aspects of the conduct of the campaign. The number of organisations involved in such monitoring has increased, as has the scope of their work. These elections, for example, were the first to include systematic monitoring of the content of both state and private print and broadcast media. In addition, some organisations have become more proactive in attempting directly to influence the conduct of the authorities during the election period itself. The Centre for Policy Alternatives, for example, filed a petition before the Human Rights Commission (HRC) on the issue of the politicisation and intimidation of state institutions such as the police department. This resulted in the Commission requesting the Commissioner of Elections to direct the Inspector General of Police (IGP) to make public all directions, circulars and instructions issued to police to ensure free and fair elections.

Further civil society responses to the violence of the electoral campaigns were the Campaign against Political Violence, the Alliance for Democracy and the creation of a Consultative Committee on Electoral Reform. As political violence and confrontation worsens, at least some sections of the public are responding with an alternative, positive political agenda.

Sri Lanka's system of proportional representation (PR) has the benefit of ensuring the participation in government of representatives from minority communities and smaller political parties, who may gain a strong bargaining position in pledging their support to a numerically weak governing party. But while the necessity for minority voices to be heard within the political system is an undoubted benefit, the PR system has not contributed to the development of an inclusive, pluralist political culture. As pointed out in the chapter on "The Right of Franchise," the legislature has, in fact, become highly fragmented despite the broader political alliances that coalition politics demands.

Last year we wrote that, "Every effort must be made to ensure that people are free to exercise the franchise without fear, and according to their conscience." Clearly, no such action was taken; it is most regrettable that the right to vote freely – a right so fundamental to the democratic process – remains so vulnerable in Sri Lanka, despite the relatively high voter turn-out.

3. War and Peace

Although the electoral process brought a gloomy note to the latter part of the year, 2000 had begun more optimistically, with the public recognition of a Norwegian envoy nominated by the

Norwegian government to facilitate communication between the government and the LTTE. Given the government's earlier opposition to any such third party role, this appeared as an important development, which might help initiate a peace process acceptable to both parties.

Yet while the envoy's quiet diplomacy continued behind the scenes, the year also saw major new military confrontations in the North. These created new waves of displacement, and had island-wide repercussions when in May the President placed the country on a "war footing" as the LTTE appeared poised to reclaim Jaffna after winning control of Elephant Pass from the military. The new emergency regulations promulgated in May granted even greater powers to the police and security forces than the excessive powers they already possessed, as described in the chapter on emergency rule.

In the event, the military retained their hold on Jaffna and by the end of the year, the LTTE had declared a unilateral ceasefire as an indication of its willingness to negotiate with the government providing that certain conditions were met (similar to those they had insisted on in 1994). The government did not declare a ceasefire in return, but it was noted that the level of fighting reduced.

Even with these glimmers of hope, it had to be remembered that there would be many obstacles to overcome before any direct negotiations could take place. Furthermore, the government's complete inability to progress with its proposed constitutional reforms had been made abundantly clear when it had placed a Constitutional Bill before parliament in October.

Without substantial constitutional reform, however, it is hard to imagine how a sustainable resolution can ever be found to this conflict; indeed it may require constitutional reform for a meaningful peace process even to begin. That such a process is urgently needed is clear; without it, no effective remedies can be found for some of the gross violations of rights that are widespread in the North and East. Take the case of internally displaced persons, for example: even if both parties to the conflict ameliorated the hardships faced by civilians by fully observing the basic minimum standards of humane conduct contained in Common Article 3 of the Geneva Conventions – which they currently still fail to do – the conditions that create large-scale displacement and its attendant violations of a range of rights would still remain. Civilians would still flee from areas of conflict, and have to survive with inadequate shelter, lack of employment opportunities, poor access to medical and educational services, among other hardships. The importance of the Guiding Principles on Internal Displacement and their application to Sri Lanka is discussed in the chapter on "Internally Displaced Persons."

As October 2000 came and went, we were reminded that displacement for many is a long-term fate. Some 100,000 Muslims were forced out of Jaffna and surrounding areas ten years earlier,

in October 1990, and remain unable to return to their homes. Their grievances are now compounded, as explained in the chapter on “Internally Displaced People:”

As it is over ten years since they left, their chances of ever returning to their properties remain bleak since under current property law¹, unlawful occupants of property can gain rights to it after a lapse of ten years. These IDPs are on the verge of losing their properties to trespassers.

4. Impunity

Impunity remains a major problem in Sri Lanka, and is a contributing factor to the continuation of gross human rights violations. As the Civil Rights Movement of Sri Lanka pointed out,² the gruesome murder of some 28 inmates detained at Bindunuwewa rehabilitation centre in October 2000 was a powerful reminder of the killings of 52 Tamil prisoners in Welikada prison in July 1983. Nobody was ever prosecuted for the Welikada killings, giving the impression through its inaction that the state not only fails to protect its Tamil prisoners, but it also condones such killings. In addition, as stated in the chapter on “Integrity of the Person,” these killings also raised important questions about the fate of child soldiers who surrender. For the inmates at this rehabilitation centre, which came under the Ministry of Youth Affairs, included such “surrendeers” and others:

The future of child combatants and their chances of leading a normal life after they leave the LTTE has always been an issue of concern. Children who surrender to the armed forces live with the fear that they and their families will be punished by the LTTE. Further, as events at Bindunuwewa so poignantly show, their surrender to the state authorities does not ensure their own security.

Other issues relating to impunity that are raised in this volume include the persistence of electoral violence and intimidation, with the failure of the party authorities to act decisively against those within their ranks who are responsible. In relation to torture, by the end of 2000 there had been only seven indictments for torture and no convictions, despite the prevalence of torture in the country and the repeated pronouncements of the Supreme Court on the subject. Indeed, the UN Special Rapporteur on Torture noted in his report on Sri Lanka covering the year 2000 that “It remains evident that more prosecutions and convictions will be required in order

¹ Section 3 of the Prescription Ordinance, Nos. 22 of 1871 and 2 of 1889.

² “The Killing of Detainees and Surrendeers: Massacre at the Bindunuwewa Rehabilitation Centre,” CRM Statement 01/11/2000, 2nd November 2000.

significantly to affect the problem of impunity. In any event, personnel responsible for injury leading to compensation should be removed from office.”³

The nature of the government’s response to the reports of the three zonal and subsequent all-island Commissions of Inquiry into disappearances is also criticised. In the chapter on “Integrity of the Person” it is noted that some 557 cases have been brought against police and security forces personnel as a result of the Commission’s reports. However, the chapter on disappearances notes that the indictments served so far are mostly against junior officers, and that senior officers appear to be protected by colleagues responsible for investigation. In addition, the procedures involved are slow, duplicating much investigative work that has already been done, and the relevant authorities do not comply with the requirements of the Establishment Code by initiating disciplinary proceedings. It remains to be seen whether any convictions will be reached. As stated in the chapter on disappearances:

It would appear that the only cases in which there may be sufficient political will to ensure that justice is done are those few cases that have been the focus of intense local and international pressure – and even then, only very few of these have resulted in successful prosecutions. The notable example was the case of the schoolboys who disappeared in Embilipitiya in late 1989, where convictions were reached.

As the chapter’s author notes, “There is no substitute for swift and effective action against perpetrators irrespective of their rank or status. This will require changes in the law, administrative procedures and even the judicial structure to expedite the disposal of cases pertaining to disappearances.” He fears that without such action, the reports of these Commissions risk becoming a dead letter; historical documents of interest to historians rather than the stimuli for reform that their authors intended.

