



UPR Submission – SRI LANKA

April 2008

A. Background and methodology

The *International League for the Rights and Liberation of Peoples* (LIDLIP) has closely followed the human rights situation in Sri Lanka for some twenty years and in numerous oral and written statements presented to the Commission on Human Rights and to the Human Rights Council; it regularly expressed its concern about its deterioration. In this longstanding endeavour it has closely cooperated with a great number of organizations from which first-hand information were obtained.¹

At the moment when the Government has renounced the six year old Ceasefire Agreement (CFA) and renewed war that has already claimed 70.000 dead, hundreds of thousands Internally Displaced Persons (IDPs), and has led to the militarization of society and a breakdown of the rule of law accompanied by massive violations of human rights and humanitarian law, is threatening, the top priority must be to deal with the underlying causes of the civil war rooted as it were in the decade-long collective discrimination of the Sri Lankan Tamils. It is argued that responsibility for this worsening situation is partly due to the treatment of peoples in multinational states in international law. The violations of specific rights in Sri Lanka are also addressed. Drawing largely on the thematic reports by UN Special Rapporteurs and reputed Human Rights Organisations, the systemic character of these violations, crystallized in the notion of 'culture of impunity', as ingrained in the present politico-judicial institutions is detailed. The question of the credibility and legitimacy of the Human Rights Council is raised against the background of Sri Lanka as an elected member charged with upholding and spreading human rights the world over not only does not conform to those standards, but officially denies its obligations under international law.

B. Legal and institutional framework

Date of admission to UN: 14 December 1955

	Geneva Conventions of 12 August 1949	28 Feb 59
CESCR	International Covenant on Economic, Social and Cultural Rights (CESCR), which is monitored by the Committee on Economic, Social and Cultural Rights	11 Sep 80
CCPR	International Covenant on Civil and Political Rights (CCPR), which is monitored by the Human Rights Committee	11 Sep 80
CCPROP1	Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1), which is administered by the Human Rights Committee	03 Jan 98
CERD	International Convention on the Elimination of All Forms of Racial Discrimination (CERD), which is monitored by the Committee on the Elimination of Racial Discrimination	20 Mar 82
CEDAW	Convention on the Elimination of All Forms of	04 Nov 81

	Discrimination against Women (CEDAW), which is monitored by the Committee on the Elimination of Discrimination against Women	
CEDAWOP	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	15 Jan 03
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which is monitored by the Committee against Torture	02 Feb 94
CRCOPAC	Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict	12 Feb 02
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	01 Jul 03
CRC	Convention on the Rights of the Child	11 Aug 91
	Convention on the Rights of Persons with Disabilities	30 March 07

C. Violations of specific rights

Self-determination

Based on historical and socio-political evidences, several organizations have always argued that the Sri Lankan Tamils fulfil all the criteria to qualify as a people. Not only a common culture, language and religion but also a typical traditional settlement area, a shared history and democratically expressed will characterize them as a nation. Moreover, they share the experience of a people that has been systematically and collectively discriminated against, even persecuted in independent Sri Lanka. The majority community of Sinhala Buddhists has effectively appropriated the government machinery and changed the constitution to its advantage so much so that the State has ceased to represent all the peoples living on the island. The split of society along ethnic lines became apparent with the outbreak of civil war in 1983 with Tamils fighting for their independent state in order to find at least security, social justice, equality and economic well-being.²

Non discrimination and equality

Despite being party to the two 1966 Covenants and having ratified the four Geneva Conventions, successive governments of Sri Lanka are responsible of collective punishment of Tamils, of having indiscriminately bombarded schools, refugee camps, and churches, of having blocked food and medical supplies to the population in the Northeast.³

On January 3, 2008, the Government of Sri Lanka (GoSL) announced the abrogation of the 2002 Ceasefire Agreement (CFA) with the Liberation Tigers of Tamil Eelam (LTTE). Having routed the LTTE in the East in July, the present GoSL feels emboldened to pursue a *purely military solution*, as all of its predecessors have eventually done. Neither the estimated 70.000 dead, nor the close to a million IDPs⁴ or the over 650.000 Tamil expatriates, nor the massive destruction in property already caused in the war that began in 1983.

Right to life, liberty and security of the person

Over the years, the reports of the various Special Rapporteurs as well as different NGOs have identified three principal types of human rights violations: (a) disappearances; (b) torture and extrajudicial killings in custody; (c) impunity. Disappearances⁵ are a particular scourge of the country. Going back to the period 1987-1991 when according to official figures 30.000 people disappeared, the practice has resurfaced particularly after the

resumption of hostilities since mid-2006. According to the then Foreign Minister every 5 hours a person is abducted, mostly in Colombo and in the Northeast. The victims are essentially young Tamil men (65-70 %), but also parliamentarians, journalists, clergymen and academics are not spared. Many of the enforced disappearances are carried out anonymously by security personnel coming in a 'white van' without number plates or by proxy through the paramilitary Karuna faction operating in the East.⁶ Carried out in broad daylight, they are part of the government's strategy to intimidate, if not terrorize the local Tamil (speaking) population wholesale suspected of supporting the LTTE. As to extrajudicial killings, the most glaring recent examples are the execution-style murder of 17 humanitarian workers of Action Contre la Faim in August 2006 probably by Security Forces⁷ and of the youngsters in Bindunuwewa in an organized attack by a Sinhalese mob with the camp guards looking on. In both cases, either the investigations yielded no results, or the accused were eventually discharged because of 'lack of evidence'.⁸

Right to an effective remedy and to a fair trial

The collapse of law and order is part of a system characterized by the concentration of power in the executive and the important role of the security forces. They have led to authoritarian government and arbitrary rule, undermined the rule of law and due process, politicized the judiciary and established a culture of impunity. There is not only the extraordinary powers invested in the 'executive presidency'⁹, there are also the Emergency Regulations which have been in force practically uninterruptedly for decades on end. Reintroduced in August 2005 and reinforced by the even more draconian Prevention and Prohibition of Terrorism and Specified Terrorist Activities Act of December 2006, behind the façade of legality they practically allow for the criminalization of any activity and the arrest of anyone without a warrant for about 12 months without charge who is deemed to act 'in any manner prejudicial to the national security or to the maintenance of public order, or to the maintenance of essential services'. Already in violation of Sri Lanka's obligation under the ICCPR Article 10, the law enforcement authorities are provided immunity for any act performed 'in good faith'. As if this were not enough, they are allowed to dispose of bodies in secret. In violation of the legal provisions, unauthorized detention centres continue to be maintained, abductions are not reported to courts, including the National Human Rights Committee, nor are relatives informed, records kept, or places of detention revealed. Another example is the non-implementation of the 17th amendment to the condition which provides for the establishment of a Constitutional Council to nominate independent members to various government commissions, such as the police, public services, including the judiciary and superior courts, or the Human Rights Commission, etc.

Internally displaced persons

The plight of the the IDPs and civilian population has worsened over the last 20 months due to the resumption of hostilities. There are more IDPs now, approximately 850 000, than at the beginning of the Ceasefire Agreement (CFA). A breakdown of IDPs figures shows that:

- There are approximately 350 000 pre-CFA conflict displaced;
- There have been 350 000 IDPs displaced in 2006-2007 due to the resumption of hostilities;
- And there are approximately 150 000 tsunami IDPs still in temporary shelters.

