



Tamils of Sri Lanka: The quest for human dignity

Discrimination between human beings on ground of race, colour or ethnic origin is an offence to human dignity and shall be condemned as a denial of the principles of the Charter of the United Nations, as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights, as an obstacle to friendly and peaceful relations among nations and as a fact capable of disturbing peace and security among peoples.

- Article 1

United Nations Declaration on the Elimination of
All Forms of Racial Discrimination

“The crimes committed by the Sri Lankan state against the Tamil minority - against its physical security, citizenship rights, and political representation - are of growing gravity for the international community. Other countries across the world which have had to shelter the thousands of Tamil refugees who have fled and are still fleeing the island must increasingly bear the cost of the denial of the fundamental political rights of the Tamils of Sri Lanka...Report after report by impartial bodies - by Amnesty International, by the International Commission of Jurists, by parliamentary delegates from the West, by journalists and scholars - have set out clearly the scale of the growing degeneration of the political and physical well being of the Tamil minority in Sri Lanka...everyone who possesses an elementary sense of justice has no moral choice but to acquaint himself fully with the plight of the Tamil people. It is an international issue of growing importance. Their cause represents the very essence of the cause of human rights and justice and to deny it, debases and reduces us all.”

- David Selbourne, Ruskin College, Oxford, July 1984

This report aims to provide the international community, including governments, an understanding of the political, human rights and legal uncertainty that the Tamil speaking people face in Sri Lanka

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Abbreviations

AHRC	Asian Human Rights Commission
CAAT	Campaign Against Arms Trade
CATA	Convention Against Torture Act
CESCR	Committee on Economic, Social and Cultural Rights (UN)
CPJ	Committee to Protect Journalists
DIG	Deputy Inspector General of Police
EPDP	Eelam People's Democratic Party
EPRLF	Eelam People's Revolutionary Liberation Front
ER	Emergency Regulations
EU	European Union
FAO	Food and Agricultural Organization (UN)
GDP	Gross Domestic Product
HRTF	Human Rights Task Force
HSZ	High Security Zones
ICCPR	International Covenant on Civil and Political Rights
ICESR	International Covenant on Economic Social and Cultural Rights
ICJ	International Commission of Jurists
ICRC	International Committee of the Red Cross
IDP	Internally displaced person
IGP	Inspector General of Police
IPKF	Indian Peace Keeping Force
IPS	Institute of Policy Studies (Colombo)
ISGA	Interim Self-Governing Authority
JHU	Jathika Hela Urumaya (National Sinhala Heritage)
JVP	Janatha Vimukthi Peramuna (People's Liberation Front)
LTTE	Liberation Tigers of Tamil Eelam
MOU	Memorandum of Understanding
MSF	Medecins Sans Frontieres
NATO	North Atlantic Treaty Organization
NEPC	North-East Provincial Council
NERF	North-East Reconstruction Fund
NGO	Non-governmental organization
NIC	National Identity Card
NSL	National Security Levy
OCHA	Office for the Coordination of Humanitarian Affairs (UN)
PA	People Alliance
PTA	Prevention of Terrorism Act
P-TOMS	Post-Tsunami Operational Management Structure
RSF	Reporters Sans Frontieres
SDN	Sub-Committee on De-escalation and Normalization
SPI	Sub-Committee on Political Issues
SIHRN	Sub-Committee on Immediate Humanitarian and Rehabilitation Needs
SLFP	Sri Lanka Freedom Party
SLHRC	Sri Lanka Human Rights Commission
SLMC	Sri Lanka Muslim Congress
SLMM	Sri Lanka Monitoring Mission
STF	Special Task Force
TNA	Tamil National Alliance
TULF	Tamil United Liberation Front
UNHCR	United Nations High Commissioner for Refugees
UNF	United National Front
UNICEF	United Nations Children's Fund
UNP	United National Party
UPFA	United People's Freedom Alliance
WFP	World Food Programme

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“Two different nations from a very ancient period have divided between them the possession of the island. First the Cinghalese, inhabiting the interior of the country in its southern and western parts, from the river Wallouve to that of Chilaw, and secondly the Malabars who posses the Northern and Eastern districts. These two nations differ entirely in their religion, language and manners.”

Cleghorn Minute 1799

“...Chiefly, myth, chronicle, and history have all been thoroughly intermixed. To date the beginning of Sri Lanka on the basis of the Mahavamsa, besides forever tying Sri Lanka with Buddhist cosmology (the year 544 B.C. also happens to be the year the Buddha gained Mahanibbana or died), effaces both the prior and the non-Buddhist populations of Sri Lanka. Second, by anchoring the origins of Sri Lanka in a Buddhist, Pali chronicle, Jayewardene pushes to the margins the Tamils and other ethnic and religious communities who have no comparable mythic charter of their presence. Further, it ignores the fact even if the chronicle is true, according to the Mahavamsa itself Vijaya’s seven hundred men, including the king himself, populated the “new” space by marrying women from the Tamil, Pandyan kingdom of southern India. Perhaps most important...this origin myth, as currently disseminated, establishes a hierarchy of authenticity within Sri Lanka, the Sinhala Buddhist perched at the apex and the other ethnic and religious groups reduced to supporting positions, but only if they behave themselves.”

- Sankaran Krishna

Postcolonial Insecurities: India, Sri Lanka, and the Question of Nationhood, 2002

Introduction

After a four-year ceasefire between the Sri Lankan government and the Liberation Tigers of Tamil Eelam (LTTE), the failure of the government to effectively address the substantive political issues such as devolution that would smooth the way for a peaceful settlement to the conflict, its preoccupation with retaining power and undermining any measure that will recognize the rights of the Tamil people, are leading the island dangerously close to resumption of war.

The LTTE has stated the Tamil position clearly:

"The objective of our struggle is based on the concept of self-determination as articulated in the UN Charter and other instruments. We have always been consistent with our policy with regard to our struggle for self-determination. Tamil homeland, Tamil nationality and Tamils' right to self-determination are the fundamentals underlying our political struggle. We have been insisting on these fundamentals from Thimpu to Thailand. Our position is that the Tamil national question should be resolved on the basis of these core principles. Tamils constitute themselves as a people, or rather as a national formation, since they possess a distinct language, culture and history, with a clearly defined homeland and a consciousness of their ethnic identity. As a distinct people, they are entitled to the right to self-determination. The right to self-determination has two aspects: internal and external. The internal self-determination entitles a people to regional self-rule.

"The Tamil people want to live in freedom and dignity in their own lands, in their historically constituted traditional lands without the domination of external forces. They want to protect their national identity pursuing the development of their language, culture and economy. They want to live in their homeland under a system of self-rule. This is the political aspiration of our people. This constitutes the essential meaning of internal self-determination. We are prepared to consider favourably a political framework that offers substantial regional autonomy and self-government in our homeland on the basis of our right to internal self-determination. But if our people's right to self-determination is denied and our demand for regional self-rule is rejected we have no alternative other than to secede and form an independent state."

**- Velupillai Prabhakaran, Leader of the LTTE
Great Heroes Day speech, 27 November 2002**

The above statement reflects the genuine grievances, legitimate rights, aspirations and the position held by the Tamil people of Sri Lanka, which unfortunately have never been understood and addressed by successive Sinhalese governments.

Sri Lankan Tamils believe that Sri Lanka belongs to them as much as any other community and they are entitled to rights and aspirations as any other group of people. Tamils are severely marginalised and feel that they are losing their place irretrievably. This is a process that the Tamil parliamentarians are still unable to arrest. In fact, the Sri Lankan parliamentary system has legitimised the marginalization. Consequently, Tamils of Sri Lanka are unable to develop themselves as full citizens. In addition to constitutional manipulation and blatantly discriminatory legislation and administrative action, violence has been perpetrated systematically against the Tamil community, threatening their very existence as a people.

Tamils see youth militancy as the inevitable result of political mismanagement. The youth correctly argued for secession if the legitimate rights of the Tamils are not recognised within a united Sri Lanka and their human rights are not protected by the rule of law. The LTTE has emerged as the main voice for Tamil grievances. If there are indications of inflexibility, it is because of a lack of trust in Sri Lankan governments that have reneged on negotiated agreements. Successive governments have continued to pander to the designs of racist elements bent on the destruction of the Tamils.

The LTTE has been criticized for many years for failing to put forward its own proposals for a solution to the conflict and rejecting all seemingly good proposals. The implementation of political arrangements made out in the District Development Council system and the Thirteenth Amendment to the Sri Lankan Constitution show clearly that Tamil fears are genuine. The LTTE put forward its proposals in October 2003, but the government refusal even to discuss these proposals has accentuated Tamil fears.

The Tamil struggle must not be seen in terms of “terrorism” and “military campaigns”, but as fears of a community, which has been at the receiving end of political discrimination and persecution for the last fifty years and has never been able to realise its just demands or its aspirations. The LTTE has also been blamed of gross violation of human rights. There could be no doubt about the Tamil community’s concern over this issue, and as far as possible, the community is engaging the LTTE to address these concerns and to make them accountable to the people whom they represent. The international community must also realize the urgent need to solve the Sri Lankan conflict satisfying the aspirations and the just demands of the Tamils and that delay would inevitably lead to disappointment, frustration and undesirable consequences.

A political solution must be found based on principles that have been accepted by all sides. The Sri Lankan government, the LTTE and the international community accepted the principles contained in the Oslo Declaration of December 2002. There was agreement to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal solution within a united Sri Lanka. The Oslo principles were reiterated in the Tokyo Declaration of June 2003 and since then the international community has emphasized that any solution should be based on these principles.

Unfortunately, the government of President Mahinda Rajapakse has moved away from these principles. Before the presidential election of 17 November 2005, Mr Rajapakse took an increasingly hardline and made clear that he rejected the concepts of homeland and the right to self-determination. He also signed electoral agreements with political parties, which virulently oppose not only these principles but also peace talks with the LTTE or recognizing the rights of the Tamil people.

After election as President of Sri Lanka, in the first policy statement in Parliament on 25 November 2005, Mr Rajapakse reiterated his opposition to the concepts of the homeland and self-determination and vowed to safeguard the unitary nature of the Sri Lankan state. He signalled that the present Constitution would not be amended for the purpose of devolution, despite the fact that under the current Constitution, there can be hardly any devolution of power. He also declared that he would embark on a new peace process implying that the progress made in the last five years would not be taken into consideration. In addition, Mr Rajapakse has initiated measures that may destroy important democratic institutions, which were created for the purpose of transparency and accountability and for the protection of people’s rights.

Former presidents J R Jayewardene and R Premadasa were involved in peace processes, but their priority was consolidation and centralization of power and maintenance of the existing political system. Chandrika Kumaratunge was elected President by an overwhelming majority on a peace ticket with broader objectives, but was constrained by the political system. President Rajapakse must realise that as long as the present political system remains on force, he will have no room for manoeuvre. If he wishes to achieve a solution to the conflict and guide the country to peace and prosperity, his task should be to change the political system to ensure that all people are treated equal and each individual has the opportunity for development.

The international community has been outspoken and very critical over violations of the LTTE and has imposed sanctions. But the grave violations of successive Sri Lankan governments hardly have impact on the policies of other governments and international agencies, which often appear to take decisions to please and reward the Sri Lankan government in power. In this light, this report deals with the violations of successive Sri Lankan governments for the consideration of the international community.



Demography

Sri Lanka (formerly Ceylon) is an island in the Indian Ocean 25,332 square miles (65,610 square kilometres) in extent and lies 25 miles (40 kilometres) south-east of southern India. The estimated population of Sri Lanka is 19.2 million. The Sinhalese constitute about 74% of the population, Tamils around 18% and the Muslims make up 7%. The Tamils and Sinhalese speak two different languages and by and large profess two different religions - language of the Sinhalese is Sinhala, and Tamils and majority of the Muslims speak the Tamil language. A large number of Tamils are Hindus and the overwhelming majority of the Sinhalese people are Buddhists.

Sri Lanka: Population

By Ethnicity		By Religion	
Ethnic group	%	Religious group	%
Sinhalese	74.0	Buddhists	69.3
Sri Lankan Tamils	12.6	Hindus	15.5
Tamils of Indian Origin	5.5	Muslims	7.5
Muslims	7.1	Christian	7.6
Others	0.8	Others	0.1

Source: Department of Census and Statistics, Sri Lanka

According to the Government Agents of the districts, the population in the Tamil-dominated North-East Province in 2000 was 2,603,000 [Jaffna: 502,000; Kilinochchi: 152,000; Mullaitivu: 199,000; Mannar: 11,000; Vavuniya: 11 7,000; Trincomalee: 352,000; Batticaloa: 524,000; Amparai: 650,000].

The early Tamils and Sinhalese

The Tamils are an ancient people. Their history has its beginnings in the early

settlements on the rich alluvial plains near the southern extremity of peninsular India. The Tamils were a sea-faring people. They traded with Rome in the days of Emperor Augustus. They sailed to many lands bordering the Indian Ocean and with the ships went traders, scholars, and a way of life. The island of Sri Lanka, separated from the Indian sub-continent by less than thirty miles of water, was not unknown to the early Tamils (who called it Eelam).