5. The media and censorship

The political polarisation so evident in parliamentary processes was echoed in the increasing antagonism during 2000 between the government and the private media, as well as in the confrontational approach the government adopted towards international organisations which monitor free expression issues. While the government became more restrictive in its approach to the media, with heightened censorship imposed in May followed by the closure of two newspapers, the media community became increasingly adversarial, challenging acts of censorship in court in several important cases. These issues are discussed in the chapters on

³ “Civil and Political Rights Including the Questions of Torture and Detention: Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to the Commission on Human Rights resolution 2000/43, E/CN.4/2001/66, 25 January 2001.

emergency rule, freedom of expression and fundamental rights jurisprudence. These chapters also refer to the memorandum sent to the Presidential Secretariat by the HRC which reviewed emergency regulation 14, issued in July 2000. The HRC's critique makes substantial use of international standards relating to media freedom and stresses the importance of ensuring that the media should be able to raise issues of public accountability. Such an intervention by the HRC marks a welcome new departure, in keeping with a recommendation on the HRC's work made in last year's *Sri Lanka: State of Human Rights* report, that the HRC should "make public statements about pressing and topical human rights matters."⁴

6. Fundamental Rights

In the area of fundamental rights jurisdiction, as the chapter on this subject discusses, the Supreme Court again produced some judgments that were "exceptionally innovative and pathbreaking." These included a judgment which recognised the right to sustainable development and the obligation of the State to respect the principle of inter-generational equity in exploiting natural resources;⁵ another "broadened the scope of constitutional protection to those detained under special laws."⁶ Importantly, these judgments relied considerably on international norms and stressed the need to incorporate international standards into domestic law.

7. Sri Lanka's International Human Rights Obligations

During 2000 Sri Lanka ratified several international conventions, most of which relate to international terrorism and hostage taking.⁷ Sri Lanka also ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict. Furthermore, Sri Lanka ratified ILO Convention No. 138 on Minimum Age for Admission to Employment of 1973. We welcome the ratification of these international instruments and hope that measures will be taken at the national level to give effect to these international obligations.

The government of Sri Lanka remains responsive to requests for information on reported violations submitted by such bodies as the UN Special Rapporteur on Torture, the UN Special Rapporteur on Summary and Arbitrary Execution and the UN Working Group on Disappearances, as their reports make clear. However, its treaty obligations require it to submit periodic reports reflecting the extent of its compliance with the various human rights treaties to which Sri Lanka is a State Party, including the Convention Against Torture (CAT), the

⁴ Law & Society Trust, *Sri Lanka: State of Human Rights 2000*, (Colombo, 2000), p.315.

⁵ *Bulankulama & Others v The Secretary of Industrial Development & Others*, SC Application No 884/99 (F.R.).

⁶ *Weerawansa v The Attorney General*, SC Application No. 730/96.

⁷ For a full list of these conventions see Schedule I.

International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention for the Elimination of Racial Discrimination (CERD). Sri Lanka is overdue in submitting reports under each of these treaties, as the table below shows:

	Date Due	Report
CAT	1.2.99	Second periodic report
ICCPR	10.9.96	Fourth periodic report
CEDAW	4.11.98	Fifth periodic report
CERD	20.3.01	Tenth periodic report
ICESCR	30.6.00	Third periodic report

It is to be hoped that these omissions will be rectified by submitting the reports due. The reporting process provides an opportunity for the thorough review of law and practice in relation to international norms, and for the identification of priority areas for reform. As the chapters in this volume show, there continues to be a great need for reform in Sri Lanka across the whole spectrum of internationally recognised human rights. The reporting process could be used to contribute to this cause, if undertaken with a genuine will for reform.

While the government remains tardy in fulfilling its reporting obligations and implementing the reforms that scrutiny of earlier reports has required, various institutions within Sri Lanka are increasingly drawing on international law norms in framing their interpretations and recommendations for Sri Lankan law, including the Supreme Court and the HRC. Indeed, as explained in the chapter on "Fundamental Rights Jurisprudence,"

*Increasingly ... the Supreme Court has, particularly in fundamental rights judgments, referred to international human rights standards as interpretative aids. But a direct pronouncement that international law can be transformed **either** by Parliament or by the express recognition of superior courts is a crucial breakthrough, enabling international standards to be used to expand the parameters of constitutional protection of fundamental rights." This could be interpreted as both offering exciting potential for reformers and a challenge to the government. For if the government does not take up the reins of reform itself to ensure fulfilment of its international human rights obligations, might it be that the superior courts will gradually try take on this task themselves?*

Reporting Procedure Under United Nation's Treaty Bodies

*Rukshana Nanayakkara**

The reporting obligations which are contained in Part IV of the covenant are designed principally to assist each state party in fulfilling its obligations under the covenant... .. in accordance with the letter and spirit of the Covenant, the processes of preparation and submission of reports by States can and indeed should serve to achieve a variety of objectives.

The first objective which is specially relevant to the initial report is to ensure that a comprehensive review is undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant. The second objective is to ensure that the State party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or not being enjoyed by all individuals with its territory or under its jurisdiction. The third objective of the reporting process is to enable the Government to demonstrate that they have taken action at policy level to fulfill the obligations in the covenant. The fourth objective of the reporting process is to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies. The fifth objective is to provide a basis on which the State party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant. The sixth objective is to enable the State party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights. The seventh objective is to enable the Committee, and the States parties as a whole, to facilitate the exchange of information among States and to develop a better understanding of the common problems faced by States and a fuller appreciation of the type of measures which might be taken to promote effective realization of each of the rights contained in the Covenant.¹

The objectives laid down by the UN Committee on Economic, Social and Cultural Rights under General Comment No.1 relating to the reporting system by state parties are basically aimed at the full realisation of all the obligations enumerated in the Covenant. These principles are applicable to all reporting systems under the UN treaty bodies as they all aim at the full

* Researcher, Law & Society Trust.

¹ Reporting by State parties: 24/02/89, CESCR General Comment 1, Third session, 1989.

realisation of their obligations. Each treaty body under the UN system requires the state parties to submit reports to the supervisory bodies formed under them within a specified period after the convention in question entered into force for the country concerned.² Further, they are bound to submit further reports whenever the supervisory body so requests.³

The UN Committee on Economic, Social and Cultural Rights has clearly stated that this reporting procedure is not merely a procedural matter in fulfilling a State party's obligations towards the supervisory body. On the contrary, it serves to achieve a variety of objectives under the UN system, the essence of which is to make an impact on the enjoyment of rights at the national level.

The first objective is to ensure that a State party undertakes a comprehensive review of national legislation, administrative rules and procedures, and practices, in order to ensure the fullest possible conformity with the obligations under the covenant. The aim of the initial report of the State parties is based on this objective and they are supposed to discuss all constitutional, legal, administrative, judicial and other procedures in relation to the rights specified in the respective treaties. Further, they can highlight the factors which may impede the practical realisation of the rights in the covenants.