The humanitarian situation, which is reaching crisis proportions, and obstacles and difficulties faced by the humanitarian community, must be seen in the larger context of the attacks on Tamil civil society, the media and the Tamil community in large. The GoSL security forces and affiliated paramilitaries have participated in:

- restricting the flow of humanitarian relief and access to IDPs,

- indiscriminate shelling and bombardment of IDP Camps, schools, and communities, which at the times seemed designed to displace the population prior to a military offensive and,
- attacks on and harassment of humanitarian aid workers and projects.¹⁰

In 2007, a system of military Identity Cards (for individuals as well as for families) was instituted and many tasks that were the responsibility of officials of the civilian administration were taken over by the army in Vakarai and Batticaloa. Reports from Jaffna also point to a similar process of issuing of military Identity Cards without which, residents have been told, their mobility will be severely restricted.¹¹

Impunity

Separation of powers, and independent judiciary is considered the hallmark of a democratic system, imperative for the implementation of human rights. As to Sri Lanka, a politicization of the administration of justice is observed. Not only that constitutionally the independence of the judiciary is not guaranteed, a state of emergency has been in place most of the time giving extraordinary powers to the executive and the security forces. Whatever violation of Sri Lanka's obligation under international law, including the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has occurred, the systematic impunity of the security forces has variously been noted. There is disinterest in effective investigation as prominently illustrated in 2006 in the murder of 17 humanitarian workers of "Action contre la Faim" or the Commission of Inquiry into abductions, disappearances and extrajudicial killings.¹²

D. [Enhancement, improvement], difficulties and constraints

The war of liberation started in 1983 after a particularly bloody state-sponsored pogrom. Negotiations over peace and constitutional changes over the past 20 years invariably failed, because (a) whatever concessions the party in power promised to the Tamils were totally rejected by the political opposition as a betrayal of the Sinhala nation, and the sanctified integrity of Buddha's own country; (b) no government was ever prepared to decentralize power beyond mere municipal rights, in addition equally extended to all territorial entities, never as group rights in recognition of the multi-national, multi-ethnic character of the society. Questions of redress, of security of person and property for the Tamils, of equal development and social justice were never raised, as were the question of the abolition the unitary state in favour of a federation or even a con-federation outright rejected.¹³

The LTTE-initiated ceasefire of 2002 followed by peace negotiations raised high hopes because of the involvement of international actors, i.e. Norway as 'facilitator', as well as the Quartet, that included the US, the EU, and Japan which promised increased aid conditional on progress at the negotiating table.

There have been delays, inappropriate projects and misappropriation of funds (corruption) due to the Sri Lankan political bureaucracy being centralized in Colombo, while making decisions for the Northeast. Funds for post tsunami reconstruction never materialized at the level expected. The government constantly changed systems and institutional structures as did the international community, making it difficult for NGOs to operate. As mentioned above, there are more IDPs today than at the time of the ceasefire. Attacks such as indiscriminate shelling of IDPs' schools, camps and communities, attacks and harassment of humanitarian aid and workers restrict the flow of humanitarian relief.¹⁴ Essential foods items and livelihood opportunities are in decline. In the push to reclaim the East, over 300 innocent civilians were killed. There has been destruction of houses, plantations, crops, livestock, agricultural and personal vehicles, farming and fishing equipment. The impact is more intense amongst women, children¹⁵ and disabled which are vulnerable to abuse.¹⁶

E. Recommendations to the Sri Lankan government / authorities

The official reports submitted by different Committees, by the various Special Rapporteurs on torture, on extrajudicial, summary or arbitrary executions, etc. as well as the statements by numerous civil society organizations accredited to the Human Rights Council, (AI, HRW, ACHR, Pax Christi, LIDLIP) have over so many years pointed to the massive human rights violations in Sri Lanka, invariably followed by a string of well-minded recommendations. Yet, there has been no improvement on the ground. Neither have any meaningful constitutional changes better in line with the country's multinational, multiethnic citizenry been undertaken, nor had any basic institutional reforms been made to end impunity, to re-establish the rule of law. If the GoSL were earnestly committed to an end of the war and the observation of human rights:

- It would have readily allowed the representatives of the UN, not least those charged with the promotion of human rights, access to all areas and institutions of the country, gladly accepted advice and offers of assistance.
- Instead of sidestepping, it would have implemented the 17th amendment to the constitution aiming at a separation of powers a basic requirement to re-establish the rule of law, and given the Commission of Inquiry true independent powers as first steps in ending the culture of impunity.
- It would have headed the repeated calls for the installation of an International Human Rights Commission to monitor in order to pursue the perpetrators of human rights violations in the country, not least among the security forces.

F. Recommendations to the international community

The war has marred and perturbed all development efforts within the country for over two decades. Alongside the many efforts that are taking place to respond to people in need and to seek for more conclusive and sustainable responses in development and emergency contexts, there is a silent but very grave string of human rights violations occurring across the country. The districts of Jaffna, Batticaloa and the Vanni region in particular have suffered from consistent violations, and as a result, constant senses of fear and unknowingness have been planted in the minds of people.

Primarily, there is a great need for the people's participation in development through a full-partnership approach which can guarantee transparency and accountability and in which the community organizations are genuine partners with the international agencies and State. The programmes should not be limited to skills training but also involve raising awareness regarding access to rights and services.

Secondly, no aid from the international community under the cover of aid to development should be granted to the Sri Lankan government for the risk of being diverted to purchase weapons and continue warfare.

G. Proposals for follow-up

The *International League for the Rights and Liberation of Peoples* (LIDLIP) strongly supports the establishment of a field office of the High Commissioner on Human Rights (OHCHR) in conjunction with a mandate of a Special Rapporteur of the Human Rights Council to monitor the situation on the ground.

ANNEXES

(N.B.: The following 4 papers are drawn from *Humanitarian action in the “undeclared war” in Sri Lanka*, Centre for Just Peace and Democracy, October 2007, 104 pages.)

Setting the scene: Humanitarian Action in the ‘Undeclared’ War in Sri Lanka

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INTRODUCTION

Humanitarian Action in the undeclared war in Sri Lanka or for that matter in Sri Lanka at any time, can not be divorced from the Human Rights situation in the country and especially in the Northeast just as human rights and humanitarian laws overlap in many instances. For example Rev. Father Thiruchelvam Nihal Jim Brown who disappeared on 20.8.2006 and is suspected to have been killed by the Sri Lankan Navy, was involved in rendering humanitarian services to his 800 strong Allaipiddy parish people. Take the case of 17 ACF humanitarian workers in Muthur killed execution style by the Sri Lankan Army according to SLMM on 4th August, 2006 after the LTTE forces left Muthur, (one of the 17 persons who lost his life in this incident was the brother of one of the five students who were killed at the Trincomalee beach on January 2, 2006 believed to be by the Special Task Force of the Sri Lankan Police on 2nd January, 2006). Their right to life, a very fundamental human right has been violated.

The beginning of the present humanitarian crisis of this magnitude in Sri Lanka dates back to April 2006. This is apart from the humanitarian disaster that was Tsunami that struck Sri Lanka on 26th December, 2004, when in Trincomalee District some 973 persons were killed, around 4382 injured and 10 reported missing and some 126,676 persons from 30,545 families were displaced. I was accompanying the Danish Ambassador based in New Delhi who was on a day's visit to the Muthur East LTTE liberated areas to see the Tsunami affected areas and to hand over officially the large water purifying Equipments to TRO. He was accompanied by the Danish technicians who were to install and commission these equipments and the Danish National T.V. Crew. The Italian and Danish Governments were the exceptions at that time to hand over relief material directly to the NGOs in the LTTE liberated areas in defiance of a request not to do so by the GOSL.