The Sinhalese people trace their origins to the arrival in Sri Lanka of Prince Vijaya from India, about 2,500 years ago, and the *Mahavamsa*, the Sinhala chronicle of a later period (6th Century AD) records that Prince Vijaya arrived in the island on the same day that Lord Buddha attained Enlightenment in India.

Modern historical and archaeological research has brought new factors into light and has overturned some of the claims.

"The Sinhalese are an ethnic identity that evolved in Sri Lanka through the assimilation of various segmentary/tribal and ethnic communities that occupied the island at the beginning of the EIA [Early Iron Age], about five or six centuries before the Common Era...The Tamils of Sri Lanka evolved as a second ethnic group. Their evolution was parallel to that of the Sinhalese. The earliest inscriptions and the early Pali chronicles attest to the presence of the Tamil (Demedas/Damilas) in the EIA.

The two ethnic communities, Sinhalese and Sri Lankan Tamil, are ultimately descended from the Mesolithic people who occupied almost all parts of the island in prehistoric times."

- K Indrapala,
The evolution of an ethnic identity, 2005

The early Muslims

Most Muslims trace their ancestry to the Arab traders and settlers, who arrived in the distant past. They settled in the coastal belt, mainly in the south-western and southern parts of Sri Lanka. The Arab settlers came in to close contact with the Tamil community, particularly in the west coast, and adopted the Tamil language.

During the Portuguese period, the Muslims suffered persecution, and many moved to the central highlands, where their descendants remain, and others settled in the east.

*"Historically, the origins of this community can be traced back to the ancient Arab traders who frequented the ports of this island even before the birth of Islam. With the advent of Islam and the subsequent expansion of the Muslim empire however, increased Arab commercial activities strengthened the Muslim presence in Sri Lanka. There are plenty of archaeological and historical records which have been unearthed in recent times, all of which establish the fact that the Muslims of Sri Lanka are as indigenous to its soil as the Sinhalese and Tamils."*¹

Ethnic conflict and history

The ethnic conflict has produced many pseudo-historians among the Sinhalese as well as the Tamils, who, with sectarian objectives and political agendas, have produced 'new histories', thereby encouraging ethnic divide, antagonism and violence.

*"...It is indeed reasonable to question the extent to which a new breed of charlatans and political animals in these disciplines are responsible for the emergence of an ahistorical attitude and an anti-historical bias in schools, at seats of higher education and the country in general. 'Anti-Orwellian' historians in this country who have slithered their way through 'corridors of power' have not only compromised the very fundamentals of intellectual decency but are now in the process of subverting the study of history for personal ends and political expediency."*²

- Professor Sudharshan Seneviratne,
- August 2001

Early political history

The early political history of the people of South India and Sri Lanka, in the centuries before the advent of the European powers, is largely a chronicle of the rise and fall of individual kingdoms. Sometimes they fought against outside invaders and some times they warred against each other. The society was feudal in structure. Land was the dominant means of production. Kingdoms existed. Nations were yet unborn. There were more than one Tamil kingdom in both South India and in Sri Lanka just as much as there were more than one Sinhalese kingdom in Sri Lanka. Sometimes alliances were made to defeat a common enemy.

Conquest by European powers

The Portuguese colonized Sri Lanka in the 16th century and the 17th century saw the advent of the Dutch, British and the French to the Indian region. It was a colonization process, which inhibited the organic growth of nations in the Indian region, and state boundaries in India and Sri Lanka reflected more often than not, the power wielded by the foreign ruler.

Departure of the British

It was with the departure of the British in 1947/48, that the organic growth of nations gathered momentum in the Indian region. On the Indian subcontinent, the thrust of nationalism led to the demand for linguistic states within the federal Union of India and later for increasing regional autonomy. A rising Tamil nationalism on the Indian subcontinent was contained within the frame of the linguistic state of Tamil Nadu which was constituted in the 1960s - a linguistic state with a population of around 45 million Tamils at the time.

In Sri Lanka, however, the growth of a separate Tamil national identity was accelerated by the practice of 'democracy' within the confines of a unitary state. Whilst democracy may mean

acceding to the rule of the majority in a homogeneous country, democracy also means government by discussion and persuasion. It is the belief that the minority of today may become the majority of tomorrow that ensures the stability of a functioning democracy.

The reality of democracy in Sri Lanka, where elections and everything else is based on ethnicity, no Tamil has ever been elected to a predominantly Sinhalese electorate and no Sinhalese has ever been elected to a predominantly Tamil electorate. The practice of democracy within the confines of a unitary state has resulted in continued rule by a permanent Sinhalese majority.

Violations of human rights

A permanent Sinhalese majority, through a series of legislative and administrative acts, ranging from disenfranchisement, and standardization in university admissions, to discriminatory language and employment policies, lack of development of Tamil areas and state-sponsored colonization of the Tamil homeland, has sought to establish its hegemony over the Tamils of Sri Lanka. These legislative and administrative acts were reinforced by physical attacks on the Tamil people with intent to terrorise and intimidate them into submission. The Army was unleashed in 1961 on Tamils performing *Satyagraha* (non-violent protest) in the north-east. Since 1972, the Army has been in continuous occupation of the Tamil homeland.

Popular discontent against the unacceptable conditions is usually met by strong military repression and violence. Several custodial deaths have been reported over the years and no one has been charged or punished for these acts. The cases in respect of Tamil murders are either dragged on or abandoned. During the war, civilians were compelled by the Sri Lankan army to act as human shields

during military operations and to detect landmines. Military death squads continued to operate in the country. They went about in unmarked vehicles, abducting or summarily executing persons suspected of LTTE links.

It was a course of conduct which led eventually to the rise of Tamil militancy in the mid 1970s with, initially, sporadic acts of violence. The root causes were not addressed, but the militancy was met by wide ranging retaliatory attacks on increasingly large sections of the Tamil people with clear intent, once again, on subjugation. A large number of Tamil youths were detained without trial in the late 1970s and tortured under Emergency regulations and under the Prevention of Terrorism Act (PTA), which has been described by the International Commission of Jurists (ICJ) as a 'blot on the statute book of any civilized country'. In 1980 and thereafter, security forces resorted to random killings of Tamils and Tamil hostages were taken when 'suspects' were not found. Eventually, in the eyes of the Sri Lankan state, all Tamils were *prima facie* 'terrorist' suspects.

And in 1983, the Tamils were deprived of the effective use of their vote by the Sixth Amendment to the Constitution, which rendered vacant the Parliamentary seats of the elected representatives of the Tamil people. The Sixth Amendment to the Constitution continues in force in 2006.

The Sixth Amendment to the Constitution, which came into effect on 8 August 1983, made it a criminal offence to advocate the establishment of a separate state within the territory of Sri Lanka. The Amendment also introduced an oath, to be sworn by members of parliament (MPs) and holders of official posts, which included a promise not to support the establishment of such a state within Sri Lanka. The Amendment, in so far as it criminalised peaceful support for separatism and excluded supporters from public office, involved a breach of Articles 19 (2) (freedom of expression) and 25 (right to take part in public life) of the International Covenant on Civil and Political Rights.

*- International Commission of Jurists
Sri Lanka: Attacks on Justice 2000, 13 August 2001*

Fifty years of human rights violations

Denial of citizenship

Everyone has the right to a nationality.
No one shall be arbitrarily deprived of
his nationality...

- Article 15, Universal Declaration of
Human Rights

The government of Sri Lanka introduced the Citizenship Act 1948 within a few months of independence from Britain, dealing the first blow on the Tamils, who had cooperated in good faith in removing the shackles of colonial domination. The Act prescribed qualifications to become a citizen of Sri Lanka, deliberately aimed at excluding the Plantation Tamils from citizenship, not only those living but also those yet to be born.

"The disenfranchisement of the Up Country Tamils helped to lay the foundations for 'Sinhalization' of the state from the 1950s. It was a grave denial of the rights of a significant section of the Island's population. Denied citizenship and representation, the Up Country Tamils remained one of the most neglected groups on the Island, despite their key role in the economy producing the Island's main export crop."

- Minority Rights Group, Elizabeth Nissan:
Sri Lanka: A bitter harvest, 1996

A million Plantation Tamils were made stateless by the Act despite the Soulbury Commission declaring that 80% of them were permanently resident in the island.

"The Committee was concerned that a large number of Tamils of Indian origin and their descendants, particularly plantation workers still had not been granted citizenship, many of them continuing to be stateless. Tamils without Sri Lankan citizenship were allegedly discriminated

against and did not fully enjoy their economic, social and cultural rights; and the State party was recommended to take effective measures to solve this problem."

- UN Committee on Elimination of Racial Discrimination;
Concluding observations on the 9th periodic report of Sri Lanka; 59th Session, 14 August 2001

Statelessness continued, despite a number of legislations since 1986, as a result of the Sinhalese-dominated government refusing to consult wider sections of the people involved. The government claimed that the introduction of the Citizenship to Stateless Persons Act in 2003 had finally resolved the citizenship issue. However, the consequences of denial of citizenship for over 50 years, such as poverty, low health standards, extremely poor education and miserable quality of life continue to haunt the Plantation Tamils. The new law has failed to provide for remedies regarding problems such as bureaucratic delays in recognizing citizens and illegal demands for citizenship certificates by government departments. The 1978 Republican Constitution of Sri Lanka permits the distinction between 'citizens by registration' and 'citizens by descent', and allows the denial of citizenship to 'citizens by registration' under certain circumstances. Most of the Plantation Tamils who have obtained citizenship are registered citizens and are liable to be discriminated.

Disenfranchisement

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Article 21, Universal Declaration of Human Rights

A series of legislative measures that followed against the Plantation Tamils, included the amendment to the Parliamentary Elections Order in Council in 1949, depriving them of the right to vote, resulting in the denial of parliamentary and local government representation. The Plantation Tamils had voting rights in previous elections under universal suffrage granted in 1931.

"The real purpose of these Acts was to disenfranchise the plantation workers in Up Country Kandyan areas where they might have been in danger of swamping the electorate...In revising the electoral registers for the central Sri Lanka districts for 1950, Tamil names were quite simply left out, leaving the onus on anyone who wanted his name reinstated to prove his citizenship under the new rules..."

- Minority Rights Group

Walter Schwarz; Tamils of Sri Lanka, 1981

The Tamils had 20 of the 95 seats in the Sri Lankan Parliament after the 1947 general elections. In the 1952 elections, following the denial of franchise rights, the seats were reduced to 13, whereas the seats for the Sinhalese increased from 68 in 1947 to 75 in 1952. In effect the voting power of the Tamils in the legislature dropped by 35% after the disenfranchisement. The Sinhalese obtained more than a two-thirds majority in Parliament, making it impossible for the Tamils to exercise an effective opposition to policies affecting them.³

Electoral rights

The will of the people shall be the basis of the authority of the government; this will shall be expressed in periodic and genuine elections, which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

- Article 21(3)

Universal Declaration of Human Rights

Under agreements between the Sri Lankan and Indian governments in 1964 and 1974, concluded without consultation with the people involved or their representatives, the Plantation Tamils were divided between the two countries and hundreds of thousands of them were sent to India against their will. The mass-scale deportation of Tamils and the amendments to the election laws resulted in the erosion of parliamentary and local government representation to the Tamils. Representation has been further affected by the government-planned and implemented deliberate Sinhalese colonization of the north-east Tamil areas since the 1950s.

Instead of the general elections, the United National Party (UNP) government held a referendum in December 1982 and extended the life of the Parliament by six years. This was done not only to remain in power but also to retain the two-thirds majority in Parliament. Government ministers were present in Jaffna in June 1981 and participated in the intimidation of election officers and interference in the District Development Council elections. Successive Sri Lankan governments have continued to use violence to intimidate voters and interfere in elections. Since 1983, no free and fair elections have been held in the north-east, effectively depriving the electoral rights of the Tamil people. Parliamentarians from the north-east, elected in 1994 and 2000, and who claim to represent the Tamil people, received only

few votes, five of the nine candidates of the Eelam People's Democratic Party (EPDP) receiving less than ten votes each. In December 2000, the European Union condemned the government for state-inspired violence during general elections.⁴

In an undemocratic act in November 2003, President Chandrika sacked several UNP Cabinet ministers and took control of the state media. In February 2004, she dissolved Parliament, more than three years ahead of six-year term of the legislature. When general elections were held in April 2004, because she controlled the state media and the state machinery, her party the United People's Freedom Alliance (UPFA) had an unfair advantage in election campaign as well as the use of state machinery for the campaign.

"The State controlled media, which was under the control of presidential appointees, did not fulfill their duty to ensure that all political parties and candidates obtained balanced and objective coverage thereby ensuring voters were provided with sufficient and objective information upon which to base their choice...several attempts were made of misuse by the two major coalitions of the resources of the government departments which they control respectively. This included the use of state vehicles and public servants."