As submitting an initial report is a mandatory requirement under the Covenants, all State parties which have ratified them have to take steps to fulfil this requirement. However, when ratifying a convention states have the option of entering reservations to it. When reservations have been made, the initial reports produced by the state parties will not cover the areas subject to such reservations. For example, a number of crippling reservations have been made to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Most of these reservations are on substantive provisions of the treaty which affect to the progress of the convention. Nevertheless, this initial report provides a substantive overview of the situation in states and no state can make reservations to any treaty, which violate the essence of it. Some treaties have explicitly stated that no crippling reservation can be made to such treaties, which violate the essence of it. For example, the Committee on the Rights of the Child has given priority to four rights in the Convention where it considered that reservations to these four rights by any state party are unacceptable.⁴

² This report is known as the initial report. All treaty bodies except the Committee on the Convention on the Rights of the Child, require the state parties to submit their reports within one year after ratifying the conventions. The period in the CRC for the publication of the initial report is two years.

³ These reports are known as periodic reports.

⁴ The rights prioritised by the Committee are: the rights of children to non-discrimination (Article 2), to life, survival and development (Article 6), to participate in decisions that affect them (Article 12), and to have their best interests to be a "primary consideration" in all actions concerning them undertaken by public authorities or private social welfare institutions (Article 3).

In considering an initial report of a government the committee does not analyse the report as vigorously as a periodic report. The initial session of a government is used mainly to introduce the government to the committee procedures and establishing a dialogue between the two institutions. Nevertheless, this does not mean that it prohibits any party from commenting on initial reports if they are so interested. A government's initial appearance often caps a protracted ratification campaign within the country concerned and NGOs and media may be especially interested in their government first appearance.⁵

The second and the third objectives deal with a regular monitoring of the actual situation of each right enumerated in the covenants and providing a basis for governments in elaborating clearly stated and targeted policies for implementing the provisions of the covenants. These evaluations and policies are normally enumerated in the periodic reports of the governments. In evaluating the conditions in a particular state the Committee specifically mentions that the state should pay its attention to those groups which are disadvantaged and vulnerable. As the evaluation process is potentially time consuming and costly, any state party can seek international assistance if they are unable to carry out the reporting process by themselves. Further, if a state fails in its evaluation due to these reasons it should indicate in its report the necessity of international assistance that it requires in the process. A proper evaluation of the status of a country is necessary as policies are adopted based on these evaluations.

These two objectives highlight that recognising the real situation in a country as well as implementing the policies in addressing those issues are two important areas in the process of realizing the rights in a particular convention. The supervisory bodies inspect the implementation of these two objectives when a state party submits its report to the Committee concerned. However, most state parties do not fully comply with these objectives, as it is not mandatory to submit periodic reports. A large amount of state reports are due under various treaties. As no provision is available to censure the delinquent states, the supervisory bodies merely note the reports that are overdue from state parties in their annual report.

Various systems have been adopted by the six treaty bodies in dealing with this problem. The Human Rights Committee (HRC) and the Committee against Torture met representatives of states whose reports are overdue and released a list of countries with long over due reports at a press conference in 1996. The Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Economic, Social and Cultural Rights (CESCR) notify the most delinquent governments (from seven to fifteen years overdue in meeting their reporting obligations) that, unless the Committee receives more timely information, it will consider their compliance with treaty obligations based on other reports and relevant summary records. This approach has been

⁵ See Sandra Coliver and Alice M Miller, (Ardsey, N.Y. Transnational Publishers, 1999), "International Reporting Procedure" in Hurst Hannum (ed), *Guide to International Practice*, 3rd ed., p 190.

modestly successful in encouraging the delinquent states to submit their reports. The chairpersons of the treaty bodies recommended that all treaty bodies adopt this procedure when other remedies such as the provision of technical assistance have been exhausted.⁶ Further, in respect of overdue reports the CESCR negotiates with the party concerned as to when the report will be presented. Nevertheless, if the state party fails to submit a report the Committee will designate one of its members to report on the country without the benefit of any state input.

These procedure which are consistent with the objectives of the Committees are important as they help the parties interested in the reports to get an idea how the state in question had utilized its available resources at the national level in fulfilling its obligations under the relevant treaties.

Once a state party has presented a report to the Committee, it is important to scrutinise it, as state parties tend to give various excuses in their reports for alleged human rights violations. The fourth objective of the Committee is the necessity for a wide-ranging discussion on government policies to facilitate public scrutiny of reports. This disseminating process of a report enables the parties interested to make their comments on a particular report. The participation by NGOs in the process is an important one as all treaty bodies welcome reports from NGOs. Due to the public accessibility of treaty bodies, individuals, national and international media and national and international NGOs can participate in the process. While the treaty bodies do not require the governments to take part in the process at this stage, most governments send representatives to respond to questions on their reports.

During the government's participation, it is given a chance to present comments on their country report and committee members offer their own observations on the report as well as on the state's efforts to comply with the treaty obligations. The unanswered questions put forward to the representatives of a state party are usually dealt in the next periodic report of the state concerned. However, if the answers given by the state representatives are particularly inadequate, they may be asked to submit answers to the UN secretariat within a shorter period of time.

But the practical situation which occurs at the meetings of UN treaty bodies, is that the officials who are sent to answer questions fail to respond to the questions. This implies that certain issues are remained unanswered where the state parties are neglecting the application of some of the obligations under the treaty bodies at the national level. However, the participation by various groups in the reporting system allows for an acute scrutiny of a specific report presented by a state. The first report of the United States to the HRC in March 1995 focused the attention of a number NGOs and other groups who are vigilant about the activities of the state. This type of participation

⁶ *Ibid*, p 187.

is important for the process as the committees in formulating their questions to state representatives rely on the information provided by NGOs, the press, international organisations and specialised agencies. The information provided by national NGOs and the media can be useful in this regard as they have a better picture of the government's behavior at the national level. For instance, the participation of NGOs during the CERD's examination on China's report in its August 1990 session demonstrated the potential for influence. NGOs had submitted thorough and well documented information about Tibetan victims before and during the session. As a result, members were well informed and able to ask incisive follow up questions from the Chinese government and when they found the Chinese's governments answers to be inadequate which led to an unusually animated discussion. Such discussions enabled the rest of the world to get a picture of the situation in Tibet.

Often, the governments officials take part in the reporting procedure are not fully aware of the Committee's comments on their countries. Therefore, the participation by NGOs in the reporting is significant as they take the opinions of the Committees to the national level. These activities can be much stronger if the national NGOs have better links with international NGOs. The activities of many UN treaty bodies are not widely known, and only publicity can increase their impact. International NGOs should increase their efforts to help national NGOs to submit information to attend relevant meetings of the UN treaty bodies, as well as publicise comments and recommendations of the Committees when a session has been concluded.

The fifth objective is to provide a basis on which the state party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realisation of the obligations contained in the Covenant. It is necessary to have some specific bench marks or goals in this regard to evaluate a state party's performance under a treaty. However, it is equally important to have national or country specific bench marks in evaluating states as global bench marks may have a limited value because the situation at the domestic level varies from country to country, without digressing from the international standards. These targeted goals can be made more effective if state parties are fully committed to fulfill their treaty obligations. However, as the opinions adopted by the supervisory bodies are not legally binding, state parties tend to consider these opinions leniently.⁷ As no proper follow up actions are carried out by the UN treaty bodies, the full realisation of the treaty obligations at the national level does not take place. The delay within the Committees to present their opinions on a state party report too contributes to the effectiveness of the system.

The sixth objective aims to enable state parties to develop a better understanding of problems and shortcomings which impede the realisation of the rights recognised by the covenant. This

⁷ For example, Article 9(2) of CERD states that the Committee may make suggestions and general recommendations based on state reports received.

objective can be met only if state parties are willing to give effect to the recommendations of the committees and to fulfill their reporting obligations on time. As the recommendations of the treaty bodies are not legally binding under international law, most of the state parties consider fulfilling these obligations as a mere routine matter. Normally, the country rapporteurs can monitor their countries' response to the recommendations, but no sanction can be imposed for non compliance.