The Ambassador was looking for visuals, huge structures, many storied buildings that have collapsed due to the Tsunami in Sampoor, Ilankaithurai Muhathuwaram areas in Muthur East to be filmed by the Danish TV cameramen to be shown to the Danish viewers over the weekend (that was a Friday), to collect funds from them for the Tsunami affected people of Sri Lanka. I told him that these areas have not seen any development since independence in 1948 and if he wants such visuals he has to go to the South.

In fact an unpublished paper by a Director of SIHRN, called "Challenges in the reconstruction and development of the 'NORTHEAST', draws attention to the massive humanitarian crisis that existed immediately after the CFA was signed. He presents statistical evidence to demonstrate that there are acute shortages in human resources. For example in the health sector 41%, education and administration 75%, teachers 45%, public sector upto

80% and for local Govt. accountants 40 out of 41 positions are vacant. Unemployment in the Northeast is 25% compared to 10% in the South. With regard to infrastructure he demonstrates that 25 % of health institutions are completely destroyed or non functional. 15,000 classrooms in 500 schools are completely destroyed or damaged. He draws attention to the problems encountered and suggests that a highly centralized authoritarian approach undermines the local capacity and prevents innovative changes. He argues that planning is conducted as if it refers to a different planet These figures are provided to give a sample of the extent of the crisis" (Quoted from , Kumar Rupasinghe (ed), Negotiating Peace in Sri Lanka: Efforts, Failures and lessons , Volume 2,Foundation for Co- Existence, Colombo, 2006)

SOME INCIDENTS:

In fact in Trincomalee on January 2, 2006 five innocent students were killed on the beach as stated earlier. This was followed by the murder of the journalist S.Sugirtharajan,in front of the office of the Governor for Northeast, a retired Naval Commander. He has taken the photographs of the bodies of these students that appeared front page of the national Tamil daily 'Sudaroli'. On April 7th, 2006, Mr.Vigneswaran, a political activist who was nominated to become a Member of Parliament to fill the vacancy created by the murder of Mr.Joseph Pararajasingham, Member of Parliament, a Human Rights defender and a founder member of our organisation, inside the Batticaloa Church on the Christmas eve, the previous year.

In or around April 25, 2006 said to be in retaliation for the attempted murder of the Commander of the Sri Lankan Armed Forces, Major General Sarath Fonseka, aerial attack from Kfir planes (made in Israel), Multi Barrel Rocket Launcher attacks (MBRACourtesy, Pakistan), from Naval Dockyard-Trincomalee and Artillery fire from Monkey Bridge Army Campwere carried out. The Gun Boats of the Navy started pouncing on the coastal areas of Muthur East. Multi barrel rocket attack went on for days starting in the middle of the night till 2am or 4 am and again in the morning or day time. Windows of our houses in Trincomalee were shudderring and making the heart patients and others in Trincomalee hospital to suffer.

This started the exodus and people in Muthur East started moving towards the south to Batticaloa District. A Report from the Office of the Resident Humanitarian Co-Ordinator of U.N. in Colombo dtd December 12, 2006, under the heading, UN DEMANDS PROTECTION OF VAHARAI CIVILIANS stated, "The United Nations is gravely concerned at the deteriorating prospects facing civilians in Vaharai as intense shelling continues for the fifth day in the area. An unconfirmed number of civilians are with dozens lying wounded at Vaharai hospital. Innocent civilians and school children suffered direct attacks on a school and private homes. In Trincomalee District some 2500 civilians left their homes and took refuge in Kantale. The United Nations is deeply concerned about indiscriminate shelling of civilian residential areas, leading to death, injuries and evacuation of communities to Kantale and sorrounding areas out of danger zones.

The Critical need of the moment is the protection of these desperate civilians. All fundamental rights being breached in areas like Vaharai and villages in Trincomalee District and it is imperative where civilians reside shelling stops and the civilian population must be granted full and unhindered freedom of movement away from military operations. The wounded need to be evacuated and assistance and protection to the population must be

guaranteed. Some 35,000 people remain trapped along a silver of land where government forces and LTTE are engaged in a military campaign....."

An Amnesty International report dated June 26, 2006 describing the difficulties for the IDPs in Sri Lanka stated amongst other things that, " The last two decades of internal armed conflict in Sri Lanka have been characterized by widespread displacement of the civilian population. The majority of them are from the north and east, the contested areas where most of the fighting has taken place. Because of the geographical concentration in these regions, the Tamil population has experienced by far the greatest displacement.... while many people were displaced by the fighting, displacement was also the result of a multitude of many other factors. Some left their homes to escape the widespread arrests, torture and disappearances, perpetuated by the security forces..."

UN Human Rights Committee's views In re Nallaratnam Singarasa, with regard to the amendment of certain provisions of the Prevention of Terrorism Act No:42 of 1972 as amended, which were not in accordance with the Human Rights norms were not followed by the Sri Lankan Government, the state party. Very few cases have been filed by the state under the Prevention of Torture and other cruel, inhuman or degrading Treatment or Punishment Act No:22 of 1994. None of the recommendations of the UN working group on past disappearances in Sri Lanka have been implemented by the Government according to Human Rights Educational Website. The Presidential Commission on Involuntary Removals and forced Disappearances in the Northeast presided by Late Justice Balakidnar made many recommendations in its report submitted to the President in 1997. Names of the Army Officers said to have been involved in these disappearances were given but no action has been taken to date. Sri Lanka was second only to Iraq in the number of persons forced to disappear. No action at all being taken against the perpetrators of these dastardly crimes have made these persons to act with impunity.

Professor Subramaniam Raveendranath, Vice Chancellor of Eastern University was abducted in the heart of capital Colombo in high security zone in front of BMICH where he has attended a conference. To-date he is missing and the so called investigations of the Police has revealed nothing. No suspects are ever produced in courts by the Police in any of these cases leading to the people to believe in the complicity of the Police in these offences. As Galtung states, "By signing and ratifying Human Rights Instruments a state makes itself doubly accountable to the U N Organs and to its own citizens. However what is happening in Sri Lanka has led Asian Human Rights Commission to state that, "All Institutions of the Rule of Law and democracy has have been dismantled in Sri Lanka creating a chaotic situation in all aspects of governance throughout the country."

The intentional forced displacement of the people of Batticaloa West (Paduwankarai) for the first time in their history during the three days from March 5th to March 8th,2007, when indiscriminate shelling of these areas took place from positions within the Weber Stadium Army camp in the heart of Batticaloa town adjacent to the Courts of Justice and Batticaloa Central College and Vincent Girls College has, according to Mr.S.Jeyanandamoorthy, Member of Parliament from Batticaloa District damaged 1000 houses, 103 schools, 107 Hindu temples,100.000 livestock and 17.000 acres of paddy fields. Around 153,000 people were displaced in this exercise and the temporary camps lacked basic amenities in addition to the presence of armed paramilitaries working with the Sri Lankan Armed Forces. It was ICRC, UNHCR, Care, Oxfam, World Vision and Ehed which rendered most of the humanitarian assistance.