*- European Union Election Observer Mission
Sri Lanka: Parliamentary elections 2 April 2004
Final Report and Preliminary statement of
4 April 2004*

Constitution

All are equal before the law and are entitled without any discrimination to equal protection of the law.

- Article 7, Universal Declaration of Human Rights

A new Republican Constitution introduced in 1972 removed the minority protection section 29 of the Soulbury Constitution,

enacted at the time of independence. Section 29 provided that Parliament had no powers to enact laws that made persons of any community liable to disabilities to which persons of other communities are not made liable. The new Constitution also made the country a unitary state (Article 2) and prohibited Parliament from delegating legislative power (Article 45 (1)), thereby ending any negotiation on devolution or a federal structure. Buddhism was made the foremost religion and it became the duty of the state to protect Buddhism (Article 6). The 1972 Constitution affirmed Sinhala language as the official language of Sri Lanka (Article 7). It provided that laws should be made in Sinhala (Article 9) and that the language of the courts and tribunals shall be Sinhala (Article 11). After amendments suggested were disallowed, the Tamils representatives withdrew and did not participate in the proceedings of the Constituent Assembly, which adopted the 1972 Constitution.

The 1978 Republican Constitution, while reiterating that Sri Lanka shall be unitary state (Article 2) and reaffirming the foremost place for Buddhism, went a step further and made it incumbent on the state to protect the Buddhist clergy (Article 9). The Constitution also confirmed Sinhala as the official language and language of courts but provided that 'Tamil shall also be an official language' (Article 18). It further confirmed the Sinhala lion flag as the national flag (Article 6) and the Sinhala *Namo Namo Matha* as the national anthem (Article 7). The discriminatory provisions relating to the unitary state, Sinhala language, Buddhism, national anthem and national flag were entrenched, requiring approval at a national referendum for repeal or amendment, in addition to the two-thirds majority in Parliament needed for the repeal or amendment of any constitutional provision (Article 83). The 1978 Constitution, which is currently in force, also says that 'Parliament shall not abdicate or in manner alienate its legislative power, and shall not set up any authority

with any legislative power', thus excluding altogether the concept of devolution.

The Sixth Amendment to the Constitution was rushed through Parliament on 8 August 1983, while violence against the Tamils was raging in the country, outlawing the demand for a separate state (Article 157A). The amendment directly conflicts with provisions in the Constitution guaranteeing freedoms of thought, conscience, speech and expression and violates articles 2, 18, 19 and 25 of the International Covenant on Civil and Political Rights (ICCPR). The Amendment also required an oath of allegiance, making it impossible for members of the Tamil United Liberation Front (TULF), which had received an overwhelming mandate for the establishment of a separate state at the 1977 general elections, to continue as MPs. Thus the Sixth Amendment deprived the Tamil community its remaining voice in Parliament and so its opportunity to take part in the democratic process.⁵

Both the major political alliances have refused to come together to provide a two-thirds majority in Parliament for any amendment to the Constitution that would enable substantial devolution to the Tamil regions. But the parties voted together in Parliament for the Seventeenth Amendment on 24 September 2001.⁶ This demonstrates that the parties have no intention of solving the Tamil national issue.

President Chandrika deliberately failed to perform her duties under the Seventeenth Amendment, causing long delays in appointing members to the various commissions even after recommendations by the Constitutional Council. Later she also failed to appoint the Constitutional Council, the Police Commission and the Public Service Commission when their terms ended. The new President Mahinda Rajapakse has gone a step further and has illegally assigned the duties of these constitutional bodies to other institutions

(See under "Government commitment to human rights").

"...the attempt by the newly elected president and the cabinet to ignore the 17th Amendment to the constitution and not to make appointments required for the Constitutional Council, without which the provisions of the 17th Amendment cannot be made operative. As of now the Constitutional Council, the National Police Commission and Public Service Commission are not functioning and a cabinet decision was made on December 22, 2005 to hand over the powers of these constitutional bodies to the ministers responsible for different areas of administration. This cabinet decision is a clear violation of the Constitution of Sri Lanka."

- Asian Human Rights Commission, January 2006⁷

Language

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

- Article 27, International Covenant on Civil and Political Rights

The Sri Lankan government introduced the Official Language Act in 1956, as part of its discriminatory policy, making the Sinhala language the only official language of Sri Lanka. In implementing the language policy, Tamil public officers were denied promotions and many Tamils were discriminated against in the process of recruitment. The Tamils launched non-violent *satyagraha* protests. The Army sent to the north-east brutally attacked the peaceful protesters. The government rigorously implemented the 'Sinhala only' policy and enacted the Language of Courts Act requiring courts to conduct

proceedings in the Sinhala language.

"The Bandaranaike government directed that unless a Tamil public servant passed a proficiency test in Sinhala in stages over three years, his annual increment would be suspended and he would eventually be dismissed. Mr. Kodiswaran, a Tamil in the executive clerical service, declined to sit for the exam and in 1962 his increment was stayed. He sued the government on the ground that the regulation was unreasonable and illegal as the Official Language Act of 1956 transgressed the prohibition against discrimination provided for in section 29 of the Constitution. The trial judge, the most senior in the judicial service, upheld the plea. But his judgment was set aside on appeal in the Supreme Court on the ground that a public servant could not sue for his salary. Mr. Kodiswaran appealed to the Privy Council in London, which set aside the Supreme Court's decision on suing for a public servant's salary and directed that the Supreme Court should now rule on the constitutional question. The Sri Lanka government thereupon abolished appeals to the Privy Council, thereby disposing of Kodiswaran's case. And the Republican Constitution of 1972 did away with the safeguards for minorities enshrined in the original section 29."

- Minority Rights Group
Walter Schwarz; *Tamils of Sri Lanka*, 1983

The Thirteenth Amendment to the Constitution in 1987, introduced following the Indo-Sri Lanka Accord, provided that 'Tamil shall also be an official language'. In the Northern and Eastern Tamil areas, this provision is not fully implemented. In all other provinces, Sinhala remains the language of administration and public record as well as the language of transaction of all business by public institutions.⁸ A very large number of Tamils, including most of the Plantation Tamils live outside the north-east and suffer discrimination in the use of their language. The Language Commission appointed to ensure the use of the Tamil language by public institutions, has been a complete failure. The Language Commission and the Sri Lanka Human Rights Commission (SLHC) are unable to grant remedy for violations of the language

rights of the Tamil people by public institutions.

"Tamil litigants and lawyers face enormous problems in this respect, particularly in Colombo. The right to the services of an interpreter is not observed because interpreters are not available. In addition, few judges can function in Tamil, publication of legislation and emergency regulations in Tamil is not up to date and law reports and text books are not available in Tamil."

- Centre for Independence of Judges and Lawyers
International Commission of Jurists, Sri Lanka: Attacks on Justice, 13 August 2001

Education

Everyone has the right to education ...
higher education shall be equally
accessible to all on the basis of merit.
- Article 26.1
Universal Declaration of Human Rights

Plantation Tamils have been the most disadvantaged group because of exclusion from tertiary education and government scholarships on the ground of their statelessness for many years and suffer from structural disadvantages - low standards and neglect in investment in education. They remain a group with the worst educational record in terms of literacy rates and higher education.⁹ Surveys indicate that 86% of the Plantation Tamils over the age of 19 have had less than five years schooling.¹⁰

In 1970, the government arbitrarily modified the system for university admissions in order to reduce the number of Tamils entering universities, particularly to the faculties of medicine and engineering. The introduction of standardization of marks by medium of instruction meant that Tamil students had to obtain higher marks than Sinhalese students for university admission.¹¹

University Department	Marks required for university admission	
	Sinhalese Students	Tamil Students
Medicine and Dentistry	229	250
Physical Science	183	204
Bio-Science	175	184
Engineering	227	250
Veterinary Science	181	206
Architecture	180	194

Source CR de Silva - *Weightage in University Admissions: Standardization and District Quotas, in Modern Ceylon*

"The Government should re-examine its policies on university admissions with a view to basing admission on merit rather than on racial grounds. Tamil and Sinhalese young people alike will then have equal rights to university education on the basis of capacity rather than on race. One of the major points of tension among many Tamil youth has been the implicit racial quota under present university admission policies which has barred many competent youths from pursuing higher education."

- International Commission of Jurists
Virginia Leary: *Ethnic Conflict and Violence in Sri Lanka*

Report of a mission to Sri Lanka, July/August 1981

Standardization and the imposition of district quotas had an adverse impact on the proportion of Tamils entering science. The percentage of Tamils entering engineering courses fell from 40.8% in 1970 to 24.4 in 1973 and 13.2% in 1976; in science faculties the percentage fell from 35% in 1970 to 15% in 1978; the reduction to the medical faculty was from 50% in 1970 to 37% in 1973 to 26% in 1974 and to 20% in 1975. Standardization was abolished in 1978, but the current system is heavily weighed against Tamil students. Only 40% of admissions to science-based faculties are on merit. Another 55% of admissions are based on district quotas proportionate to the population of each administrative district and 5% is for

students from educationally underprivileged districts.¹²

Sri Lankan security force bombing and shelling have damaged hundreds of school buildings in the north and east. The government economic blockade of the north-east has meant that students suffered from lack of school furniture, chemicals for science classes, writing paper, exercise books, school bags and pens. There was an acute shortage of teachers in the north-east which still continues. The lack of electricity and limited fuel supply made it difficult for schools to function and students to study in the nights. Many schools in the north-east have been commandeered by the Army and still remain under military control. The lack of adequate food in the region has meant that children found it difficult to follow classes.

The lifting of the economic blockade has not improved the situation in some areas. Some 300 schools lie within the military High Security Zones in the north-east. International agencies estimated in 2003 that 50,000 children in the north-east were out of school. There is a shortage of 4,650 Tamil medium teachers and 240 Sinhala medium teachers and around 40% of the vacancies are for trained primary teachers and English teachers. Around 15,000 classrooms in 500 schools are damaged or destroyed, requiring about 209,000 sq. metres of additional classroom space and 312,000 sq. metres of additional space for laboratories, libraries and office rooms for replacement and to absorb anticipated increase in students. The agencies said that the shortage of skilled and unskilled labour in the region is likely to affect reconstruction of schools.

All aspects of the education system - pre-school, primary, secondary, tertiary and technical-vocational - are severely damaged in the North East. Problems such as non-enrolment, dropouts, absenteeism and poor learning quality are aggravated as a consequence of displacement, poverty, single-

headed households, damaged infrastructure and lack of human resources. Further, many children and young people who have grown up in an environment of conflict and violence show symptoms of insecurity, stress and varying degrees of psychological distress.

*- Asian Development Bank, United Nations,
World Bank*

*Sri Lanka: Assessment of needs in the conflict affected areas,
May 2003*

Employment

Particular efforts shall be made to prevent discrimination based on race, colour or ethnic origin, especially in the fields of civic rights, access to citizenship, education, religion, employment, occupation and housing.

- Article 3

***UN Declaration on the Elimination of
All Forms of Racial Discrimination***

Since 1956, the Tamil people faced intense discrimination in the field of employment and the 'Sinhala only' policy had a direct and serious impact on employment. Due to the language policy of successive Sri Lankan governments and discrimination in recruitment, the employment opportunities of the Tamils in the state sector have been greatly reduced. Between 1972 and 1980, of the 45,131 state sector jobs created, Tamils were given only 2% of places. Between 1977 and 1984 Tamils were able to secure only 0.7% of the 140,000 jobs created.¹³ In 1970, Tamils constituted only 6% of the 225,000 employees in the government sector. Between 1956 and 1970, public sector corporations recruited 189,000 persons and 99% of them were Sinhalese.¹⁴

"Policies concerning the use of Sinhala, inter alia, have seriously lessened the opportunities of Tamils for government employment. The government should adopt a system for recruitment for government service which provides equal

opportunities for all persons regardless of ethnic origin."

*- International Commission of Jurists
Virginia Leary: Ethnic Conflict and Violence in
Sri Lanka*

Report of a mission to Sri Lanka, July/August 1981

Although the 1978 Constitution provides for non-discrimination, it contains two caveats concerning language. If a position requires reasonable knowledge of a particular language, then it is lawful to require that the language be learned within a reasonable time. It is also lawful to require sufficient knowledge of a language at the time of employment if the duties cannot be carried out without that knowledge. Sri Lankan human rights agency, Law and Society Trust says that although phrased in neutral terms, this terminology gives wide discretion for abuse and serves as a tool of legitimized discrimination in practice.¹⁵

The World Bank and the UN reported in 2003 that 20 years of war severely affected the livelihood capabilities of many families and communities and in the diminished economy of the north-east, unemployment and underemployment further reduced individuals' and families' incomes, even to no income at all. Up to 1.3 million people in the labour force in the region were directly affected by the conflict. The level of unemployment in the north-east exceeded 25% compared to the national rate of 10%, the group most seriously affected being youth both men and women.¹⁶

Religion

...States Parties undertake to prohibit and eliminate racial discrimination in all its forms ...without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(d) (vii) The right to freedom of thought, conscience and religion.