The seventh objective is to facilitate the exchange of information among state parties and to help develop a fuller appreciation of both common problems and possible solutions in the realization of the rights contained in the covenant. This objective too can be better realised if state parties adhere to the reporting procedures and they share their experiences with other states.

Negative Aspects

Some of the negative aspects of the reporting system have negated the realisation of the above objectives. The limited time allocations for the sessions is a major problem in the system as it does not allow for any lengthy discussion between the experts and the NGOs participating in the session. Most of the time the state representatives who respond to the questions of the experts take the opportunity to evade further questions by giving long-winded answers. The experts who are appointed by the state parties to the committees do not have adequate time to devote to the work of the Committees, as they are not engaged in these activities full time. Recently some of the countries have queried the competence of the experts in the Committees. The government representatives too are often badly briefed or unable to answer the questions put to them. Some of the scholars have pointed out the lack of gender dimension in the composition of the experts in the Committees.

Conclusion

The reporting system under UN treaty bodies has not received the same attention as the work of Human Rights Sub Commission of the Commission on Human Rights. The treaty based committees offer particularly good for a for examining those countries whose human rights record is among the worst or whose political influence protects them from close scrutiny in the diplomatic fora. With greater NGO involvement and coordination in supplying information with national organisations and publicising committee discussions the treaty bodies could increase their capacity to draw attention to violations and promote the concrete improvement of human rights.

Sri Lanka and the Global Experience

*Rasika Mendis**

1. Introduction

Economics of transnational capitalism seems to have reached its zenith with the advent of globalisation. Features of such capitalism - increase in international trade, the rise of transnational corporations, the increase in capital flows across borders, and the internationalisation of production - have been fueled and facilitated by immense advances in technology and a 'global' economic and political mindset. The 'catch words' of the last few decades, such as 'integrated economies,' 'liberalised trade,' and 'enhanced competition,' reflect this mindset and have become rules for survival in a globalising world.

Amidst this global phenomenon of an integrating world economic sphere, has emerged a debate with its own sequencing of catch words, such as 'level playing fields,' 'fairplay,' 'marginalisation,' and 'equity with growth.' Basically, expressions that voice concern and attempt to address whether the process of globalisation affords the same opportunities to all alike or whether it benefits some at the detriment of the others. Developing countries are at the forefront of this debate and may need to speak louder in order to **equitably** benefit from the seemingly irreversible trend of globalisation.

In this paper it is sought to highlight a few issues relevant to Sri Lanka with a perspective of the prevalent global order, by focusing in particular on the Free Trade Zones of Sri Lanka, and how they are **impacted** by the operations of transnational corporations.

2. Sri Lanka and Liberalisation

Globalisation has been defined as the "present historical process of further integration of the world economy through trade, investment, and global movement of capital."¹

The contribution Sri Lanka makes to the entirety of international trade is perhaps miniscule, and the foreign direct investment (FDI) Sri Lanka attracts ranks amongst the lowest in the world. However, since initiating a process of liberalisation in 1977, there has been significant success in adapting to the pro liberal policies of greater reliance on the market, and liberalisation of trade,

* Attorney at Law, Researcher, Law & Society Trust.

¹ See Dr. Jayadeva Uyangoda, *Daily News*, 22nd July, 1998. "Impact of Globalisation on the SAARC Workforce and the Struggle to Change Course."

and the levels of FDI within the country have increased by a large percentage over a period of time. The shifts in policy and the resulting structural adjustments that were made were reflective of the response to an emerging pattern of economic globalisation.

The Investment Programmes that were initiated by the Government at the time established the first Free Trade Zone (FTZ)² at Katunayake. The Government sought to diversify the structure of exports and expand industrial exports, as part of the reforms that were being implemented. In addition to the fact that at one time the whole country was declared a free trade zone, the number of zones within the country has grown to around nine. In addition, Sri Lanka has about 84 industrial parks.

The Greater Colombo Economic Commission, the predecessor to the present Board of Investment (hereinafter referred to as the BOI), was established to promote export-oriented industrialisation and was entrusted with the supervision and control of the FTZs. The policies applicable to the FTZs are based on BOI guidelines. The BOI has the power, amongst others, to establish and operate export processing zones; and grant eligible enterprises with fiscal incentives.

Today the export industry has increased in value to US\$2450 million - six times to that of the value in 1989.³ Prominent among the export industry is the garments sector. The income from apparel exports grew from US\$ 1,058 million in 1993 to US\$ 2,099.9 million in 1998, registering a growth of 82.7 per cent.⁴ Significant to the growth in the export industry is the impressive influx of FDI that was attracted by the climate of investment that was created after liberalisation, ranging from a maximum of 2.02% of the GDP in 1993.⁵

Correspondingly, exports as a percentage of the GDP grew from 18.2% in 1977 to 29.5% in 1996. The average rate of approximately 10% for export growth was faster than the growth rate of world exports. The **composition** of exports underwent remarkable changes, to include 73% of industrialised products in 1996 as opposed to 14% in 1977. The textile and apparel industries have contributed significantly to the structural changes in the composition of exports, and accounted for 63% in 1996 against 9% in 1970, and 32% in 1980.⁶ It currently represents 54% of total exports and 71% of Sri Lanka's total industrial exports.⁷

² Free Trade Zone (FTZ): An area demarcated by regulation where commercial, service and industrial activities are conducted and are given certain incentives as detailed in law.

³ See *Kelly Dent*, "Law and Reality in Sri Lanka's Garment Factories," *Tie Asia*.

⁴ Analyses - Presidential Secretariat, April 10, 2001 (number 26).

⁵ Statistics taken from Tilan Wijesinghe, "The Impact of FDI on Industrialisation," *Daily News*, 17th July 1998.

⁶ *Ibid.*

⁷ *Supra* n. 4.

Thus, the scale and inflow of FDI has impacted on more than the growth of exports, and as was intended, diversified the industrial base. A case is made for market friendly liberal policies and investment schemes that open up doors to foreign participation. The BOI records (in 1997) that companies with foreign equity participation accounts for 68% of total exports (by BOI companies) and 85% of non-apparel industries. The year 2000 saw a further growth in the manufacturing sector. In the face of a precarious economy and a defence expenditure amounting to 5.6% of the GDP, the export industry is undoubtedly an anchor that keeps the country in course.

However, the significance of the growth in the export industry, and its impact, has undermined and thrown into imbalance a whole host of crying issues that carry immense social implications. Much has been said about these issues in the past, but practical measures to counter their adverse effects have been minimal. Some of these issues include:

- The applicability of labour laws in FTZs;
- The vulnerability of women FTZ workers⁸ of being sexually harassed;
- The conditions of work;
- Wage rates and overtime;
- The applicability and the effective use of Codes of Conduct.⁹

While these issues manifest themselves as immediate problems, to effectively address them in the long term may require the analysis of the wider picture from within which they stem. This may entail looking into:

- The operations of transnational corporations (TNCs);¹⁰
- The mechanisms of trade that are adopted;
- The attitudes of the institutions and organisations that are involved;
- The regulatory role of international organisations, and
- The role and responsibility of the state in resolving these issues.

3. The Impact of Transnational Corporations

It is primarily important to have an understanding of the significance and operation of TNCs in today's context of globalisation. Progressive economic integration and international trade saw

⁸ 80% of the workers within the Free Trade zones are single women.