Already 24 army camps and 5 Police stations have been set up thus highly militarising the area.

UNHCR GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT

It is pertinent to look at some of the above Principles enunciated consistent with the International Human Rights Law and Humanitarian Law.

According to Principle 7

Authorities should look prior to any decision requiring displacement for feasible alternatives to avoid displacement altogether.

According to Principle 8

Displacement shall not be carried out in a manner that violates the right to life, dignity, liberty and security of those affected.

(These Principles were not followed by the GOSL in the case of displacements that took place in the East due to the intentional and forced displacement of the people of the area by military action)

According to Principle 24,

(1) All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartially and without discrimination.

(2) Humanitarian assistance to IDPs shall not be diverted in particular for political or military reason.

(The field report of IMADR in December, 2006 noted that, "the ethnicisation of humanitarian assistance is perhaps the most obvious feature of this present round of displacement. The Sinhala families that were displaced were relatively few in number and their capacity to return and resettle is more than that of Tamils and Muslims. The situation in Kantale and surrounding areas highlights how the provision of humanitarian assistance has been used on ethnic lines as well, to propagate political agendas")

According to Principle 25:

(1) The primary duty and responsibility for providing Humanitarian Assistance to IDPs lies with the State

(2) International Humanitarian Organizations' assistance should not be seen as an unfriendly act or an interference with the State's internal affairs.

(Often GOSL and Armed Forces did not take up the above view. They also were of the opinion that the INGOs were pro LTTE and assisted the people in LTTE liberated areas more. The execution style killing of ACF humanitarian workers may be attributed to this fact. Further they harass more the local workers of the UN Agencies, ICRC and INGOs more than the non Sri Lankans and subject them to severe body check etc.)

According to Principle 26

Persons engaged in Humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

(During the Vaharai displacement only ICRC and UNHCR transport of relief items were allowed and even their lorries were stopped and returned first by the Army at the check point although clearance has been obtained by them from higher authorities)

RETURNEES:

The people who were internally displaced are being resettled now hurriedly perhaps with a political agenda to hold local government elections. Principle 28(1) Under Section 5 relating to Return, Resettlement and Reintegration, states that Right to return is Voluntary and according to 28(2), they have their right to full participation in the planning and management of their return or resettlement or reintegration.

It would seem that that these principles are not being adhered to. People from Muthur East villages have been taken in buses with Policemen stating that they are being taken to their villages but have been placed in temporary camps in the Muthur west. People from Poonagar in Muthur East were kept in a transit camp in Kiliveddy 6 km away from their village, built with the support of UNHCR. According to a Danish Council Report a family of seven lived in a 10 sq.metre room made of plastic tarpaulin without windows. Out of the 770 families accommodated ther in July, 2007, 150 families returned to Poonagar in August, 2007. His two cows are missing and so he has to solely depend on paddy cultivation for his future income. He can not cultivate until land mines and UXOs are removed.

In the meantime 28 villages of 12 Grama Sevaka (Village officers) divisions in Muthur East have been declared by a Government notification as High Security Zone (HSZ). The fundamental rights applications of four villagers from that area and Centre for Policy Alternatives (CPA) a highly respected Civil Group has been turned down by the Supreme Court and they have been effectively barred from returning to their houses. Their property rights have been violated. The Chairman of the Muthur East Displaced persons Welfare Society has stated that they are not ready to be resettled in any other areas as the Government is said to be taking steps to settle them in Kanguvely and Iralkuli, two other villages in Muthur west. It is said that a Buddhist Association was going to fund the building of 200 houses there and arrangements are under way to settle Sinhala people from south there thus changing the demographic pattern of the district.

The democratically elected Tamil Members of Parliament, Two from Amparai District, Four from Batticaloa District and Two from Trincomalee District who are in the majority of members from the East are unable to go to their constituencies due to threat to their lives from a para military organisation working with the Government Forces. They are not consulted in any of the resettlement or reconstruction work in their respective constituencies. The Government Agent of Trincomalee is a former Army General. In 204 years of the Kachcheri System (Civil Administrative system in Trincomalee) no Tamil has served as a Govt. Agent. The Governor of the recently demerged Northern Province is a former Navy Commander. The Governor of the Eastern Province is a former Assistant Superintendent of Police, Civil administration has since been fully militarised.

POSITION OF HUMANITARIAN WORKERS

44 Humanitarian aid workers have been killed between January 2006 and 6th August, 2007. Humanitarian Organisations working in the area has been reduced from 104 to 34. Very recently 'World Vision' which has built many schools in the Trincomalee District in addition many other humanitarian assistance has decided to quit from there. UN Under Secretary General for Humanitarian Affairs and Emergency relief co-ordinator, Sir John Holmes recently said,"Sri Lanka is amongst the most dangerous places on earth for humanitarian workers" and called on the government to probe civil war abuses and consider an International monitoring mission.

CONCLUSION:

Often when the negotiations fail the intensity of war between the parties to the negotiation increases resulting in severe humanitarian crisis. International Human Rights and humanitarian law as well as Guiding Principles on Displaced persons have to be followed fully if we are to avoid this situation.

Setting the scene: Humanitarian Crisis and the ‘Undeclared War’

Ms. Sunila Abeysekera

Executive Director, INFORM

As human rights defenders living and working in Sri Lanka, we are identifying the present moment as one in which there is a serious human rights and humanitarian crisis in the country. The nature of the crisis is so severe that it affects the lives of very many Sri Lankans, but in particular hundreds of thousands of people of all religious and ethnic communities who live in the north and east of the island.

Although the roadmap of the conflict in Sri Lanka is a contested one, and every attempt to put a chronology of events on record could be challenged, for the purposes of my intervention at this meeting I would like simply to refer to the period since April 2006 when the government launched its military offensive in the east, in the aftermath of the attempted assassination of the Army Commander by an LTTE woman suicide bomber.

From that time onward, the consistent and systematic military offensive in the east has led to massive displacement and resettlement, including forced resettlement, of hundreds of thousands of men, women and children, primarily Tamils who had lived in areas under the control of the LTTE. Both the government and the LTTE have shelled areas in which civilians are living, and have also engaged in acts of intimidation, harassment, assassination, abduction and disappearance in the north and east throughout this period. The involvement of other armed groups, in particular of the Karuna faction, and, more recently, armed Muslim groups, adds another layer of complexity to the situation.

The military offensive has taken place in the context of a series of events in the south of the island that have undermined democratic processes and weakened the capacity of national institutions to respond to the dual crises. Unconstitutional appointments to the National Human Rights Commission, the National Police Commission and to high levels of the judiciary have called the legitimacy and credibility of these institutions into question. The balance of power in the national Parliament has been altered by multiple crossovers and the most recent appointment of Basil Rajapakse, the brother of President Mahinda Rajapakse as a MP from the National List has reaffirmed fears regarding the centralization of political and decision-making power in the hands of the President and a small group of confidantes. The expulsion of a group of over 300 Tamil women, men and children from Colombo on June 7 and the subsequent round of denials of responsibility for the decision from various high-ranking members of the government serves as an indicator of the pervasive lack of accountability that prevails in the country.