- Article 5, International Convention on the Elimination of All Forms of Racial Discrimination

it is prohibited:

(b) To use such objects in support of the military effort;

(c) To make such objects the object of reprisals.

- Article 53, Protocol Additional to the Geneva Conventions of 12 August 1949 (Protocol I)

In Sri Lanka, the equation of the national interest with the protection of Buddhism has fostered a militant anti-Tamil Buddhism, which has sought domination in the political and cultural spheres, even by violence.¹⁷ Hindu and Christian places of worship, predominantly in the north-east, have been forcibly changed into Buddhist shrines, particularly as a means of claiming a settlement for the Sinhalese in the context of colonization, and acquired by successive governments by way of expropriation.¹⁸

The constitutions of 1972 and 1978 provided that 'the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the state to protect and foster Buddhism (1972); the Buddhist priesthood (1978). Although the constitutions allowed persons to adopt any religion of choice, the constitutional primacy accorded to

Buddhism has had the effect of legitimizing a policy of discrimination against minorities on religious grounds.¹⁹ The deviation from the ideals of a secular state has been accentuated even in governments' peace proposals.

In the pogroms of 1958, 1977, 1981 and 1983, Sinhalese mobs and the security forces willfully destroyed places of worship of the Tamils such as temples and churches throughout the island.²⁰ From 1983, the security forces destroyed hundreds of temples and churches in the north-east. The Air force deliberately bombed places of worship. Between 1983 and 1993, a total of 1,479 places of worship were damaged or destroyed.²¹ Ten civilians praying inside Jaffna's Gurunagar St James Church were killed on 13 November 1993 when an Air force plane scored a direct hit in retaliatory bombing for the LTTE attack on the Pooneryn Army camp.²² Sixty five people were killed and 150 injured when an aircraft bombed 2,000 civilians sheltering in St Peter and Paul's church at Navalay in Jaffna in July 1995.²³

Particularly after 1983, a number of religious leaders, Hindu and Christian priests and devotees have been killed, often inside a temple or a church. Other have been arrested and tortured, on the ground of their religion and beliefs.²⁴ The government took over a number of Hindu temples in the north-east, including the famous Munneswaram temple in Puttalam, for the purpose of stationing troops. While in occupation, the security forces damaged or desecrated the Hindu idols in the temples.

Since 2003, attacks by Buddhists on Christians and churches have increased,²⁵ often encouraged by the political party of Buddhist monks, the Jathika Hela Urumaya (National Sinhala Heritage).

During the year, there were at least 30 confirmed reports of assault on Protestant and Catholic churches and church members by Buddhist mobs,

often led by extremist Buddhist monks. Village police often were reluctant to pursue Buddhist monk agitators out of deference for their position; however, in February police arrested three Buddhist monks and four other persons for an attack on the Kebitigollewa office of the Christian NGO World Vision and charged them with arson. The arrested persons were freed on bail and the investigation continued at year's end.

- US State Department

*Sri Lanka: Country report on human rights practices 2004,
28 February 2005*

Culture

Each culture has a dignity and value which must be respected and preserved. Every people has the right and duty to develop its culture.

*- Article 1, UNESCO Declaration of
the Principles of International Cultural
Co-operation*

In the terms of the first known Ceylon Tamil poet, Eelathu Poothanthevanar, Sri Lankan Tamil literature is as old as Tamil Nadu's *Sangam* literature (100 BC-250 AD). At independence, a dichotomous religio-literary tradition was distinguishable (Saiva-Tamil literature, Christian-Tamil literature and Islamic-Tamil literature) with secular literary development, each enjoying popularity at its own level, and Muslims enjoying an ethnic identity that is separate from that of the Tamils.²⁶

Since independence, Tamil culture has been discriminated against, attacked and obstacles placed in the path of free development. Tamil cultural archaeological finds in the north-east have been suppressed, impeding research. There have also been numerous attacks on cultural events and cultural monuments. In 1974, hundreds of policemen attacked and disrupted the Fourth International

Conference for Dravidology and Tamil Linguistics in Jaffna, which resulted in the death of nine people. The Sri Lankan army under the United National Party (UNP) regime after 1978, caused severe damage to the ancient and historical Hindu temple Thiruketheeswaram in Mannar District. They plundered the temple properties. The priests, temple employees and residents in the vicinity of the temple and Manthai village were forcibly driven out from their homes. The pilgrim rests and the residence of temple trustees were destroyed and the library building containing valuable religious books and other materials was badly damaged and books destroyed. The teaching school for temple priests was completely destroyed. The 'Third eye' of Lord Shiva, implanted in gold was scooped out and the ornamental jewellery was removed. The desecration of the temple has caused a deep wound in the religious sentiments of the Hindu community.

The police burned the Jaffna library on 1 June 1981, during night curfew hours and Emergency, under the direction of Sri Lankan government ministers, Cyril Mathew and Gamini Dissanayake. The People Alliance (PA) government's Defence Secretary Chandrananda de Silva was also present in Jaffna with the ministers at the time.

"...a large group of police...went on the rampage...burning the market area of Jaffna, the office, office of the Tamil newspaper, the home of the Member of Parliament for Jaffna...the destruction of the Jaffna Public Library was the incident which appeared to cause the most distress to the people of Jaffna...The 95,000 volumes of the Public Library destroyed by the fire included numerous culturally important and irreplaceable manuscripts."

- International Commission of Jurists

*Virginia Leary: Ethnic conflict and violence in Sri Lanka
Report of a mission to Sri Lanka, July/August 1981*

The Tamil sections in the state radio and television have no independence and are completely controlled by the Sinhalese sections. Many programmes have been

curtailed or banned. Cultural exchanges between the Tamils of Sri Lanka and Tamil Nadu have also been restricted. In the field of sports, Tamils face discrimination and there are very few Tamils in national teams. The various actions adopted against Tamil culture by the state constitute a process of cultural genocide and threaten the future development of Tamil culture in the island.

Colonization - Threat to land security

In no case may a people be deprived of its own means of subsistence.

- Article 1(2)

International Covenants on Economic Social and Cultural

The most vicious and calculated effort to destroy the national identity of the Tamils has been the state aided aggressive colonization, which began soon after independence in 1948. The Sinhalese colonization of Tamil districts was willfully carried out to change the ethnic and political character of the Tamil homeland and annihilate the geographical entity of the Tamil nation.

Colonization has also gone hand in hand with violence directed against the Tamils, particularly during the pogroms in 1956, 1958, 1977, 1981 and 1983. Almost a quarter of the island's population was

moved from the Wet Zone Sinhalese areas to the Dry Zone between 1946 and 1971, under peasant colonization schemes using tax-payers' money. The rapid increase in the number of Sinhalese settlers in the Eastern Province led to the creation of the Sinhalese electorates of Seruvila and Amparai in 1976, which have engulfed 1,500 square miles of territory, two-fifths of the Eastern Province, to the detriment of Tamil and Muslim interests.

"...even though Sinhala settlers were largely settled in only loosely populated areas, the change in population ratio (and thus electoral powers) were substantial and thus undermined the political claims of Tamils over their 'homeland'. It is exactly in this line that many Tamils in the North-East perceived the Sinhala colonization schemes as a threat to their political aspirations and the security of their

ethnic integrity... Various studies from international scholars and consultants underline Sinhala national rhetoric of colonization schemes which were even officially promoted in project booklets and by high-ranking officials."

- Berghof Foundation
Discussion Paper
Control over land: Competing claims and fuzzy property rights in the North-East of Sri Lanka,
21 March 2003

Population Batticaloa and Amparai Districts

Census Year	Sinhalese	%	Tamils	%	Muslims	%
1911	1,138	3.8	17,233	57.9	9,714	32.6
1946	11,606	15.3	33,795	44.5	23,219	30.6
1963	40,950	29.6	54,050	39.1	42,560	30.8
1981	86,341	33.6	93,510	36.4	74,403	29.0

Trincomalee District

Census Year	Sinhalese	%	Tamils	%	Muslims	%
1911	1,848	10.7	14,059	81.1	1,241	7.1
1946	3,870	16.6	17,071	73.4	2,153	9.3
1963	12,020	17.5	51,410	75.1	4,900	7.2
1981	15,876	16.6	73,133	76.3	6,640	6.9

Vavuniya and Mullaitivu Districts

Census Year	Sinhalese	%	Tamils	%	Muslims	%
1911	5,771	3.7	83,948	54.5	60,695	39.4
1946	11,850	5.8	102,264	50.3	85,805	42.2
1963	68,740	16.9	192,070	47.1	143,190	35.1
1981	157,017	21.8	315,941	43.9	240,798	33.5

Source: Department of Census and Statistics, Sri Lanka

Since the 1970s, Sinhalese colonies have been established in Mullaitivu and Batticaloa districts, which had hitherto been exclusively inhabited by Tamil speaking people. The Manal Aru area in Mullaitivu District was initially inhabited by

Tamil peasants who preserved the contiguity of the Northern and Eastern provinces. This was transformed into a Sinhalese area and given the Sinhalese name 'Weli-Oya'. The colonization of this area was deliberately aimed at breaking the contiguity of the provinces. Many Tamil names of villages have been changed to Sinhala names. The Tamil name of the village 'Thannimurippu' was changed to the Sinhalese name, 'Janakapura', after the ruthless army major Janaka Perera, who has committed crimes against humanity. The colonists have been armed and large army camps in the vicinity of the settlements provide additional protection.

Sinhalese politicians continue to justify these Sinhala settlements in the Tamil areas and the Sinhala colonization policy on the ground that the Tamils, like Sinhalese, have been migrating to Sinhalese areas, although Tamil migration has been voluntarily initiated by individuals and personally financed. Furthermore, Tamils sought residence in Sinhalese areas mainly for the purpose of securing white-collar jobs before the 1980s. The Sri Lankan armed forces also intensified their military operations, including aerial bombardment in the north-east in the 1980s and 1990s resulting in Tamils fleeing to southern areas from where flight to other countries was possible. The migration of the Tamils has neither changed the ethnic composition of any Sinhalese district nor has created electorates in the Sinhalese provinces.

Colonization of the Tamil areas with the assistance of the security forces is continuing. The recent trend has been to install statues of the Buddha in strategic areas and claim these areas for the Sinhalese. Such actions have taken place in several towns and villages in the north-east and have led to demonstrations by the Tamils.

Destruction of property

...it is prohibited to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples.
- Article 53, Protocol Additional 1 to the Geneva Conventions

Sinhalese mobs and the security forces have destroyed a vast amount of property belonging to the Tamils. In the 1958 and 1977 violence against the Tamils, a large number of houses belonging to Tamils were looted and set on fire. Damage caused to Tamil property in 1977 was estimated at \$60 million.²⁷ In May 1981, the Army attacked, looted and burned Tamil shops in Jaffna.²⁸ In Amparai District and the Hill Country, many houses belonging to Tamils were looted and set ablaze.

In June and July 1983, security forces and mobs destroyed more than 2,500 Tamil houses, shops, hotels and temples. Soldiers went on the rampage in Jaffna burning 169 houses, 45 vehicles, many shops, petrol stations and temples. The Army set alight the market, shops and vehicles in Vavuniya on 1 June 1983. Sinhalese mobs destroyed 18,000 Tamil houses and 3,000 shops in July and August 1983 throughout southern Sri Lanka. In the Hill Country alone over 200 line room dwellings of Plantation Tamil workers, some 1,500 houses, 1,000 shops, vehicles, factories and Hindu temples were burned or otherwise destroyed.²⁹

After 1983, the Sri Lankan security forces have been involved in deliberate destruction of Tamil property on a massive scale. After 107 days of continued Air force bombing in 1990 and 1991, the Jaffna Municipal Council assessed the damage to buildings, schools, fishing boats and equipment, factories, shops, banks, government departments such as Electricity Board and Road Development

Authority and machinery at \$100 million. Some 7,830 houses, 995 shops, 45 places of worship, 50 industrial buildings and 54 government buildings and 27 schools buildings had been destroyed or damaged in the bombing raids.³⁰

In the Jaffna peninsula, all houses and other buildings in a 20 sq km area around Palaly and Kankesanthurai military bases were demolished to give a clear view from the area. All buildings within a mile on both sides of the road between Vavuniya and Mankulam in the Vanni region were demolished. Similarly all buildings along the Mannar-Vavuniya road were also destroyed. Trees along roads and around camps were cut. Soldiers ran amok in Puthukudyiruppu, Batticaloa on 15 July 1997 after an LTTE ambush, killing three Tamils and setting ablaze 87 houses and damaging another 30 houses.³¹ Journalists, who visited Chavakachcheri after its capture by the Army in September 2000, reported that 80% of the buildings, including the hospital, are damaged or destroyed.³²

International agencies estimated in 2003 that nearly 326,700 houses and household assets such as furniture, fixtures and possessions were damaged partly or totally destroyed in the north-east. Nearly 58% of damaged houses remain uninhabitable and about half of these are in Jaffna and Batticaloa districts. Nearly 84% (144,890 units) of the housing owned by internally displaced people is located in the north-east and that nearly 90% of these houses were damaged during the conflict, constituting 43% of the total damaged houses. It was also estimated that 12,000 to 15,000 damaged houses belong to refugees in camps in India.³³

Destruction of infrastructure and livelihood

It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas crops, livestock, drinking water installations and supplies and irrigation works for the specific purpose of denying them for their sustenance value...