⁹ **Code of Conduct:** A document that outlines basic labour rights and minimum standards that a transnational company agrees to make applicable in all locations of production.

¹⁰ **Transnational Corporation:** A corporate entity whose operations transcend international boundaries such that production and distribution of goods or provision of services are conducted internationally.

the emergence of the TNCs. The impact of TNCs in today's context, however, goes beyond the sphere of economics and extends to the social and political aspects of a nation. Spear headed by a global ideology of a world without borders, and backed by advanced technology, TNCs have grown to become international entities of large financial magnitude that control an extensive labour force. Statistics reflective of this are as follows:

- The number of TNCs expanded from 7000 in 1970 to 53000 in 1998;¹¹
- TNCs have over 450,000 affiliates worldwide;¹²
- TNCs account for 80% of the total world investment;
- Half of the world's largest economies are TNCs;
- 500 TNCs control 70% of global trade, and 30% of the world GDP;
- 1% of TNCs account for 50% of the world FDI.

Market saturation in the country of origin (the 'home' country) propelled TNCs toward internationalisation, in the pursuit of new markets (in 'host' countries), and in an attempt to maximise profits by cutting costs in labour and production. The growth and expansion of TNCs, while enhancing the integration of world economies, has also affected a 'diminishing role of the state'. TNCs can be perceived as entities that function parallel to the state, in terms of its social and political impact. Prominent areas reflective of this are:

- That economic development is not determined solely within the bounds of the nation state;
- The restructuring of labour at an international level, such that the labour force in a particular country constitutes only a segment of a diverse and complex force, which may present problems in addressing labour concerns at a corporate level;
- The limited ability of nations to regulate the functions of TNCs, and
- The influence that TNCs exercise on the formulation of policies within the host state.

Much of the 'affiliation' Sri Lanka has with TNCs is through the garment industry. A complex network of TNCs affect and influence the operations of this very export oriented industry. It is very rarely that a major TNC will operate directly within Sri Lanka. Rather, dealings are made through an 'international garments subcontracting supply chain' (hereinafter referred to as the 'supply chain').

¹¹ UNCTAD Investment Report, 1998.

¹² Information given by Forum Asia, Thailand.

Some of the types of TNCs that operate within Sri Lanka may be termed retailing TNCs, such as those that produce labels and brand names, and contract to develop products (Wal-Mart, Nike, Gap, Tommy Hilfinger); and manufacturing TNCs.

The supply chain, mentioned above, comprises a whole host of 'middle people' such as buying houses, buying agents, manufacturing TNCs, joint ventures and the like. A retailing TNC, for instance, will not establish its own factory in Sri Lanka, but will subcontract with independent factories through the 'supply chain'. A factory may at a given time subcontract to produce brand labels for a number of retailing TNCs.

In the light of the different types of TNCs that are involved in the production of a particular item, and the complexity of the contracting involved in the supply chain, it is often difficult to identify a particular product with a particular TNC. For instance, a manufacturing TNC that contracts with a number of factories around the world through the supply chain, does not necessarily own the 'label' of the product they are manufacturing. Therefore, the process of 'tracing back' to the TNC that is ultimately responsible for the working environment of the employment they generate is somewhat complex and may go beyond the conventional rules of contract law.

4. Free Trade Zones and the State

The presence of TNCs, and the inflow of FDI as outlined above have undoubtedly benefited the Sri Lankan economy, in the short term at the least. However, some of the issues surrounding the FTZs remain unresolved and sometimes unaddressed. While the BOI assumes responsibility for the supervision and control of investment of the FTZs, it is the ultimate role and responsibility of the State to ensure that basic labour rights such as the right to a proper working environment, the right to fair wages, and the right to bargain collectively or form trade unions, are maintained within the FTZs.

Working conditions, for instance, fall short of standards prescribed by the International Labour Organisation. It was recently pledged by the Government then in power, that it would take measures to improve working conditions within the FTZs: "it is the bounden duty of the Government to ensure the welfare, comfort and remedy the grievances of the female¹³ employees...."¹⁴ These measures may require the Government to go beyond the provision of basic facilities, and ensure that corporations operating within the FTZs meet with these labour standards.

¹³ *Supra* n. 8.

¹⁴ Speech made by the Minister of Women's Affairs at a ceremony to lay the foundation stone for a women's hostel in the Biyagama FTZ, *Daily News*, 14th August 2001.

Another area of concern within the FTZs is the assumption that labour laws do not apply within these zones. While it is not legally recorded as such, workers within these zones have very limited access to labour tribunals and labour courts of the country. The BOI has attempted to redress worker grievances by an independent process of conciliation; but this attempt is perceived on the part of the workers as not being objective, in the light of the fact that the BOI is primarily a promotional body. Further, such a conciliatory process does not have legal validity.

The State has also been slow in recognizing the right of FTZ workers to collectively voice their grievances – in other words, the right to organise and form unions.¹⁵ To allow the right to collectively voice one's grievances is perceived as an impediment to the growth of an investor market. The sustenance of this basic human right is not seen as being conducive to creating a platform for negotiation that would, in turn, contribute to the long-term growth of a healthy work environment. It must be reiterated that the State is, in the face of the dominant TNCs and the like, still the entity in charge of the realisation and progressive development of socio-economic rights. It is necessary to seek out, in the context of internationally integrated industry, a balance between the economic and social interests of the country.

It is pertinent to note that despite the wages in the FTZs being relatively higher than those outside, there is a dearth of labour in the FTZs.¹⁶ The Government was contemplating 'importing cheaper labour' to fill in capacities and generate export orders, as the vacancies are impeding the efficiency of the export industry.¹⁷ Given that the wage system in existence falls short of the concept of the 'living wage'¹⁸ expounded on by the United Nations, and Sri Lanka has a problem of unemployment, it may have been far better to think in terms of promoting better working conditions in order to resolve this problem in the long term. The perception that comes through at most times is that pressing economic concerns of the moment makes developing countries such as Sri Lanka lose a sense of 'planning' for future development.

5. Free Trade Zones and the Transnationals

An assessment of labour conditions within the FTZs also entails looking into the responsibility that must be attributed to TNCs in maintaining labour standards. As outlined above, TNCs are global entities that are structured to function independently of the states they operate within. The complexity of TNCs and their rapid expansion and growth renders mechanisms of state

¹⁵ FTZWU: The Free trade Zone Workers Union was formed on 23rd January 2001 after a lengthy process of organising workers and first forming a Joint Association of workers and Worker Councils of the Free Trade Zones.

¹⁶ Vacancies amount to about 12000.

¹⁷ The *Sunday Times*, 24th September 2001.

¹⁸ **Living Wage:** A wage that is calculated on a 'cost of living index' and which reflects the cost of living. The 'minimum wage' that applies to industries at present is based on the concept of the 'basket of goods' implemented in 1952.

regulation inadequate to effectively regulate the operations of TNCs. With progressive internationalisation of trade, international institutions and organisations have sought to make TNCs responsible for the manner in which they operate. Public outcry by consumer groups around the world against some of the exploitative methods used by TNCs¹⁹ in the international production of goods, have led TNCs to adopt Codes of Conduct that are applicable to their organisations. These codes specify basic labour rights that are to be implemented, and minimum standards that a company and suppliers of that company agree to abide by. However, they are voluntarily adopted by TNCs and are not legally enforceable at either the national or international level. Therefore, the ethics of a TNC are determined by factors such as, pressure from consumer groups, trade unions, and NGOs, and the working culture a particular TNC wishes to permeate for better consumer relations.