The lack of investigations into alleged acts of human rights abuse by the law enforcement agencies and the denial of such allegations by responsible government officials has strengthened the culture of impunity and enabled continuous violations. According to our records, over 550 people have been the subject of extra-judicial executions in the 6 months from January to June 2007 and over 350 people have been abducted or have ‘disappeared’. The abduction of two Sri Lanka Red Cross workers from the Railway Station in Colombo in the late afternoon of June 4 2007 and the discovery of their bodies on the next day in a location about 60 kilometers from the city and the disappearance of the Vice Chancellor of the Eastern University are both well-known cases that point to the high level of insecurity and impunity that confront ordinary citizens of Sri Lanka today.

In addition, there have been consistent attacks on civil society organizations and on the media that create an environment in which no criticism of the prevailing situation can take place. Attacks on over 40 individuals, local staff members of various humanitarian and de-mining agencies, who have been killed in the past year. These attacks, combined with a range of bureaucratic processes have resulted in the serious curtailment of activities of humanitarian agencies who face restrictions placed on visas and work permits for expatriate workers, constant surveillance, challenges to their reports and accusations of being anti-government, LTTE sympathisers and terrorists. Sir John Holmes, the senior-most official of the UN humanitarian system who visited Sri Lanka this year was the most recent and most high level recipient of such treatment.

The military offensive in the east, which resulted in the displacement of many hundreds of thousands of people, led to a heavily militarized process of resettlement of those who had been internally displaced. For those of us who are concerned with the long-term and political implications of these rounds of displacement, there are qualitative differences in the resettlement that took place with regard to those displaced from Mutur in August 2006 and the resettlement of IDPs from Vakarai and Batticaloa west in the months from March to July 2007. In 2007, a system of military Identity Cards (for individuals as well as for families) was instituted and many tasks that are the responsibility of officials of the civilian administration were taken over by the army (in Vakarai) and by the STF (in Batticaloa west). Reports from Jaffna in the past weeks point to a similar process of issuing of military Identity Cards without which, residents have been told, their mobility will be severely restricted.

Security in the resettled areas of Batticaloa District is almost non-existent as far as the civilian population goes. There have been reports of several killings and abductions and in June a woman from the Batticaloa west area was reported to have been abducted, raped and murdered. Despite a quick government response saying there would be an inquiry in fact there has been no information available regarding any follow up to this case. In addition, people are without access to any form of livelihood and the issuing of rations is often sporadic. Although surveys of houses was conducted soon after resettlement for allocating compensation for losses of property and livestock during the period of displacement, in fact these communities have not received their due.

The re-opening of the A9 road which would facilitate the transport of goods and people between the south and the north remains a highly contested issue with the government of the checkpoints in the Vanni was an LTTE initiative. In these circumstances, the situation of civilians in Jaffna remains dire. There is almost no regular employment for those who do not work with the government in one way or the other. Regular curfews and cordon and search operations create further obstacles for people to maintain any degree of normalcy, and render people housebound due to fear. Transport and travel to and from the peninsula is controlled by the army, the navy and the LTTE and the limited options contribute to a very high cost of living. Abductions of University and senior school students has resulted in schools being closed due to student agitation in April and May while government servants including teachers who must report for work outside the peninsula have been protesting against such orders in view of their circumstances.

In the Jaffna peninsula, there have been regular killings and abductions attributed to the LTTE as well as to government forces. A particular ploy used by the army is that of keeping back the National Identity Cards of young men they subject to checking at check-points and ask them to report at the army camp later to pick the NIC up. There have been several reported cases of disappearances in such cases where the young men went to the camp to

retrieve their NICs. Another phenomenon has been that of young men in particular seeking protection from the office of the National Human Rights Commission in Jaffna and then being placed in 'protective custody' in the Jaffna prison. On September 11 it was reported that there were 71 such cases of protective custody in Jaffna prison, which is in fact not a prison as such but two houses that have been acquired by the government in Jaffna town. The houses have ten rooms and two toilets which must serve over 300 individuals. The children, women and men who stay there for their own safety must inhabit the same restricted space as other adults awaiting trial and those who have been convicted of crimes. In May following an outbreak of chickenpox in the prison, some of the persons who were there for their own protection opted to leave. Within a few days one of them was killed and most returned to prison.

The situation of conflict has also led to heightened tensions between Tamil and Muslim communities living in the East in close proximity to one another, as well as to clashes and conflicts among different Muslim groups in the east. Some strategic alliances between the Karuna faction and some of the Muslim armed groups create a dangerous precedent for inter'necine warfare.

The population shifts that have been observed in the east and in the Vanni due to the conflict have led to significant changes in demographic patterns in these areas. In addition, the alienation of land to the government by means such as the declaration of High Security Zones (Sampur), Special Economic Zones (Trincomalee town and its environs) and religious or archaeological sites (Amparai and Trincomalee) have also contributed to this phenomenon. The long term political and social implications of this situation have yet to be examined.

Overall, the present situation is one in which developing a clear vision regarding the future is extremely difficult. Political instability in the south combined with an increasingly authoritarian form of government and heightened reliance on the military and on a military resolution of the ethnic conflict dominate southern politics, while in the north and east the political and military hegemony of the LTTE is being challenged by the government and its security forces as well as by other political actors. The possibility of a return to negotiations and to a peace process becomes ever more distant.

Setting the scene: Humanitarian Crisis and the ‘Undeclared War’

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This paper will focus on the current situation in the Eastern Province in the context of Mahinda Rajapakse’s claimed victory over the LTTE in the region and his pledge to resolve conflicts and tensions therein through development under the auspices of the ‘180 Day Eastern Development Plan’.ⁱ The contention of this paper is that whilst the current landscape in the East is one of humanitarian crisis and endemic human rights abuses, the current focus on human rights issues, which whilst performing the essential task of exposing the authoritarianism and violence of the current regime, is insufficient to capture the cold calculations and reasoning in the intentions of the Sri Lankan State which has once again returned the logic of Sinhala colonisation. What we must additionally scrutinise and track is the logic inherent in the state’s current development strategy and how this demonstrates continuities with but also departures from the historical record of colonisation, reflecting the current regime’s navigation of the current global aid frameworks through a mixture of resistance to, competition with and ultimately control and cooption of donors and development and humanitarian aid agencies in order to achieve its aims. In the course of this focus we must also understand the dangers implicit in the pursuit of ‘securitised development’ and the way in which this process acts to depoliticise both the dynamics of conflict as well as their resolution.ⁱⁱ Whilst, securitised development suggests the militarisation of the development process, it also has wider implications that merit further exploration.