- Article 54, Protocol Additional 1 to the Geneva Conventions

The infrastructure in the north-east suffered extensive damage due to indiscriminate attacks by the military. The military also followed the policy of destroying the infrastructure around their camps. Since there were thousands of camps in the north-east, the policy led to the vast destruction. In 2003, international agencies estimated that only 10-15% of the road surface in the north-east was still intact. With the absence of maintenance during conflict, all pavement surfaces have deteriorated and some have entirely disappeared. At this time, a 20-year development gap existed between the standards of roads in the north-east and the rest of the country. Many bridges were also damaged or destroyed.

"The infrastructure of the North East is greatly debilitated due to the armed conflict and needs significant rehabilitation, reconstruction and development. These needs stem from three problems, namely: damage due to the conflict, deterioration of service condition due to lack of maintenance, and, stagnation in development and improvements compared to the rest of island."

- Asian development Bank, UN and World Bank
Sri Lanka: Assessment of needs in the conflict affected areas,
May 2003

In the north-east, total crops exceeded 800,000 tonnes in 1982 but decreased to less than 450,000 tonnes in 2001, because of the conflict. Due to the war, there was substantial destruction of standing crops

and those around homesteads, as well as farming equipment and infrastructure. The agencies estimated that a total of 323,700 hectares of land needed irrigation in the north-east, and over 30% of the 2,398 minor irrigation tanks in the north-east required rehabilitation due to the impact of war.³⁴

Before the conflict the north-east accounted for 25% of the total livestock population in the island. It was estimated in 2003 that between 1981 and 2000, farm animals decreased from 1,978,000 to 1,656,000 with the consequent decrease in milk, meat and egg production. Around 12,000 fishermen's houses, boats fishing gear and boat engines had been destroyed in the north-east. Serious damage has also been caused to supporting infrastructures such as harbours, boatyards, net production facilities, ice plants and fuel supply stations.³⁵

Economic repression

Social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society, with respect for and compliance with human rights and fundamental freedoms...

- Part II, UN Declaration on Social Progress and Development

Economic repression of the Tamils took many forms since independence and the onslaught on their economic rights was carried out in several fronts and in successive phases with increasing severity. The many-years long conflict has systematically destroyed the social fabric of institutions sustaining food security, education and healthcare in the Tamil homeland. The long-term erosion of these institutions has made more than a generation of Tamils dependent on relief. Poverty is extensive, deep and growing.

Development policy was conceived as one that would benefit only the Sinhalese, and employment 'creation' for the Sinhalese was sought to be achieved by deprivation of the rights of the Tamils rather than a broad-based expansion of employment opportunities.³⁶

The benefits of state-aided land settlement schemes for agricultural development were almost exclusively reserved for the Sinhalese, while even in Tamil areas the Tamils were denied their due right to benefit from these schemes and many were even stripped of their existing land rights. In addition, the Plantation Tamils were subject to loss of citizenship and civic rights, loss of employment as a consequence of the Land Reform Law 1972 and a continuous diminution of their standard of living. The Plantation Tamils have been economically the most disadvantaged group throughout. Although producing 35% of the wealth, they appropriate less than 5% of the national income.³⁷

Another important manifestation of economic repression is in the field of public administration. Openly discriminatory policies have been used to reduce Tamils' share in public administration to levels much lower than their proportion in the population. Even this unduly small share in employment has been whittled away by state terrorism and intimidation since 1983. The denial of educational rights of the Tamils was designed to deprive the Tamils of the opportunity to enter the more lucrative forms of employment and scotch the growth of human capital among the Tamils so as to debar future generations of Tamils from an avenue to prosperity.³⁸

Much of the economic activity is confined to the Sinhalese zones and very few industries have been established in Tamil areas. The capital expenditure, per capita expenditure and foreign aid utilization in these areas have been extremely low and in

the implementation of irrigation schemes Tamil areas have been neglected.³⁹ The violence in 1977 and 1983 deliberately targeted Tamil economic activities and had a devastating impact on the Tamil share of the economy.⁴⁰ Ensuing war brought the targeted destruction of roads, bridges, transport equipment and means of employment such as farms, fishing boats and factories as well as crops and animals. The military has looted and destroyed entire Tamil villages.⁴¹

The government has also followed a *scorched earthed policy* in the Tamil areas of the north-east, burning down maturing paddy (rice) fields and jungles. The security forces have bombed, burned or cut down an estimated half a million coconut and palmyrah palms, which are vital to the economic life of the Tamil people. Trees are also cut down for construction of bunkers for the military. Hundreds of farm animals have also been killed in indiscriminate bombing and shelling.

"...current fish production is estimated at around 56,000 tonnes/year, compared with around 93,000 tonnes before the conflict...Coastal fisheries have experienced widespread destruction of production assets, including boats, looting of fish gear and engines, and serious damage to supporting infrastructure such as harbours, boatyards, net production facilities, ice plants, fuel supply stations and fishermen houses...in some districts eg. Jaffna, 90% of the boats, engines and gear may have been lost or rendered unusable."

*- Asian Development Bank, UN and World Bank
Sri Lanka: Assessment of needs in the conflict affected areas,
May 2003*

Economic blockade

Starvation as a method of combat is prohibited. It is therefore prohibited to attack, destroy, remove or render useless, for that purpose objects indispensable to the survival of the civilian population, such as foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.

*- Article 14, Additional Protocol 11 of
1977 to the Geneva Conventions*

"By mid-1987, India intervened in the conflict by air-dropping supplies to prevent what it felt was harsh treatment and starvation of the Tamil population in the Jaffna Peninsula caused by an economic blockade by Colombo."

*- US State Department, Bureau of South Asian Affairs,
Background Note: Sri Lanka, December 2005*

The government imposed an economic blockade on the northern Tamil areas in 1991, causing extreme suffering and deaths of hundreds of Tamil civilians. The government used food and medicines as weapons, in violation of the Geneva Conventions applicable to non-international armed conflicts. Under Emergency regulations, 42 commodities were banned into these areas. In addition, the Defence Ministry and the military imposed bans and restrictions on 25 other items. Save the Children (UK) estimated that 900,000 children in the north-east were directly affected by war and the economic blockade.

The economic embargo on goods entering into the Vanni impacts on all aspects of day to day life, and as such impacts hardest on children. While in theory the embargo is only with regard to items of potential military significance, in practice most items have not been able to reach the people. The result has been insufficient quantities of pharmaceuticals, food stuffs, drugs, kerosene, agricultural materials, spare parts and fertilizer and even items such as clothes and water jars, pens and pencils, school books and other educational materials.

*- Save the Children (UK), Children affected by armed
conflict in North and East Sri Lanka, 1998*

Children disabled by war were unable to procure prosthetics and other rehabilitative materials.⁴² The government imposed a ban on materials needed to make artificial limbs in the Vanni.⁴³ Local military commanders introduced arbitrary restrictions on towels, clothes, buckets, hurricane lanterns, plastic sheeting, drugs and even soap and oral dehydration salt.⁴⁴ The restrictions together with rains in the region, where shelter was lacking as a result of restrictions on shelter materials, increased mortality and

morbidity in children.

When the LTTE controlled the Jaffna peninsula before 1995, the government allowed only half the food needed in the peninsula. Only 6,197 of the 12,750 lorry-loads of food needed for the period May-October 1996 were allowed into the northern Vanni region. In May 1997, the government further reduced food aid to the Vanni. According to the World Food Programme (WFP), food supply to the Vanni for May 1998 amounted to 1,623 tons, some 1,098 tons less than April 1998 deliveries, and more than 1,800 tons below the cumulative monthly average for the previous 24 months.⁴⁵ The reduction in fuel of the agreed 8,000 barrels a month by 5,350 barrels badly affected education, health and agriculture. That same month, the UN Committee on Economic, Social and Cultural Rights (CESCR) expressed grave concern for the Tamil refugees, 'who lacked basic sanitation, education, food, clothing and health care'. CESCR was alarmed that undernourishment among refugee women and children was as high as 70%.⁴⁶ Despite these concerns, the government reduced dry rations to the refugees in the Vanni by 57% from July 1998.

"Agriculture and fisheries are the major sectors in the affected areas, and as a result of the damage to irrigation schemes, livestock farms, machinery and equipment, vehicles and animal sheds, billions of rupees have been lost. With the signing of the ceasefire agreement between the Government of Sri Lanka and LTTE in February 2002, there is relative peace in the area, but food security remains at a very low level in the Northern and Eastern provinces of the country, as indicated by recent nutrition surveys."

- Food and Agricultural Organization/World Food Programme, Crop and food supply assessment mission to Sri Lanka, Special Report, 10 May 2004

According to health surveys in 2000 and 2001, there was over 50% shortage of doctors, including specialists, and other medical staff in hospitals in the north-east. For example, only 1,077 nurses were in

service, whereas 3,375 were required. Over 250 assistant medical offices were needed, but only 58 were available. Surveys in Jaffna, Trincomalee and Vavuniya revealed that nearly 50% of children were malnourished. In Jaffna, 56% of pregnant women, 42% of lactating women and 54% of adolescent girls were anaemic. Wasting as a result of poor nutrition among children in Jaffna was nearly 19% and stunting 31%. Wasting was as high as 31% among 6-17 month-old children. In Vavuniya, 19.5% of the displaced children were wasted. In Trincomalee, 26% of the children were wasted, 27% stunted and 50% underweight.⁴⁷ This situation hardly improved after the ceasefire agreement of 2002.

"...However, at the end of 2005 and early this year, the escalation in violence and volatile security situation in the North and East has had a slowing effect on implementation of assistance both in post-tsunami and conflict affected areas...We are now working on our plan after P-TOMS failure. There are still clear priorities and needs. People need permanent housing, access to roads, electricity, water, sanitation, community infrastructure – as well as support to livelihoods and secondary occupations that have not been sufficiently targeted by assistance to date."

- External Relations Directorate General, European Commission, Letter dated 16 February 2006 to the Tamil Information Centre

Freedom of movement

Every one has the right to freedom of movement and residence within the borders of each State

- Article 13, Universal Declaration of Human Rights

Although the Sri Lankan Constitution guarantees freedom of movement, the right of Tamils has been extremely restricted through Emergency regulations and security force actions. Human Rights Watch said in 2001 that due to government restrictions, Tamil civilians were often

unable to reach work sites, attend schools or seek urgent medical care.⁴⁸ Before 2002, Tamils from the Vanni entering the refugee camps in Vavuniya were forced to sign a form, which stated that 'they are residing in the camps at their own free will'. These camps were in effect 'detention centres' and the residents could not move out of the camp as they wished. Even to enter Vavuniya town for shopping they had to obtain a permit. The permits were issued only for a limited time, often for a day. Other people entering Vavuniya for various purposes such as trade and medical treatment also had to obtain permits from the security forces, which were issued only for a limited period. People were often expected to pay a bribe to obtain the permits. Similar rules also applied in Mannar area.

"Tamils must obtain police passes in order to move freely in the north and east, and frequently they are harassed at checkpoints around the country. These security measures have the effect of restricting the movement of Tamils."

- US State Department Country report on human rights practices 2000, February 2001

Before 2002, a large number of people remained in Vavuniya or Mannar, unable to obtain permits to travel to Colombo or southern areas to meet relatives, attend weddings or funerals, for medical treatment and to travel abroad or for trade purposes. In order to travel to southern or eastern areas, a relative in these areas must sponsor the visit. A travel permit may be issued after police in that area check and report on the suitability of the sponsor. The procedure took several months and eventually permit was often refused.

Before 2002, Tamils who wished to travel to southern areas from Jaffna also had to obtain permits. In January 2001, over 10,000 people were waiting in Jaffna for permits. Tamils travelling to Jaffna were also expected to obtain permits from the Defence Ministry, which took weeks or months. Air travel was expensive and ship services to Jaffna from Trincomalee were

irregular. As a result, sometimes thousands of Tamils were stranded in Trincomalee, including foreign Tamil visitors, without adequate food or shelter. The government had denied permits to shipping companies, which were able and willing to provide services to Jaffna. On 4 July 2001, the government introduced new regulations, requiring permits from the Defence Ministry to visit the Vanni.