Many of the by-laws and Codes of Conduct of TNCs that are in operation in Sri Lanka, give emphasis to effecting labour laws of the country, in setting out the labour standards applicable to the corporation. This makes no material difference to the present situation, as successive governments have shown reluctance in putting together an apparatus within the FTZs, through which labour laws may be enforced and labour rights realised. The pressure exerted on these corporations by civil society groups toward the proper implementation of Codes of Conduct are minimal and ineffective. External monitoring of these Codes are conducted on the basis of interviews with management, and data that is already recorded, and reports do not reflect whether these Codes are in actual fact being implemented. Further, the mechanisms for monitoring TNCs lack transparency and prominence.

Civil society groups in Sri Lanka and South Asia may well be able to play a bigger role in this regard. The global experience of NGO intervention in these matters have provided positive results. NGOs around the world (especially in developed countries) work in partnership with TNCs in formulating Codes of Conduct and working towards policies of good governance. While NGOs cannot dictate terms to TNCs, partnerships between them prove constructive for several reasons, including:

- NGOs are impartial entities that are better able to draw the attention of corporations to human rights concerns;
- They are in touch with diverse communities and can reflect their views on corporate behaviour and human rights;
- NGOs are becoming increasingly networked, and are able to link up with other civil society groups in campaigning either for or against a particular cause or business, and

¹⁹A well-known campaign for public outcry was against the working conditions in Indonesia of workers in the supply of NIKE products.

- Effective external monitoring of TNCs by NGOs creates a culture of accountability, towards the stakeholders of a business including the consumer.

Civil society groups in Sri Lanka have much to learn in making themselves more vibrant and dynamic in attempting to monitor any adverse consequences that globalisation may have on Sri Lanka.

6. The Role of International Organizations

Organisations such as the World Trade Organisation (WTO) and the United Nations Conference on Trade and Development (UNCTAD), have attempted to implement a uniform standard of labour practices at the international level at the meetings of their respective forums. The main mechanism for doing so was by linking labour standards with trade. Such a linkage was received with mixed reactions, as the perception of 'basic labour standards' differed between nations, especially between the developed and the underdeveloped. While the latter saw these initiatives as protectionist measures on the part of the developed nations, the former came through as seeking to protect the humane interests of all persons, globally.

If in the case an international agreement is created to link international trade with labour under the auspices of the WTO, it follows that the enforcement machinery of the WTO would be availed of to sanction a member state that is deemed not to comply with any of the standards set therein. While these sanctions may be quite legitimate, it is to be noted that the sole focus of the sanction is still the 'state'. International organisations that seek to set standards for trade in a globalising world, must take into account the hard fact that globalisation entails a transcending of borders and the emergence of very powerful 'stateless entities.'

Countries such as Sri Lanka beholden to TNCs for economic survival may be subject to sanction at the risk of lax labour standards, but whether the violation of these same standards by a TNC warrant the same, or similar sanctions at the least, is not yet defined. Are Codes of Conduct to be the only checks on TNCs?

7. Conclusion

The task ahead is immense. Developing countries around the world need to pull together and push for 'equitable treatment' that safeguards them from global marginalisation. Doing this may entail:

- A clear understanding of emerging patterns of production, labour and trade in the international arena, and the corresponding problems that may arise from making the necessary structural adjustments at the national level;
- Demarcating the parameters of the responsibility that must be attributed to the nation state within a globalised environment. This involves a practical assessment of factors that may be seen as beyond the control of a particular state;
- Joining in partnership in an attempt to assess the need for international institutions that can regulate global entities (such as TNCs), and how such regulatory mechanisms can be synchronised with state policy and strategy;
- A study of how strategies for human development may be integrated with the processes of globalisation in a particular social and cultural context.

If we (in Sri Lanka) decide that 'globalisation is good for us,' it has to be for more reason than accessing world markets, and boasting a high percentage of FDI. It is pertinent to quote the following words taken from the UNDP Report of 1999.²⁰

*Private Capital flows, particularly foreign direct investment, have helped developing countries to grow and to enhance human development. But again, **the link between foreign direct investment, growth and human development is not automatic.** And empirical evidence suggests that short-term speculative capital makes for financial volatility and **little long-term** contribution to an economy. (emphasis added).*

Globalisation must be checked at every turn by 'indicators of human development.' This may entail a host of different approaches to development by different nations; whether it is to be growth led development or development led growth or any other combination. In Sri Lanka it may simply mean assessing every opportunity that opening up to globalisation presents, in terms of 'planning' for both human and economic growth. Human growth needs an understanding of human rights and of its realisation. The above outlines a 'few' of those rights that needs to be looked into in the context of the Sri Lankan FTZs.

AKNOWLEDGEMENTS:

Ms Kelly Dent, "Transnational Information Exchange – Asia" (Tie asia), for information on Free Trade Zones and the operation of Transnational Corporations in Sri Lanka.

²⁰ National Responses to make globalisation work for Human Development, UNDP Report, 1999.

TOWARDS MORE EFFECTIVE PROTECTION OF HUMAN RIGHTS DEFENDERS*

*M.C.M. Iqbal***

Introduction

The General Assembly of the United Nations adopted the Declaration on the Rights and Responsibility of Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms by resolution 53/144 of 9th December 1998. With the adoption of this Declaration it became clear that the UN is committed to acknowledge, promote and protect the rights of human rights defenders (HRDs) all over the world. This legitimised the work of HRDs. However, there arose a necessity to set up a mechanism at the regional level to promote and protect HRDs. Consequently by its resolution 2000/61 of April 2000, the UN Commission on Human Rights requested the Secretary General to appoint a special representative to report on the situation of HRDs all over the world. In August 2000 Ms. Hina Jilani of Pakistan was appointed Special Representative of the Secretary General on HRDs.

The Mandate

The Mandate of the Special Representative as set out in the UN Commission on Human Rights resolution 2000/61 is as follows:

- (a) To seek, receive, examine and respond to information on the situation and the rights of any one, acting individually or in association with others, to promote and protect human rights and fundamental freedoms.
- (b) To establish co-operation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the Declaration; and
- (c) To recommend better strategies to protect human rights defenders.

Any interested person, group, non-governmental organisation, inter-government agency or government organization with reliable knowledge of human rights violations of HRDs is encouraged to bring the relevant information to the attention of the Special Representative, in

* A report on the Workshop on Human Rights Defenders held on 17.11.2001 and the Consultative Meeting in Bangkok on 30.11 & 1.12.2001 organised by the Law & Society Trust and Forum Asia respectively.

** Consultant, Law & Society Trust.

writing.¹ The information required includes the identity of the alleged victim, the alleged violation, the perpetrator(s) and the steps, if any, taken by those in authority. The Special Representative will transmit information which she considers credible and reliable to the government concerned and request that it responds with its comments and observations.

It is stated in paragraph 3 of this resolution that the Special Representative is requested to “report on the situation of the HRDs in all parts of the world on possible means of enhancing their protection in full compliance with the Declaration.” She is also expected to submit an annual report to the General Assembly. The resolution urges all governments to co-operate with and assist the Special Representative in the performance of her task. The mandate authorises the Special Representative to seek information and allows her to request invitations from Governments to conduct field missions, when the situation so demands.