On the one, hand the securitisation of development refers to the manner in which, development has increasingly become a form of control over the conduct of populations considered within the terms of the discourse, as marginal or threatening to the socio-economic and political fabric of an increasingly globalised world. Thus we have seen a shift occurring from the 1970s onwards, from a situation in which development operated through the nation state system allowing a certain autonomy to developing world states (albeit in the context of Cold War allegiances) towards, firstly, increasing imperatives laid down for economic development (in for instance the structural adjustment programmes of the 1980s), and finally for imposing demands in relation to political governance and human rights issues which became hegemonic from the 1990s. As this reach into the developing world has expanded, those areas subject to conflict have increasingly been perceived within development discourse as problematic ‘borderlands’ wherein socio-economic and political factors have become intertwined in the reproduction of conflict and many developing world states have been adjudged weak, incapacitated, corrupt, subject to patronage, lacking in protection of citizenship and rights and riven by conflict and insecurity.ⁱⁱⁱ In this context of perceived lack in state capacity, civil society actors IGOs, INGOs, and NGOs have come to act as the footsoldiers of humanitarianism and development, forging a nexus between these actors and donor states residing in the shared assumption, implicit in the securitised development discourse that uneven development and under development in ‘borderlands’

ⁱ See SCOPP - ‘Sri Lanka’s East after Liberation: Prospects and Challenges’: http://www.defence.lk/new.asp?fname=20070922_04

ⁱⁱ See M Duffield - ‘Governing the Borderlands: Decoding the Power of Aid’ in *Disasters*, 2001, 25,4, 308-320 & ‘Social Reconstruction and the Radicalization of Development: Aid as a Relation of Global Liberal Governance’, *Development and Change*, 2002, 33 (5), 1049-1071

ⁱⁱⁱ Ibid.

results in conflicts which increasingly have global repercussions in the spread of conflict and its consequences such as the global flow of refugees and internal displacement at the local level etc. According to this discursive logic, development becomes a means of attaining long-term global security to the extent that development simultaneously operates as a security measure. Although this scheme of things suggests that “aid and politics have been reunited” in the current era due to these shifts,^{iv} it should also be noted that the securitisation of development also has the potential to depoliticise local landscapes and communities which become the objects and targets of development strategies stifling the channels for antagonism that are necessary for the longterm resolution of conflict.^v Indeed, development in this context, all too often becomes a solution imposed from outside in which local political articulation is papered over, an issue to which we will return after a brief focus on the background of development and colonisation in Sri Lanka.

The security/development nexus in Sri Lanka is not entirely new as the close connection between control of what the Sri Lankan State considered as unstable borderlands through militarized colonisation and irrigation projects demonstrates. It is also clear that development as it has evolved historically in the postcolonial period has itself acted as a dynamic in the reproduction of ethnic conflict. What occurred in the immediate aftermath of independence, as new ruling elites confronted the legacy of the colonial plantation economy and went in search of development strategies that would also secure their legitimacy and re-election was the eulogising and reproduction of the Sinhala small-holder cultivator through colonization schemes for the resettlement of predominantly Wet Zone landless farmers in Dry Zone areas of northern and eastern Sri Lanka.^{vi} In the Eastern Province, these resettlements were accompanied by new and/or renovated irrigation schemes, and a development discourse emerged in which the motifs of Sinhala Buddhist nationalism of the paddy field, temple and tank, key material elements of development, were interwoven and invoked a return to the glorious ancient past of Sinhala Buddhist hydraulic society in the Dry Zone, an infusion of development with religious overtones that is still significant in current conflicts over land and space in the East. The economic liberalization which occurred under the UNP regime of JR Jayawardene rather than challenging and reducing the overt nationalism of these development practices, tended rather to augment it to the extent that it deeply infused the foreign aidfunded Accelerated Mahaweli Programme which continued to pursue colonisation in an ever more aggressive manner in the context of the rising tensions and conflict between Tamil militants and the GoSL.^{vii} For their part bilateral and multilateral donors had little conflict sensitivity and were still willing to grant the Sri Lankan State considerable autonomy partly as a reward for the island’s early venture into structural adjustment and liberalisation. In this context, as we know, state-sponsored development became aggressively militarised, using colonists as ‘frontiersmen’ in the state’s nation and state building projects, a development that fomented ethnic conflict over land and space as well as blurring the divide between combatant and civilians.^{viii} The defence that such a form of development was

^{iv} M Duffield - ‘Governing the Borderlands: Decoding the Power of Aid’ in *Disasters*, 2001, 25,4, p.312.

^v See J Ferguson - *The Anti-Politics Machine: Development, Depoliticization and Bureaucratic Power in Lesotho* (University of Minnesota Press, 1994).

^{vi} M Moore – ‘The Ideological History of the Sri Lankan Peasantry’ - *Modern Asian Studies*, 23, 1, 1989. See also M Moore - *The State and Peasant Politics in Sri Lanka* (Cambridge, 1985).

^{vii} S Tennekoon – ‘Rituals of Development: The Accelerated Mahaweli Development Program of Sri Lanka’, *American Ethnologist*, 15, 2, 1988 & J Brow – ‘In Pursuit of Hegemony: Representations of Authority and Justice in a Sri Lankan Village’ *American Ethnologist*, 15, 2, 1988.

^{viii} R Hoole - Sri Lanka: the Arrogance of Power: Myths Decadence and Murder (UTHR[J], 2001 & Y Thangarajah - ‘Ethnicization of the Devolution debate and the Militarization of Civil Society in North-Eastern Sri Lanka’ in M Mayer et al (eds.) - *Building Local Capacities for Peace: Rethinking Conflict and Development in Sri Lanka* (Mamillan, 2003).

about “practical necessity” as opposed to a rampant form of demographic engineering, through colonisation and administrative and electoral changes, remains difficult to sustain but this claim is again an indicator of the depoliticisation inherent in the development field.^{ix} And it is this history that has also separated communities in the East as elsewhere that had once demonstrated considerable cultural, religious, linguistic, political and economic interdependence and sedimented layers and memories of distrust between communities and between communities and the intentions of state-sponsored development.

Into the 1990s the overt and authoritarian logic of this nationalist development discourse subsided as successive regimes from that of President Kumaratunga’s PA alliance onwards pursued a developmental strategy in which military defeat of the LTTE was accompanied by a professed intent to provide a devolution package and to ‘win hearts and minds’ among the population of the northeast. Whilst it can be argued that this shift was a result of good intentions, one should also recognise that this shift is also symptomatic of the need of successive regimes and indeed, more broadly, of developing world states to adapt and realign themselves to the new aid paradigm which encompassed both economic and governance issues. In this sense whether we are looking at Kumaratunga’s ‘dual track’ strategy or Ranil Wickremasinghe’s CFA peace bid with the LTTE, both these strategies still operated within the new logic of securitised development. Indeed it has been a central criticism of the Wickremasinghe’s 2002-4 peace bid that his strategy was far too heavily reliant on economic development and the securing of aid at the expense of engagement in furthering political negotiations and furthermore a form of economic development which eventually undermined his peace bid.^x

The rise of the current Rajapakse regime has seen a return of the Sinhala nationalist rhetoric and the pursuit of a military strategy to subdue the northeast. Evidently the Rajapakse regime also has to respond in some way to the changed context for humanitarian and development aid and governance but it is doing so through a mixture of resistance, competition and cooption. Resistance obviously because the current regime is implementing the nationalist project of consolidating a Sinhala majoritarian unitary state and this consolidation works not just through military conquest but through terror and fear and the instigation of the current humanitarian crisis perpetrated by the Defence and Environment Ministries, the security forces and their allies, the TMVP. The humanitarian crisis operates through the abductions of Muslims and Tamils, extrajudicial killings, forced returns of the displaced, evictions through the HSZ designation of East Mutur and Sampur in Trincomalee, obstacles to humanitarian access particularly in Batticaloa, attacks on and killings of humanitarian workers, violence over the acquisition or appropriation of land and religious and archaeological sites.