Tamils in the north-east in army-controlled areas were expected to register with the security forces and submit a list of residents. The security forces issued them with special identity cards in addition to the National Identity Card (NIC). Tamils in urban centres in southern Sri Lanka were expected to register with the police under Emergency Regulations. Although the Regulations had general application, they were implemented only in respect of the Tamils. They were expected to carry their NICs, proof of police registration and work place identity cards (or school identity cards if they are students) when they travel. The security forces often raided homes, lodges, cinemas and other public places to check the NICs and police registration. Tamils without the documents were taken into custody. There were many incidents where security forces confiscated or destroyed the NICs and accused the people of failure to produce them.

There are hundreds of checkpoints in the north-east. These continued in many areas even after the ceasefire agreement of February 2002, although in southern Sri Lanka the checks were not carried out at the checkpoints after the ceasefire until mid-August 2005. People have disappeared at checkpoints and women have been raped. Students going to schools and others travelling to work must pass several checkpoints. Tamils were checked at the many checkpoints in southern Sri Lanka and sometimes detained even if they possessed all the documents. In the north-east, security zones have been created around military camps, coastal areas and

around public buildings such as hospitals. These have adversely affected the freedom of movement of the people. There were also prohibited zones, no-go areas and territorial zones where fishing was disallowed.⁴⁹ A large number of high security zones which are no-go areas, continue to be in force in the northeast.

Before the ceasefire, fishermen in the north-east were allowed to fish only a few hours a day and only within a kilometre from the shore. Night fishing was banned. Journalists and independent observers could not enter the Tamil areas of the north-east without permits from the Defence Ministry. Permits for journalists were never issued. In April 2001, security forces shot and injured London's *Sunday Times* journalist Marie Colvin after she visited the Vanni without a permit.

After the ceasefire agreement of 2002, freedom of movement somewhat eased. But in many parts of the north-east, the security forces maintained the restrictions on movement. Local people were only able to access some of the areas and roads following continued demonstrations. But, after Emergency was re-imposed and Emergency Regulations were reintroduced in August 2005, severe restrictions on the freedom of movement have returned. Since 8 January 2006, the security forces have imposed restriction on fishing in parts of the north-east and have again banned night fishing.

"Trincomalee was characterized by a hartal (work stoppage) and a tense situation prevailed in the area. Normal life and business in the town is paralyzed with all shops, government offices, schools, non-governmental organizations, financial institutions closed down. The ban on fishing ordered by the Sri Lankan navy in the sea area from Koneswaram to the harbour continues with some 1,500 fishers directly affected as reported to OCHA by FAO."

- United Nations Office for the Coordination of Humanitarian Affairs (OCHA), Humanitarian Situation Report - Sri Lanka, 6-12 January 2006

After Mahinda Rajapakse became president of Sri Lanka in November 2005, new restrictions were imposed on foreigners travelling to the north-east. On 28 December 2005, the government announced new arrangements for foreigners seeking to enter the "uncleared areas" of the north-east, which are presently under LTTE control. Foreign staff of diplomatic missions, international organizations and international NGOs accredited with the Ministry of Foreign Affairs will be allowed to cross entry and exit checkpoints into these areas without restriction. All other foreigners must seek prior approval from the Sri Lankan Ministry of Defence.⁵⁰ After the ceasefire, a large number of Tamils who have become foreign citizens travelled to the north-east to assist war victims and in post-tsunami relief and reconstruction. The government restrictions will affect their work and bring more suffering to ordinary people, particularly in view of the fact that the government is unwilling to participate in a joint mechanism to provide relief to the people of the north-east.

Expression

Attacks such as murder, kidnapping, harassment and/or threats to journalists...as well as material destruction of communications facilities, pose a very significant threat to independent and investigative journalism, to freedom of expression and to the free flow of information...

- Joint Declaration by the UN Special Rapporteur on Expression, Organization for Security in Europe (OSCE) & Organization of American States (OAS)

Before lapsing in July 2002, the Emergency Regulations granted the government Censor wide powers, including powers of penal sanctions, undermining the judicial powers vested in the judiciary under the Constitution. Sri Lankan governments have

imposed censorship on several occasions. The government strictly controlled information to and from the north-east denying freedom of expression of the Tamils. Before the ceasefire, sufficient newsprint paper was not allowed to Jaffna and the east and it was banned from transport into the northern Vanni region. In May 2000, the Censor banned the Jaffna Tamil newspaper *Uthayan*, for reporting news relating to the war. Although censorship was lifted, newspapers and reporters continued to come under government threat.

BBC's Jaffna correspondent Mylvaganam Nimalarajan was murdered in October 2000 for exposing the atrocities committed by the security forces in the north-east. In a letter to the Sri Lankan Prime Minister in October 2002, international human rights agencies, Reporters Sans Frontieres (RSF) and Damocles Network said that they have conclusive evidence that the authorities blocked police investigations into his killing.⁵¹ Tamil journalists are under continuing pressure. A number of them have been arrested or received death threats and some have been murdered. The Tamil Media Alliance has stated that members are subject to harassment and intimidation by pro-government paramilitary groups and the Sri Lankan security forces.⁵² Leading Tamil journalist Dharmaratnam Sivaram was abducted and murdered in Colombo on 28 April 2005.⁵³ On 6 January 2006, the military cordoned off and searched the editorial, business, production and administrative offices of the Jaffna Tamil daily *Yarl Thinakkural* during business hours.⁵⁴

The government has continued to use its power to harass and punish journalists who do not toe the line.

"The Committee to Protect Journalists is alarmed by intimidating remarks made by President Chandrika Kumaratunga against senior defence correspondent Iqbal Athas last week. Speaking to a closed meeting of 1,000 top military and police officials in Colombo on July 26, the president

accused Athas of publishing sensitive information harmful to Sri Lanka's national security...Kumaratunga threatened to use the Official Secrets Act against Athas...The Official Secrets Act allows the minister of defence to prohibit access to certain locations and facilities, and to bar photography and reporting about such secret information. Under the law, those convicted of gathering secret information can be subject to 14 years in prison."

- Committee to Protect Journalists (CPJ)
2005 *News Alert*, 3 August 2005

The courts have often failed to protect journalists but have gone on to punish them under unjust laws and have been condemned by the UN.

"No reasoned explanation has been provided by the court or the State party as to why such a severe and summary penalty was warranted...The imposition of a draconian penalty without adequate explanation and without independent procedural safeguards falls within that prohibition...The Committee concludes that the author's detention was arbitrary, in violation of article 9, paragraph 1...the State party is under an obligation to provide the author with an adequate remedy, including compensation, and to make such legislative changes as are necessary to avoid similar violations in the future."

- UN Human Rights Committee
83rd Session, March/April 2005⁵⁵

Healthcare and sanitation

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores...intended only for civilians...

- Article 23, Geneva Convention Relative to the Protection of Civilian Persons in Time of War

Government restrictions for many years, such as on chlorine for water wells, and malathion insecticide for anti-malarial campaigns, have had profound impact on public health in the north-east. As a result, cases of malaria increased.⁵⁶ French medical agency Medecins Sans Frontieres

(MSF) reported in April 2000 that there were acute shortages of medicines in the Vanni districts. Even antibiotics and painkillers were not available and hospitals were turning patients away. In September 2000, MSF concluded, following a survey, that 20% of the displaced people in Jaffna were suffering from acute malnutrition and that the figure rose to more than 30% among displaced children aged between six and seventeen months. In a declaration at the meeting of the World Bank Sri Lanka Development Forum in December 2000, the European Union drew attention to the extreme social, moral and physical precariousness of the people of the north-east and urged the government to improve the situation, particularly through better access to humanitarian aid and improved freedom of movement.

In April 2001, London *Sunday Times* journalist Marie Colvin reported, after visiting the Vanni, that the economic embargo had created a huge but unreported humanitarian disaster for the 500,000 civilians, pointing out that the government prohibits international aid agencies distributing food in the region. Aid agencies estimated that 40% of the children in the Vanni are undernourished or malnourished.⁵⁷ The German Integrated Food Security Programme said that 80% of the population of the north-east lived under the poverty line and that malnutrition, which is a poverty indicator, was 10% at national level while in Trincomalee District it was 27%.⁵⁸

The British Refugee Council has reported over 3,625 civilian deaths - 2,490 in Jaffna and 1,135 in the Vanni - including more than 1,990 children, between September 1991 and April 2001, as a result of lack of food, medicines, medical equipment, medical care, medical staff and transport facilities for patients.⁵⁹ Professor Jordan J. Paust has said that the intentional withholding of medicines and medical supplies from the LTTE-controlled areas, as recognized by the US State Department,

is a clear violation of Article 3 of the Geneva Conventions, and a war crime. This is true 'whether or not medicine and medical supplies were forcibly destined solely for the use by enemy combatants or enemy wounded and the sick'. Medicines and medical supplies are neutral and protected property in times of armed conflict and may not be withheld.⁶⁰

According to estimates in 2003 by international agencies, including the World Bank, of 400 health institutions such as hospitals in the north-east, 55 were totally destroyed and 49 were not functioning and out of 9,542 posts in the health sector, 3,251 posts (34%) were vacant (eg. medical officers and basic specialists). The National Immunization Programme in the region is under serious constraint because of the irregular supply of vaccines and lack of trained personnel. Hospitals are affected by the lack or shortage of essential drugs, near collapse of the health information and monitoring systems.

The agencies also pointed out that there is malnutrition among mothers and children, anaemia among women, children and adolescent girls and increased disability mainly due to war and mines injuries. Laboratory and blood bank facilities, blood transfusion services and reproductive healthcare services are not adequately available. The war had increased trauma related mental and physical disabilities and there were several thousand ex-combatants with disabilities. This is exacerbated by the poor state of sanitation facilities. Over 40% of primary schools in the north-east have no access to water points and of the remaining 60%, many of the water points do not meet recognized standards of water quality. About 63% of schools have no sanitation facilities.⁶¹

Repressive laws

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law...

- Preamble to the Universal Declaration of Human Rights

The Prevention of Terrorism Act (PTA) was introduced as a temporary measure in 1979, but has become a permanent feature of the statute book. The Act gives wide powers to the security forces. Since its introduction, the Act has almost exclusively been used against the Tamils and before February 2002, thousands of Tamils were arrested each year and detained under the Act. The Act permits detainees to be held incommunicado for up to 18 months without trial. Normal rules of evidence are suspended under the Act permitting admission of confessions as evidence without independent corroboration. This has led to widespread torture against Tamils in custody by security forces to extract confessions. The UN Human Rights Committee, the International Commission of Jurists and Amnesty International have repeatedly called for the abolition of the PTA or it to be brought in line with international standards. But successive governments have continued to ignore these pleas.

Under the ceasefire agreement of 2002, the Sri Lankan government agreed not to use the PTA. However, the draconian legislation remains in force and may be used by the government at any time. The UN has expressed concern.

"The Committee is also concerned that the continued existence of the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court (sect. 7), and thereafter for up to 18 months on the basis of an

administrative order issued by the Minister of Defence (sect. 9). There is no legal obligation on the State to inform the detainee of the reasons for the arrest; moreover, the lawfulness of a detention order issued by the Minister of Defence cannot be challenged in court. The PTA also eliminates the power of the judge to order bail or impose a suspended sentence, and places the burden of proof on the accused that a confession was obtained under duress. The Committee is concerned that such provisions, incompatible with the Covenant, still remain legally enforceable..."

*- UN Human Rights Committee,
1 December 2003⁶²*

Emergency rule in Sri Lanka was in force for 27 years out of 54 years of independence and has permitted serious derogation by governments of Sri Lanka of the rights protected under the ICCPR and other international human rights instruments. Emergency Regulations (ER) made by the President, have the legal effect of overriding, amending or suspending any law, except the provisions of the Constitution. The declaration of Emergency cannot be called into question in any court and there is insufficient parliamentary control over the ER. The ER have also been almost exclusively used against the Tamils. Before February 2002, thousands of Tamils were arrested each year and detained under the ER. Furthermore, the security forces did not even observe the few safeguards provided in the ER. Although the ER have been criticized by international human rights agencies as falling far below international standards, the Sri Lankan government introduced new ER in May 2000, granting enormous powers to the security forces and state officers and further eroding the rights of the people.

The ER granted powers to state officers to acquire any property, including buildings, vehicles and machinery and force anyone to perform any work, order people to move out of areas, confine and impose restrictions on people. Any arrested person may be held for 90 days without being produced in court. The courts were had no

discretion but to extend the period for another six months, if the police make a request. The ER also required Tamil people in urban areas to register with the police.

On 13 August 2005, the Sri Lankan President declared a state of Emergency and reintroduced Emergency Regulations. These are similar to those in existence before July 2002. Arrests of Tamils are now taking place throughout Sri Lanka. The police initially denied that these arrests are carried out under Emergency Regulations, but when pressed by the SLHRC, have admitted that arrest and detention are under the Regulations.

"...reminds the government that even under a state of emergency it cannot violate basic international human rights such as the right to life; freedom from torture or cruel, inhuman or degrading treatment or punishment; and freedom of thought, conscience, and religion. Arbitrary deprivations of liberty or deviations from the fundamental principles of a fair trial, including the presumption of innocence, are not permitted... urged the Sri Lankan government to publicly issue instructions to the army, police, intelligence services and other state institutions to this effect.