Links with NGOs

The importance of the non-governmental organisations as a source of information on human rights violations in general and the rights of HRDs in particular has been recognised by the Special Representative. She hopes to establish links with human rights centres and institutions not only to provide the information she requires but also to draw from their experience and expertise to develop the scope of her mandate.

The Law & Society Trust took the initiative and conducted a workshop of local human rights NGOs to identify the problems and issues pertaining to their work in Sri Lanka. Based on the matters that came to light at this workshop a background paper was prepared for presentation at the consultation in Bangkok in late November 2001 organised by Forum Asia.

Twenty eight HRDs from different parts of Sri Lanka, including Jaffna, Batticaloa and Trincomalee, participated at this workshop. Many of them had worked in the area of civil and political rights including the issues of impunity and disappearances. Others work on a variety of women’s rights issues. Some were lawyers who represent persons charged under the prevention of terrorism legislation. Several participants belonged to organizations that provide support services to internally displaced persons. Some had acted as liaisons between the State and victims of human rights abuses

Dr. Radhika Coomaraswamy, UN Special Rapporteur on Violence Against Women and Dr. Deepika Udagama, UN Special Rapporteur on Globalisation and Its Impact on Full Enjoyment of

¹ The Special Representative of the Secretary-General on Human Rights, United Nations, 1211 Geneva 10, Switzerland. Fax: (41 22) 917 90 06.

Human Rights, spoke at this workshop. They referred to the UN Declaration on Human Rights Defenders and the mandate of the Special Representative and the means of accessing her.

The discussions held at the workshop brought to light the variety of experiences and issues faced by the HRDs in Sri Lanka. Representations were made at the workshop to the effect that HRDs in the North were exposed to the risk of being penalised by many actors including the militants, the state forces and ex-militants who were now working in collaboration with the security forces. A participant from the North put it succinctly as follows: "In the North the HRDs do not face any threats. They are merely dealt with straightaway if found to be a problem to any of them. There is no one to complain to if such a thing takes place and nobody is concerned of our security."

Issues faced by HRDs

Following the discussions at the workshop many of the issues faced by the HRDs were identified by the participants. They are briefly set out below:

- a) The lack of a systematic response to threats faced by HRDs. In some parts of the country this is exacerbated by the lack of any support structures.
- b) Several instances of threats to the personal security of HRDs were mentioned at the workshop. In this respect the situation in the North is rather precarious as even newspaper reporters are under threat not to publish incidents of violations of the rights of individuals. Almost a year ago a prominent newspaper correspondent who persisted in issuing news of such incidents was shot dead during curfew hours allegedly by one of the militant groups that is authorized to carry weapons in the North. This has happened in spite of an army check point being close to the place of this incident.
- c) More subtle types of pressures faced by HRDs include constant criticism regarding their choice of work. This is especially so with respect to activists working on women's rights.
- d) Women face the unique problem of having to struggle to be recognised as HRDs. They are also targeted in a more personal manner.
- e) Misuse of telephones by the authorities including phone tapping and for threatening or otherwise abusing HRDs. This has resulted in HRDs being forced to waste time at face-to-face meetings so as to ensure secure communication.
- f) There certain areas of the country classified as uncleared areas. Such areas are not accessible to anyone including NGOs and media personnel. Consequently, the people in those areas are denied assistance from NGOs and publicity in cases of violations of their rights. These are areas within the control of the LTTE and any

threats to HRDs or violations of human rights in these areas remain undocumented.

- g) Internal travel restrictions on local HRDs have greatly hampered their work. For instance, an HRD working in the South cannot visit Jaffna without a clearance from the military. Certain parts of the country are out of bounds for media personnel.
- h) Another matter that was brought to the notice of the workshop was the difficulty HRDs faced in accessing government statistics or data. This was pointed out as another form of harassment of HRDs and also created problems relating to documentation.
- i) The failure to adequately investigate extra judicial killings in the North also adds to the problems of documentation. For instance, bodies of persons with gunshot injuries are frequently dumped into the hospital mortuary and at the inquest the verdict is often given as 'shot and killed by unknown persons'.
- j) There had been instances of professionals such as judicial medical officers especially in the conflict areas being pressurized to produce reports according to the wishes of service personnel. In order to circumvent this, in important cases, bodies are transported to Colombo for medical examination, thereby adding to the delays in investigations and trials.
- k) Instances of trade union leaders being subjected to harassment by managers and proprietors of institutions because they fight injustices to the workers, was brought to the notice of the workshop.
- l) There had been instances of visas being refused to HRDs from abroad. Sometimes visas are issued with restrictions such as the areas they could visit or the time is strictly limited to prevent them from meeting anyone else other than the purpose for which they were allowed to come in.
- m) International NGOs who rely on government clearance face unusual obstacles. For instance, a reputed organisation like Amnesty International (AI) was given permission to come to Sri Lanka but was not allowed to employ the interpreter of its choice in the North because on an earlier occasion the interpreter had assisted some persons to contact AI in spite of the military wanting to deny them that opportunity.
- n) The Constitutional requirement that legal action should be taken in respect of violations of fundamental rights within thirty days of the violation has prevented many HRDs from helping victims of fundamental rights violations, especially those in the North, which is not easily accessible to the South where legal action has to be instituted (i.e. in the Supreme Court).

The participants also focused on two issues with respect to the Declaration and wished to have clarification from the Special Representative on two issues; the definition of a human rights defender; and the protection afforded to human rights defenders from activities of non-state actors.

Consultation in Bangkok

The Asian Forum for Human Rights and Development (Forum Asia) organised the consultative meeting with the Special Representative and human rights NGOs in the region. At this consultation the problems faced by the HRDs in the region were discussed. The paper containing the issues that were raised at the workshop in Sri Lanka by the Law & Society Trust was presented at the meeting. Representatives of many human rights organisations from 18 Asian countries and peoples groups attended the meeting in Bangkok and urged governments in the region to improve their human rights records and to protect HRDs from violent reprisals.

In a press release issued by Forum Asia on the occasion of the convening of this meeting it was stated as follows:

Respect for rights is always an important hallmark of a civilised society; unfortunately, in much of Asia the rights situation has only grown worse since September 11, as concerns with national security and terrorism are being misused as a pretext for silencing critical voices. The lives of many of our colleagues are literally at stake; courageous rights defenders seeking to uphold basic human dignity in some cases are being labelled terrorists or terrorist sympathizers. We are working together with members of the international community to find new ways to put an end to the threats and attacks. We therefore welcome the willingness and commitment of the Special Representative of the U.N Secretary General on Human Rights Defenders to attend this Consultation to improve protection of defenders in the Asia Region. We urge all States in the region to follow her example and meet their obligation to help secure the full and effective protection of human rights defenders and their work.

Ms. Hina Jilani, the UN Secretary General's Special Representative said that she is conducting regional consultations with regard to the manner in which she could assist human rights defenders in keeping with her mandate, to formulate better strategies to enable human rights NGOs to communicate with each other and with the UN Special Representative and to work more closely with her. She called for increased international co-operation to end attacks on individuals and groups striving to defend and promote human rights in the region.

Conclusion

The Law & Society Trust hopes to maintain its contacts with the human rights organizations that participated at the workshop. Some of the documents pertaining to this subject collected at the Consultation in Bangkok are to be shared with them. It is hoped to link up with the other NGOs in the region and establish contacts with a view to share information and make them available to the UN Special Representative on HRDs who has expressed her desire to work more closely with NGOs.