Yet the Rajapakse regime has also attempted forms of cooption of both donors and aid and development agencies. It has done this through the auspices of the ill-fated UNP-SLFP MOU, through the APRC, the Presidential Commission and IIGEP and, more recently through its pronouncement and plans that the conquest of the Eastern Province sets the stage for a development thrust that will benefit all communities, rid the East of conflict dynamics and act as a template for successful development that will win hearts and minds in the North as to the viability and desirability of the unitary state. Such high-profile statements of intent and premature celebrations are obviously intended as much for international consumption as for domestic legitimisation amongst the majority community and to mask the increasing microlevel instances of violence, harassment and intimidation pursued by the security forces

^{ix} N Hennayake – Culture, Politics and Development in Postcolonial Sri Lanka (Lexington Books, 2006).

^x S Bastian - *The Politics of Foreign Aid in Sri Lanka* (ICES, 2007), pp. 154-166 & p.177.

and their proxies, instances which still bear the undeniable logic and expressions of Sinhala nationalism. Professions of secular and equitable development are also intended to veil the return of colonisation implicit in the forced evictions from or removal of access to residential or agricultural lands through, for example, HSZ designation in East Mutur/Sampur or by designating 'National Park' boundaries in Lahugala DS division of Amparai, actions deliberately targeted at the Tamil and Muslim communities of the East. One should also note the profound militarisation of development committees and the whole structure of the administrative machinery of the Province. In this sense, despite the gloss and spin of the current professed development strategy, in actuality, we see a return to the militarised and highly nationalistic and exclusifying colonisation of old.

The danger here is that the donors and development agencies will be won over by the development discourse and will give up on a political solution in the shared belief that accelerated development is the key to securing the resolution of conflict. If we focus on some of the planned development projects we can see the manner in which this pattern is being borne out. As I suggested above at the macro-level, the State is pursuing development shorn of the overt articulations of Sinhala nationalism that once characterised the AMP, whilst at the micro-level, on the ground and locally through threats and violence this logic is fully present. For example, if one scrutinises the creation of the SEZ which was gazetted in October 2006 well before the Mutur/Sampur HSZ and the design of the Metro-Urban Development Plan for Trincomalee, one can see that these plans might appear, especially to donors, as the innocuous pursuit of a much-needed strategy for intensive and accelerated industrial, port, tourist and rural capitalist development in the district couched in secular, technocratic language and that the reaction of some political actors and local communities to the issue is merely a result of confusion between the designation of the HSZ and the SEZ.^{xi} The same might be said province-wide, for that matter, of the proposed '180 Day Development Plan'.^{xii} As long as development is even handed and not outwardly tainted by ethnonationalist logic it is not only considered safe but also the route out of the conflict. And, once you have accepted that development is the key, it is only a short step away from accepting that, in the midst of conflict and tension, it is perfectly 'normal' to pursue intense securitisation of the process.

The danger here as Danni Sriskandarajah, once opined is that we are once again putting "the development cart before the conflict resolution horse"^{xiii} without the donors willing to face up to the fact that, as local Tamil and Muslim communities and their representatives in the environs of Trincomalee will tell you, 'development' has in the past resulted in demographic alterations and little immediate benefits to those from the minority communities. Furthermore, there are no safeguards to prevent this happening again through the logic of Sinhala majoritarianism and patronage. The only safeguard that can be pursued is a politically formulated one which must lie in radical devolution and decentralisation in order to curb the centre's hold over local and regional space.

Whilst, humanitarian agencies and human rights advocates have all drawn attention to the aforementioned serious abuses on the part of the State and its apparatuses, I would argue that unless we draw attention to the way in which the government is currently pursuing

^{xi} See Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka, No, 1467/3, October 16th, 2006, (Govt. of Sri Lanka Printing Dept) and 'The Development Plan for Trincomalee Metro-Urban Development Area', Urban Development Authority, 2007.

^{xii} See SCOPP - 'Sri Lanka's East after Liberation: Prospects and Challenges': http://www.defence.lk/new.asp?fname=20070922_04

^{xiii} Dhananjayan Srikandarajah - 'The Returns of Peace in Sri Lanka: the Development Cart before the Conflict Resolution Horse', *Journal of Peacebuilding and Development*, 2003, Volume 1 Number 2.

development, that bears all the hallmarks of the long-term strategy of colonisation, then we cannot fully confront the intentionality, and the cold calculations and reasoning of state that are at work. Human rights frameworks do not necessarily adequately capture this intentionality, they remain demands that the State respect the rule of law, that they follow universal norms, principles and conventions, that the displaced are treated according to the guiding principles on internal displacement, that HSZs are used for their declared purpose, that the freedom of movement for 'minority' groups is respected etc. but they do not always provide for a fuller political confrontation or contestation of what is currently at work in the Eastern Province or the frameworks for a political solution to the current crisis. I am not saying that we abandon the human right perspective as it is crucial but that the framework is insufficient as the State which, can readily absorb the pressure of the critique about human rights, may in the end control and co-opt humanitarian and development agencies in the process of achieving its goals, leaving humanitarian and development agencies as arms of state counter-insurgency. It remains essential therefore that donors, agencies and observers tie together the development and human rights perspectives so that the political intentionality of the present regime is rendered completely transparent and set themselves boundaries to combat cooption. However, it remains to be seen whether many IGOs INGOs and NGOs are willing to cross this bridge given the threat that pursuing a politically conscious programme may present to firstly, their often self-professed neutral, 'non-partisan' or non-political mandate, however empty such professions are, and, secondly, to the overriding imperatives of fulfilling humanitarian and development mandates regardless of the deteriorating context.

Human Rights, Humanitarian Standards and the War in Sri Lanka

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The positions and policies of the principal protagonists in the war in Sri Lanka will determine the prospects for desperately needed human rights protection and observance of international humanitarian standards. Indeed, the current situation of civilian fear, insecurity and misery is attributable to the emergence of the GOSL and the LTTE as mirror images of the other. Both have chosen to rely predominantly, if not exclusively, on the use of force to advance their perceived interests. In doing so, they have relegated the primary issue of human security to one of scant importance, if any importance at all. International and civil society efforts notwithstanding, there is every prospect of the space for human rights violations and humanitarian tragedy increasing with the intensification of hostilities in the north. Intensified and protracted conflict underpinned by the further polarization of perspectives and interests poses the seemingly insuperable challenge in respect of what can be done to alleviate civilian suffering. Should all efforts be concentrated on stopping the war or should they focus on ensuring to the extent possible that the war is fought with a minimum of civilian suffering?

In terms of what is practical and feasible in the current context, it would seem that efforts to stop the war, laudable in themselves will not succeed against the polarization referred to above. Put another way, both sides are caught in a “trap” of their own making in which a clear and decisive military victory is believed to be possible and forthcoming, in their respective favour. On the one side, human rights violations and humanitarian tragedy are secondary at the very most and more often than not human rights protection and humanitarian standards are seen as inconveniences or encumbrances in the march to certain victory. The raising of such concerns are accordingly labeled as the hallmarks of a conspiracy designed for the sole purposes of rescuing the other side from the jaws of defeat. This is mirrored by a cynical calculation that human rights violations and humanitarian tragedy will swing international opinion and assistance as well as a matching disregard in the conduct of hostilities for human security and international standards relating to the treatment of civilians caught up in armed conflict. The fighting in the east was replete with examples of this from both sides. Will the fighting in the north be any better?