At this critical hour, the government needs to exercise restraint, and make sure the security and investigative forces follow internationally accepted norms. Many innocent Tamils have suffered unjustly in the past when the government has ignored their basic rights. The government must vigilantly safeguard the rights of the minority communities."

- Human Rights Watch, August 2005 ⁶³

Military High Security Zones (HSZ)

A substantial land area of the north-east, particularly the areas where the displaced people are to return, is designated as High Security Zones (HSZ) and occupied by the Sri Lankan security forces.⁶⁴ Since the ceasefire agreement, the security forces have been creating new security zones or expanding existing zones, including into

areas where resettlement is taking place. In early 2003, the SLHRC demanded an explanation from the Army over the declaration of HSZs in Jaffna where IDPs were to be resettled, but did not receive a satisfactory answer. The people of the north-east have continued to stage demonstrations demanding the removal of HSZs.

There are 18 HSZs in the Jaffna peninsula alone, covering 160 sq kilometres or 18% of the total landmass. The LTTE have said that nearly 30,000 houses, 300 schools, 25 roads, 40 industries and more than 42,000 acres of cultivable land are within HSZs. Legal experts say that the establishment of the HSZs has no legal basis. Hundreds of complaints have been lodged by Jaffna citizens with the Sri Lanka Monitoring Mission (SLMM) and the SLHRC, regarding the violation of their fundamental rights such as freedom of movement, freedom to choose the place of residence and equality before the law, by the illegal existence of HSZs.

Following the ceasefire in February 2002, the Sub-Committee on De-escalation and Normalization (SDN) was established, according to decisions at the second session of the peace talks, to examine ways and means of ensuring resettlement, particularly looking at military HSZs, return of private property and resumption of economic activity. The work of SDN came to a standstill in December 2002 after Jaffna Army commander Sarath Fonseka submitted a report to the SLMM demanding that the LTTE should lay down arms before resettlement in HSZs can begin. As a consequence of Army occupation, nearly 100,000 displaced people are unable to return home.

"...The return of a sizeable portion of those still displaced will depend on tangible progress at the peace talks, as their home areas lie within the strategic High Security Zones."

- United Nations High Commissioner for Refugees, (UNHCR), Global Report 2003 – Sri Lanka, 1 June 2004

Arbitrary arrest

No one shall be subjected to arbitrary arrest, detention or exile.

- Article 9

Universal Declaration of Human Rights

Before February 2002, arbitrary arrests of Tamils continued every day. Amnesty International and other international human rights agencies recorded over 120,000 Tamil arrests between 1990 and 2001. In February 1994, Amnesty International said that thousands of Tamils were being arrested every month in Colombo, most without any valid reason.⁶⁵ Some 15,000 arrests were made under Emergency Regulations between 1 June and 31 December 1993.

"Thousands of Tamil people, including scores of prisoners of conscience, were arrested during security operations in all parts of the country. According to official figures, 8,652 people were arrested in Colombo alone between July 1996 and July 1997."

- Amnesty International - Annual report 1998

Colombo agency, the Centre for Human Rights and Development (CHRD) estimated that 18,000 Tamil arrests took place in 2000. Tamils were arbitrarily arrested in streets, houses, cinemas, government departments, offices, in vehicles, lodges, hostels and often late in the night. Tamil women have been forced to go to police stations late at night in their night dress. Tamils arrested often suffered degrading treatment, such as verbal abuse, covering of the eyes and tying of the hands.⁶⁶ The security forces almost never followed the safeguards provided in the Emergency Regulations, such as informing relatives and issuing arrest receipts, informing relatives about the place of detention and informing the SLHRC within 48 hours of arrest.

"Large-scale arrests of Tamils continued during the year...The Government detained more than

2,819 persons under the ER and PTA from January to August 31, a higher number than that for all of 1999. Many detentions occurred during operation against the LTTE. Most detentions lasted several days to several months. The number of prisoners at any given moment under the ER and the PTA consistently remained close to 2,000. Hundreds of Tamils indicted under the PTA remained without bail awaiting trial, some for more than two years...Many such cases drag on for years."

- US State Department

Country report on human rights practices 2000, February 2001

In August 2005, after Emergency was imposed a large number of Tamils were arrested in the Tamil-dominated Colombo suburbs. Between midnight on 30 December and mid-day on 31 December 2005, the security forces conducted cordon and search operations in Colombo and rounded-up 920 Tamils. The operations took place in Tamil-dominated areas in the Colombo suburbs of Bambalapitiya, Grandpass, Kotahena, Maradana, Mutuwal and Wellawatte. The arrested persons were taken to eight police stations, interrogated, photographed and finger-printed before being released. According to the SLHRC, seven Tamils are still in custody for further interrogation. Tamils have also been arrested in Kandy and Dambulla.

According to reports after August 2005, Emergency Regulations and other measures are used more broadly under the guise of preventing LTTE attacks. Patrols and night raids have increased, particularly in Tamil neighbourhoods and vehicles, including buses to and from areas with large Tamil populations, are subjected to stringent security checks. These reports also say that the attitude of the security forces is clear from the abusive racist language towards Tamils.⁶⁷ The Sri Lankan army also conducted many cordon and search operations in Batticaloa, Jaffna and Trincomalee in the north-east. In Jaffna, on 13 December 2005 alone, search operations were conducted in Achchuveli, Analaitivu, Ariyalai, Idaikaddu, Kachchai,

Kerudavil, Kodigaman, Kondavil, Mayilankadu, Meesalai, Pannankaddai, Point Pedro, Thumpalai, Vallalai and Varani.

Detention

Tamils in detention are forced to live in appalling conditions and are harshly treated and many have been killed. Fifty three Tamil political prisoners were killed in the Welikada maximum security prison in Colombo in July 1983.⁶⁸ Three Tamil detainees were hacked to death in Kalutara prison in December 1997 and two more were killed in the same prison in January 2000. No proper enquiries have been held or effective action taken on these killings. Tamils have also been killed in police stations and military camps.⁶⁹ On October 2000, 24 young Tamils in the Bindunuwewa Rehabilitation Centre near Badulla were massacred by Sinhalese mobs (See under “Massacres”). At least 40 Tamils remain in custody for several years under the PTA, awaiting trial. Access of prisons and detention centres to human rights agencies to monitor the conditions of detainees is important in the prevention of torture, but the Inspector General of Police (IGP) is opposed to surprise visits by the SLHRC.

There are no jury trials in cases brought under the PTA. Confessions obtained by various coercive means, including torture, are inadmissible in criminal proceedings but are allowed in PTA cases. Defendants bear the burden of proof to show that their confessions were obtained by coercion.⁷⁰ This has led to widespread torture in detention.

Torture

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

- Article 5, Universal Declaration of Human Rights

Torture, which is considered among gravest of crimes, the gravity of which is comparable to crime against humanity, has continued against the Tamils for many years. Human rights agencies have pointed out that members of the security forces continued to torture and mistreat detainees and other prisoners, both male and female, particularly during interrogation and most victims were Tamils suspected of being LTTE insurgents or supporters.⁷¹ Even Sri Lankan Supreme Court judges have stated publicly that torture continued unabated in police stations in spite of a number of judicial pronouncements against its use.

Agencies have also reported that methods of torture included electric shock, repeated beatings on the soles of the feet, head or body, suspension by wrists or feet in contorted positions, burnings with heated iron bar, electric iron or cigarettes and near drowning, covering heads with bags dipped in insecticide, chilli powder or petrol, putting insect into the ear and covering with plaster, beating the sexual organs, electric shock on sexual organs and inserting a rod into vagina or rectum.⁷² Children have also been subjected to torture in detention.⁷³

“Yogalingam Vijitha, a 27-year-old woman, was illegally detained, and horribly raped and tortured by seven officers of the Negombo Police...from 21 to 28 June 2000...During the terrible ordeal that followed her arrest, she was beaten all over her body with a club; hit on the ears; smothered with a shopping bag containing chilli powder mixed with petrol; wrapped semi naked in a shopping bag containing chilli powder and petrol; pinned down on a table while policemen inserted pins under the nails of all her fingers and toes; assaulted with a club and wires; trampled with boots; and hung up and assaulted with a club. When she refused to sign a forced confession, she had a plantain flower soaked in chilli forced in and out of her vagina for about 15 minutes, at which point she lost consciousness...On June 28 she was then transferred to the Terrorist Investigation Division, where she was further assaulted...”

- Asian Human Rights Commission - Letter of 9 September 2002, to Sri Lanka's Interior Minister John Amararatunge

Despite international condemnation, the Sri Lankan state has consistently failed to take proper action to prevent torture or against perpetrators of torture. Even the judiciary has often failed to protect the people.

"Human rights organizations noted that some judges were hesitant to convict on cases of torture because of the CATA-directed 7-year mandatory sentence for committing torture. According to human rights organizations, obtaining medical evidence was difficult, as there were only 25 forensic specialists, and medical practitioners untrained in the field of torture assessment examined most torture victims. In some cases, doctors were intimidated by police, which made obtaining accurate medical reporting on torture victims difficult."

- US State Department

Sri Lanka: Country report of human rights practices 2005, 28 February 2005

The Sri Lankan police continue to be accused of torture.⁷⁴ The head of SLHRC, Radhika Coomaraswamy, said in April 2005 that the police routinely used torture as a method of investigation and it is systematic and widespread.⁷⁵

Disappearances

Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the UN and as a grave and flagrant violation of human rights and freedoms proclaimed in the Universal Declaration of Human Rights...

- Article I, UN Declaration on the Protection of all Persons from Enforced Disappearances

The UN Working Group on Involuntary Disappearances, in its report to UN Human Rights Commission in March 2000, noted that three key recommendations from 1991 for the

prevention of disappearances have still to be implemented by the Sri Lankan government: (1) the Prevention of Terrorism Act and Emergency regulations have not been abolished or brought in line with internationally accepted standards. (2) A central register of detainees has not been established. (3) The requirement of informing the national Human Rights Commission about arrests and detention is either not known by law enforcement officers or is disregarded in practice.

The Working Group has said that Sri Lanka remains the country with the second largest number of un-clarified cases of disappearances next to Iraq. The investigations of the four Presidential Commissions appointed by the government on disappearances relate only to the period 1988-1993 and appear mainly to be in respect of disappearances of Sinhalese people during the insurrection of the JVP. The four Commissions enquired into 37,662 complaints of disappearance and found evidence of disappearance in 21,115 cases. No further action has been taken, although the commissions have recorded the names of the security force personnel responsible for the disappearances. At the time, there were a further 16,742 cases of disappearances in respect of which no investigations have been carried out.⁷⁶

The PA government did not allow commission investigations on disappearances during its tenure of office. Nor did the government take action to investigate the large number of Tamil disappearances before 1988. Amnesty International expressed concern and said that between 1984 and mid-1987 it has documented over 680 disappearances in the custody of the security forces in the north-east.⁷⁷

More than 600 Tamils disappeared in Jaffna after the Sri Lankan Army took control of the peninsula in May 1996.

"Young Tamil men suspected of LTTE allegiances were detained and many disappeared. Frequently, the army and the police would cordon and search villages and detain scores of people. Tellingly, in 1996, when the security forces regained control of the Jaffna Peninsula, the highest number of people (622) disappeared . . . Despite some governmental efforts, family members of disappeared persons and NGOs reported that many people identified as suspected perpetrators by the Commissions of Inquiry, continue to serve in their posts or have been promoted."

- UN Working Group on Enforced or Involuntary Disappearances, Report to the UN Human Rights Commission, 2000

Since the reintroduction of Emergency in August 2005, there has been a recurrence of enforced disappearances. According to the SLHRC, some 20 people disappeared in the Jaffna peninsula after arrest by security forces in December 2005.

Amnesty International and other human rights agencies have expressed concern.⁷⁸

*"The Asian Human Rights Commission (AHRC) writes to inform you of a report by the Human Rights Commission of Sri Lanka (HRCSL) stating that enquiries are ongoing regarding 20 complaints of forced disappearances that are alleged to have taken place during the month of December 2005. In a statement issued on this matter by the AHRC today (AS-004-2006) we noted that the HRCSL's director of Investigations and Inquiries stated that "some of these people have been abducted while on their way to work, while others have been abducted in the night." He is further quoted as saying that the Commission has not been able to establish who is responsible for the abductions."*⁷⁹

- Asian Human Rights Commission
Sri Lanka: Forced disappearances, Urgent Appeal,
11 January 2006

Killings

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

- Article 6.1, International Covenant on Civil and Political Rights

Sinhalese mobs and the security forces have killed at least 65,000 Tamil civilians since 1956. According to the Jaffna Council of NGOs, there were 19,000 widows and 13,500 orphans in the Jaffna peninsula at the beginning of 2001. The killings have taken place in the form of massacres, arbitrary extra-judicial killings and acts causing harm, such as torture. More than 150 Tamils were killed in the eastern province in 1956, and in the genocidal massacre by Sinhalese mobs two years later, over 1,000 Tamils were murdered. Over 500 Tamils were killed in mob violence against Tamils in July/August 1977. Government officers were involved and the security forces stood by and sometimes participated in the atrocities.⁸⁰ A Presidential Commission (Sansoni Commission) enquired into the 1977 violence and made recommendations for punishment of the offenders, but these recommendations were never implemented.