HUMAN RIGHTS DEFENDERS

Submission of allegations to the Special Representative of the Secretary-General on human rights defenders

Overview

At its fifty-sixth session, the Commission on Human Rights requested the Secretary-General to appoint a Special Representative on human rights defenders (resolution 2000/61 of 26 April 2000). Ms. Hina Jilani (Pakistan) was appointed in August 2000. Her work on the mandate, which began in September 2000, is based largely on the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms" (General Assembly resolution 53/144 of 9 December 1998).

The Declaration recognises that the definition of a human rights defender must be broadly understood as encompassing also those striving for the promotion, protection and realisation of social, economic and cultural rights, as well as civil and political rights. As the Special Representative, Ms. Hina Jilani, stated in her first annual report (E/C.4/2001/94), she believes that the ambit of her mandate is broad enough to include, for example, those defending the right to a healthy environment, promoting the rights of indigenous peoples, or engaging in trade union activities. The mandate of the Special Representative of the Secretary-General on human rights defenders, as set out in Commission on Human Rights resolution 2000/61, is:

- (a) To seek, receive, examine and respond to information on the situation and the rights of anyone, acting individually or in association with others, to promote and protect human rights and fundamental freedoms.
- (b) To establish cooperation and conduct dialogue with governments and other interested actors on the promotion and effective implementation of the Declaration; and
- (c) To recommend strategies better to protect human rights defenders.

Any individual, group, non-governmental organisation, intergovernmental agency or government organisation with reliable knowledge of human rights violations against human rights defenders is encouraged to bring the relevant information to the attention of the Special Representative in writing. The Special Representative will transmit information she considers credible and reliable to the government concerned and request that it respond with its comments and observations.

Because of the wide range of groups and individuals that send allegations to the Special Representative, those submitting complaints are encouraged to provide information regarding their own human rights work.

While there is no formal procedure for the submission of allegations, certain details must be provided to enable the Special Representative to bring the appropriate cases to the attention of the Governments concerned as soon as possible. The information required includes the identity of the alleged victim, the alleged violation, the perpetrators(s), and the steps, if any taken by the authorities. Complaints must be made in writing and sent to:

The Special Representative of the Secretary-General on Human Rights Defenders
Office of the High Commissioner for Human Rights
United Nations
1211 Geneva 10, Switzerland
Fax: (41 22)917 90 06

Guideline for submissions

The following outline should be followed, to the extent possible, by those wishing to submit allegations of violations against human rights defenders.

1. Information regarding the alleged victim

- Full name
- Age
- Sex
- Profession or occupation
- Place of residence (or origin, if relevant to the violation suffered)
- The victim's affiliation, if any, with an organisation, association or group engaged in human rights work
- Name of the organisation, association or group
- Name of the person heading the organisation, association or group
- Nature of human rights work the individual performs.

If the alleged violation is against an organisation:

- Name of the organisation
- Nature of the human rights work/activities it is engaged in

- Territorial scope of its work (national, regional, international)
- Affiliations with other human rights organisations, if any
- Name of person(s) heading the organisation.

Additional Information on the history of the work the individual or organization has performed, if submitted, may be helpful in assessing the complaint/allegation.

2. Nature of the alleged violation

All relevant information regarding the violation allegedly committed against the human rights defender, or organisation, association or group, including:

- Date
- Place
- Description of the events/incident
- Nature of violation suffered or threatened.

The information must indicate the connection of the alleged violation to human rights activities performed.

If the violation involves or includes the arrest and/or imprisonment of an individual or group of human rights defenders, information is required on:

- Identity of the authority involved (individual and/or ministry and/or department)
- Date and place of arrest
- Any circumstances under which the arrest was made that are relevant to the violation
- Nature of charges, if any, and the legal statute invoked
- Potential penalties the individual or group faces
- Place of detention, if known
- Term of detention
- Information on the provision of access to legal counsel and family members
- Steps taken to seek administrative or judicial remedy, nature of the remedy sought, legal entity before which proceedings have been taken, and stage or result of such proceedings.

If the defender is being prosecuted in the courts of any activity in defence of human rights or related activity, or as a consequence of such activity:

- The date and location of the trial
- The court hearing the case
- The relevant appeal procedures
- The penalties the group or individual faces

3. Perpetrator(s) of the alleged violation

- Name(s), if known
- If they are members of the security forces, their rank, functions, the unit or service, etc. to which they belong
- If they are members of a civil defence group, paramilitary or other forces or an armed group, details on whether or how these groups relate to the State (e.g. cooperation with the State security forces, including information on chains of commands if available, state collusion with or acquiescence in their operations)

4. Steps taken by or on behalf of victim or organisation to seek a remedy at the national level

All relevant information regarding:

- Whether a complaint was filed
- If so, when, where, by whom and before which authority.

5. Steps taken by the concerned authorities

- Whether or not an investigation or inquiry into the alleged violation has been initiated and/or concluded
- If so, by which authority, ministry or department of the Government
- Progress and status of the inquiry or investigation at the time of submission of the allegation
- Whether or not the investigation or inquiry has resulted in charges or other legal action
- If so, the reason why the result is unsatisfactory
- Measures, if any, taken to protect person(s) under threat.

6. The violation alleged may not be the result of one incident or event, but may be a continuing violation owing to conditions, policies, practices or laws that obstruct the promotion, protection and/or realisation of human rights.

In such cases submissions must include:

- All relevant information regarding such conditions, policies, practices or laws
- The nature of the prejudice suffered by an individual or groups working for the defence of human rights because of the above
- Methods used for impeding the work of human rights defenders by adopting the above
- Agencies (State, non-State) employed for harassment, intimidation and/or injury to human rights defenders because of these conditions and laws or in the course of such practices and policies
- Possible measures that can be taken to remedy the situation
- Any action taken by individuals or groups at the national level to reverse the conditions, policies and practices or for reform of the laws that are contrary to the rights recognised by the Declaration.

This guideline is not final. Comments and suggestions are welcome.

Call for papers/articles

If you are interested in writing on issues of human rights, constitutional reform law, the economy or civil society issues, or if you have an important document for publication, please send them to:

The Editor
LST Review
Law & Society Trust
No. 3, Kynsey Tererace
Colombo 8

An electronic version is preferred.

A small honorarium will be paid for original articles.

LST retains the right to publish or not to publish any articles or documents submitted to the Editor.

Subscriptions

The annual subscription rates of the LST Review are as follows:

Local : Rs. 800 (inclusive of postage)

Overseas :

South Asia/Middle East	US\$ 32
S.E. Asia/Far East/Australia	US\$ 37
Europe/Africa	US\$ 42
America/Canada/Pacific countries	US\$ 47

Individual copies at Rs. 75/- may be obtained from the Trust, No. 3, Kynsey Terrace, Colombo 8, and BASL Bookshop at No. 153, Mihindu Mawatha, Colombo 12.

For further details, please contact

Law & Society Trust
No. 3, Kynsey Terrace
Colombo 8
Tel: 691228, 684845
Fax: 94 1 686843

Now Available.....

SRI LANKA: STATE OF HUMAN RIGHTS 2001

- * Integrity of the person
- * Emergency Rule
- * The phenomenon of disappearances
- * Freedom of Expression and the Media Freedom
- * Fundamental Rights Jurisprudence
- * Migrant Workers
- * National Child Protection Authority
- * Rights of Franchise
- * Internally Displaced Persons
- * Fair Trading Commission

Inquiries: Law & Society Trust
No. 3, Kynsey Terrace, Colombo 8
Tel: 684845, 691228