In such a context, civil society in particular has no other option than to continue to try to focus the attention of the protagonists on human rights and humanitarian concerns with the minimum aim of mitigating civilian suffering. This requires convincing the protagonists that civilian suffering should not be exploited for political gain but should be accorded precedence even when a clash with political interests is perceived. This is by no means easy in the face of entrenched positions and determination to defend them.

For instance, it has been reported that the LTTE has refused to guarantee the security of ships carrying the Red Cross flag, when taking food supplies to the Jaffna Peninsula. This is connected to the LTTE demand that the A9 land route be re-opened and allegations that the vessels will also ferry military equipment and personnel to the peninsula. Should not civilian suffering take precedence? Is there an acceptable logic to the argument which seems to say that the alleviation of civil suffering over the long term (i.e. the reopening of the A9) has to be secured by compounding it (the consequences of the refusal to guarantee safety and security of ships bearing the ICRC flag) in the short term ?

Another example of this are the reported instances of the LTTE forcibly preventing civilians from moving to places of safety in the face of bombing and bombardment by government forces. Whilst, given the current logic, it is in the military and political interests of the government forces to ensure depopulation of areas under LTTE control and it is in the interests of the LTTE to demonstrate that despite horrendous privation and suffering, the civilian population did not “desert” them, should civilians be treated as pawns in a bloody chess game between actors who conceive of them in instrumental terms only?

Can there be a concerted focus of advocacy efforts on a human rights and humanitarian standards agreement or memorandum of understanding between the two sides that conditions the conduct of hostilities between them, since a cessation of hostilities in the current context appears to be extremely remote? This would ideally revolve around the Common Article 3 of the Geneva Conventions and incorporate the Deng Principles on the rights of Internally Displaced Persons. It could incorporate agreement with regard to Zones of Peace and ensure that places where civilians seek shelter and refuge from the fighting are not targeted by either side.

Such an initiative itself has to be focused, targeted and political in nature. Civil society will have to take the initiative and canvas whatever support it can from the international community. Exclusive and even primary reliance on the latter is misplaced in that the international community in the main, is not disposed towards proactive involvement in Sri Lanka and the key players that are involved either subscribe to the “war against terror” approach of the government and/or accord precedence to their economic and commercial interests.

Accordingly, civil society should take stock of the relations it has with the principal protagonists and explore existing and potential avenues of influence. Buy in from the main protagonists, if it is to be at all attainable, is best sought at the outset by actors with whom they have established relationships of trust and confidence. This should be backed up by persistent international focus on these issues and the identification of them as key benchmarks in any relationship.

Unless civil society is willing and able to even try to influence the protagonist it has best access to, the savagery of the conflict will continue unabated. In this respect, the challenge to civil society is to be able to differentiate between clearly political goals and human rights and humanitarian ones and the relationship between the two. Is civil society in the context of the conflict in Sri Lanka, a reflection or extension of the principal protagonists or is it able to create and maintain a space on behalf of the civilians caught up in this brutal conflict?

Civil society has to make this effort or else it will be shown up to be bogus. And rightly so.

¹ The major sources and principal partners are the following:

- (1) Asian Centre for Human Rights
- (2) Centre for Policy Alternatives
- (3) Ceylon Tamil Teachers Union, Trincomalee
- (4) Civil Monitoring Committee, Colombo, Sri Lanka
- (5) INFORM
- (6) Eelam People's Democratic Party (EPDP)
- (7) International Federation of Tamils
- (8) Law and Society Trust, Colombo, Sri Lanka
- (9) National Peace Council, Colombo, Sri Lanka
- (10) North-East Secretariat on Human Rights (NESOHR)
- (11) Organization for Peace and Protection of Human Rights in Sri Lanka
- (12) Tamil Rehabilitation Organization (TRO)
- (13) Tamil Centre for Human Rights
- (14) World Organization against Torture (OMCT)
- (15) Permanent Mission of Sri Lanka to the United Nations Office at Geneva

² See *Right to self-determination : the Sri Lankan Tamils*, E/CN.4/2006/NGO/34. Written statement submitted by International League for the Rights and Liberation of Peoples (LIDLIP).

³ See *Humanitarian and political crisis in Sri Lanka*, A/HRC/4/NGO/88, p 2. Written statement submitted by International League for the Rights and Liberation of Peoples (LIDLIP).

⁴ Since the fighting renewed in August 2006, 315.000 people, mostly Tamils, have fled their homes; between January 2006 and June 2007 16.000 sought refuge in India. Cf. Human Rights Watch, Sri Lanka, Testimony Before the European Parliament Committee on Development, June 5th, 2007.
http://hrw.org/english/docs/2007/06/05/slanka16204_txt.htm

⁵ Cf. Asian Human Rights Commission, Sri Lanka, Human Rights Violations Rise Further in 2007, pp 11, 21-25.

⁶ The government denies having any control over the Karuna group, a break-faction from the LTTE, thus conveniently escaping from any responsibility for its actions. However, evidence abounds of the close cooperation between the army and these paramilitaries on the ground. Furthermore, the predecessor of the present government helped engineer its split with the LTTE while engaging in peace negotiations with the latter. Cf. Human Rights Watch, *Return to War*, vol. 19, No.11©, August 2007, chapter IX.

⁷ International Crisis Group, Sri Lanka's Human Rights Crisis, Asia Report 135, June 14, 2007, p 8-10. Human Rights Watch opposite cited, 104-107.

⁸ On the situation of humanitarian workers, see *Humanitarian action in the "undeclared" war in Sri Lanka*, Centre for Just Peace and Democracy, October 2007, 104 pages. See <http://s211556928.websitehome.co.uk/index.asp?page=31> . Printed hard copy is provided by post mail.

⁹ Introduced in 1978, every political party has promised to abolish it once in power because of its excessive concentration of power which is moreover exercised without any democratic control, and its bearer guaranteed immunity, only to be forgotten once elected into office.

¹⁰ See *Humanitarian action in the "undeclared" war in Sri Lanka*, *op. cit.*, p 57.

¹¹ *Idem*, p 35.

¹² See *Humanitarian and political crisis in Sri Lanka*, A/HRC/4/NGO/88, *op. cit.*, p 3.

¹³ Typically, the All Party Representative Committee set up in June 2006 to develop constitutional proposals acceptable to all parties has so far made little progress: The president insists on maintaining the unitary state and the opposition UNP decided to abandon the process. Cf. International Crisis Group, Sri Lanka: Sinhala Nationalism and the Elusive Southern Consensus, Asia Report No. 141, November 7, 2007, p 2.

¹⁴ See *Humanitarian action in the "undeclared" war in Sri Lanka*, *op. cit.*, p 16.

¹⁵ The principal reproach as to the human rights record of LTTE concerns especially the *recruitment of child soldiers*. Two arguments need to be revisited: (1) the number of child soldiers have to be put into the context of a war in which Tamil civilians are the principal victims of indiscriminate bombings of houses, temples, schools, refugee camps, etc. by the government armed forces; (2) the term of 'child soldier' itself needs greater differentiation. Against the general definition of a child as a person under the age of 18 (which is used against the LTTE), article 38 of the same Convention of the Rights of the Child clearly stipulates 15 as cut-off age for recruitment into military service; it distinguishes, furthermore, their integration into the armed forces as against their conscious employment in fighting engagements.

¹⁶ See *Humanitarian action in the "undeclared" war in Sri Lanka*, *op. cit.*, p 14-15.