Several people were tortured and killed in Jaffna in July 1979 by security forces headed by the notorious 'Butcher of Jaffna' Brigadier Tissa Weeratunge who had been appointed by President Jayewardene as the Supreme Commanding Authority and given wide powers under Emergency Regulations.

"We are compelled to bring to your notice our conclusion that one or more groups of Police officers and men committed illegal acts in an organized manner on the night of July 13/14. We are satisfied that several persons were abducted tortured and in some cases murdered by the Police. Some of these persons are in prison or in hospital with grievous injuries while the fate of some others is still unknown...Not only the mutilated condition of the bodies but also the injuries that have been inflicted on those in prison or hospital, whose number exceeds fifty, compels us to state that the Police are guilty of torture and the violation of human rights on a large scale in Sri Lanka."

- Movement for Inter-racial Justice and Equality (MIRJE),
Emergency '79, May 1980

In August 1981, Hill Country Tamils were particularly targeted and at least 25 were killed. The genocidal massacre of Tamils in 1983 was the worst in history up to that time. Atrocities were committed against anybody who was identified as a Tamil, on an unprecedented scale, such as burning people alive, hacking them to death, gang raping and killing women, burning and looting houses, shops and company premises. High government officials were involved in the planning and execution of the attacks. Electoral lists, business registration and ownership registration had been checked and the thugs carried lists with them on their rampages. Members of the police and armed forces stood by and allowed the attacks on the Tamil people. Even worse, in some cases they actively participated in the attacks.⁸¹

More than 2,000 Tamils were killed in July and August 1983, throughout southern Sri Lanka. Some 200,000 Tamils were made homeless and many of them had to be transported to Jaffna for safety. A large number of Tamil owned businesses, including 100 industrial plants were severely damaged or destroyed.⁸²

"I regret that some members of my party have spoken in Parliament and outside words that encourage violence and murders, rapes and arson that have been committed."

- President J R Jayewardene, after the 1983 violence against the Tamils

The Indian Peace Keeping Force (IPKF) was responsible for thousands of deaths, disappearances, rapes, arbitrary arrests and detention and torture of Tamils, between 1987 and 1990.

"In the 32 months of their presence, the Indian forces were reportedly responsible for numerous disappearances and extra judicial executions committed either by their own members, or by Tamil groups allied to them and acting with their acquiescence. They also reportedly tortured prisoners, some of whom died as a result."

In addition, the IPKF detained several thousand prisoners without charge or trial, apparently without reference to any legislative provision."

- Amnesty International, Sri Lanka Briefing: A human rights crisis, ASA 37/20/90, September 1990

Violence against the Tamils throughout the island has continued. After the April 2004 general elections, Plantation Tamil workers were attacked in many areas including Kandapola, Kalutara, Bulathsinhala, Ingiriya, Matugama and Hatton.

"A Sinhalese gang entered Millakande Estate at Bulathsinhala in Kalutara District on 30 May and launched an attack on the workers and their line-room accommodation. Ten line-rooms and two shops were burned and over 100 line-rooms were damaged. Ten people, including regional councillor (Pradeshiya Sabha) Ponniah Ramalingam, were seriously wounded and admitted to Horana hospital. The gang entered the hospital and attacked them again, causing further injuries. The doctor who was treating them was also assaulted. Later, the ten injured people were transferred to Kalutara and Negoda hospitals. Estate workers say that the attack was led by a Buddhist monk. They also say that the police arrived in 15 minutes, but did not intervene to stop the attack."

*- British Refugee Council
Sri Lanka Project Briefing, 9 July 2004*

A large number of people have been killed in the north-east since the ceasefire. In most cases, the identity of the assailants is unknown and this has led to widespread fear among the civilian population. In the latter part of 2005, particularly after Emergency was imposed, there has been a significant increase in the number of assaults, injury and extra-judicial killings by security forces in the north-east. The security forces killed five students in Trincomalee District on 2 January 2006. Amnesty International says that although the army first claimed that they were killed by their own grenade, it was revealed following a post mortem that the students had been shot, three of them in the head.⁸³

Disposal of dead bodies

There shall be thorough and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions...The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible and any pattern or practice which may have brought about that death.

- *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*

A month before the July 1983 violence against the Tamils, Emergency Regulation 15A was introduced authorizing the security forces to dispose of dead bodies in secret without inquest proceedings or post-mortem. The regulations contributed in a large measure to disappearances. Following international condemnation, Regulation 15A was replaced by Regulations 55B to 55G in June 1985, which required an Assistant Superintendent of Police, in case of death in custody, to proceed to the scene and after enquiry report to the magistrate. The regulations did not lay down the time limit for the enquiry and the courts could not initiate an enquiry. Under the circumstances, the police still had the power to dispose of the dead bodies.

In November 1988, Regulation 55 FF was introduced, once again allowing the police to bury or cremate dead bodies without inquest. Amnesty International declared that the regulation facilitated arbitrary killings and cover-up of killings. The regulations were amended in February 1990, but Amnesty remained concerned that other regulations provided special secret inquest procedure, which could be used to cover-up extra-judicial killings in custody. The ER introduced after the PA government came to power in 1994, retained provisions (Regulations 44 and 45) for the disposal of dead bodies without

inquest. The police used the regulations to deny inquest in the cases of death in custody. Regulation 55FF allowing disposal of dead bodies in secret were reintroduced in May 2000 and were in force for three days before amendment. During this period at least four bodies were found in Colombo, including that of a Tamil who had been arrested by police. Despite the amendment, Amnesty said the regulations removed the power of the courts, denied transparency and could be used to cover-up illegal killings by security forces.⁸⁴

Crimes against Tamil women

Women shall be the object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault.

- *Article 76, Protocol II Additional to the Geneva Conventions*

Rape in the context of armed conflict is an act of torture and is prohibited by the rules of war and by international human rights law. The security forces have used rape as a weapon of war and to terrorise the Tamil population. Security forces have raped hundreds of Tamil women in the north-east. Most of the cases remain unreported because of the social stigma attached to victims of rape. Women are known to have committed suicide after being raped. A number of Tamil women have been gang-raped and murdered by the security forces and the government has failed to take proper action regarding these crimes. Student Krishanthi Kumarasamy was gang-raped and murdered at a military checkpoint in Jaffna in September 1996.⁸⁵

Sri Lankan soldiers raped three Tamil women, including a mother and daughter, at their home on 9 January 1997 at Thiyavattavan in Batticaloa District.⁸⁶ In May 1997, a police gang-raped Murugesapillai Koneswary, a mother of

four children, and then killed her by exploding a grenade on her vagina.⁸⁷ On 10 September 1999, the Army forcibly took Rukmani Krishnapillai, a mother of five, to the Kumburumoolai military base in Batticaloa. She was drugged and gang-raped. She was then tortured by being repeatedly beaten and having objects inserted into her vagina. Thereafter she was taken in a state of unconsciousness and dumped in the jungle and left for dead. After she complained to the ICRC, the Army visited her home again on 10 January 2000, threatened her and assaulted her mother.⁸⁸ Navy personnel raped and murdered S Sarathambal at Punkudutivu Island near Jaffna in December 1999.⁸⁹ On 19 March 2001, the security forces gang-raped and tortured two Tamil women in northern Mannar region.⁹⁰

"...S.R. (f), aged 22, held in detention in Batticaloa since 23 July 2002...put chili powder all over her body, suspended her from the ceiling...burned her all over with cigarettes...She was then allegedly raped by 12 police officers while in custody of the CID...She has suffered acute mental trauma..."

*- Report of Yarkin Ert Ürk, UN Special Rapporteur on Violence Against Women, 3 March 2004*⁹¹

The ceasefire agreement of February 2002 has not prevented the security forces from committing rape and other sexual offences against Tamil women. In December 2005, Amnesty International expressed concern about an increase in reports of the sexual abuse of women and reported the rape and murder of young Tamil woman, Ilayathamby Tharshini on 16 December 2005, near a naval base on Punkudutivu Island, west of the Jaffna peninsula.⁹² Two young Tamil women from Vadamaratchi in Jaffna have complained to the SLHRC of attempted rape on 2 January 2006 by Sri Lankan soldiers.

Massacres

The civilian population as such, as well as individual civilians, shall not be the object of attack ... Indiscriminate attacks are prohibited...Attacks against the civilian population or civilians by way of reprisals are prohibited.

- Article 51, Protocol Additional to the Geneva Conventions

The security forces have carried out hundreds of massacres of Tamil civilians, particularly in the north-east Tamil homeland, most of which remain uninvestigated. Soldiers selected fifty one civilians at random in Jaffna on 24 July 1983 and shot them dead in cold blood.⁹³ Soldiers ordered 16 people travelling in a bus near Vavuniya on 11 September 1984, and after ascertaining that they were Tamils, shot them dead.⁹⁴ Around 100 Tamils arrested in Vavuniya and taken to the Iratperiyakulam Army camp disappeared. It is believed that they were murdered in custody.⁹⁵ In a reprisal attack for the death of a soldier, security forces shot dead 90 Tamil civilians, including women and children, in Mannar on 4 December 1984. Fifteen of them were above the age of fifty five.⁹⁶ On 5 January 1985, soldiers murdered Catholic priest Fr Mary Bastian, who had helped to recover the bodies of the civilians.⁹⁷

Soldiers went on the rampage on 29 April 1985 in Ariyalai, Jaffna. Sixty Tamils, including women and children were massacred and over 100 houses were burned. On 9 May 1985, soldiers ran amok at Valvettiturai in Jaffna killing 42 people. Twenty five of them died when soldiers locked them in a community centre and threw grenades into the building. Soldiers also looted and burned houses.⁹⁸

Sri Lankan Navy personnel boarded the passenger vessel *Kumudini* plying between the Jaffna islands Neduntivu and Punkudutivu, on 15 May 1985, and massacred 36 Tamils, including six children

and five men and women over 60 years of age. The Jaffna Magistrate's Court returned a verdict of homicide and directed the police to conduct investigations.⁹⁹ No investigations were carried out. On 17 May 1985, the police Special Task Force (STF) arrested 40 Tamils between the ages of 18 and 25 from three villages in Batticaloa District, took them to Thambiluvil where they were ordered to dig their own graves, and then shot them dead.¹⁰⁰

The security forces massacred 71 Tamil civilians in Vavuniya on 16 August 1985 while peace talks were taking place at Thimpu in Bhutan between the Sri Lankan government and Tamil representatives.¹⁰¹ In a four-day operation in the Tamil villages of Chenaiyur, Kaddaiparichchan and Koonitivu in Trincomalee District in November 1985, the Army killed eight civilians, burned 40 houses, desecrated and damaged temples and arrested 70 people.¹⁰² The Army and the Home Guards attacked these villages again on 27 November 1985 and burned 65 houses. Eighteen people were arrested and shot dead.¹⁰³

On the night of 19 January 1986, Sri Lankan soldiers marched into the Tamil village of Iruthayapuram in Batticaloa. They herded some of the villagers into a church and brutally beat and tortured them. Other soldiers brought villagers out of their homes and shot them dead. Twenty four Tamils were killed in the incident. The relatives were not given the bodies and the government announced that 21 terrorists had been killed.¹⁰⁴ The Army rounded up 44 Tamil farmers working in their fields at Thangavelayuthapuram and Akkaraipatru in Batticaloa District on 19 February 1986, shot them dead and burned their bodies. The government claimed that 40 terrorists had been shot dead after a battle with the security forces.¹⁰⁵

The STF massacred 150 Tamils on 28 January 1987 at Kokkaddicholai in Batticaloa.¹⁰⁶ The Army arrested 158 Tamils at a refugee camp at

Vantharumoolai in Batticaloa on 5 September 1990 and they disappeared.¹⁰⁷ Four days later, 117 men, women and children were taken to the Sathurukondan Army camp in Batticaloa from surrounding villages and murdered.¹⁰⁸

"...in recent months the Sri Lankan government... has engaged in aerial bombardments of the Tamil civilian population and hundreds of Tamils have disappeared from those areas within the control of the Sri Lankan army."

- Joint statement of 17 NGOs at the 42nd Session of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities, Geneva, August 1990

Following the killing of two soldiers on 12 June 1991, the security forces massacred 185 Tamil civilians at Kokkaddicholai in Batticaloa.¹⁰⁹ A Commission of Inquiry found that the killings were deliberate retaliatory action by soldiers. A military tribunal acquitted all the 19 soldiers and found the officer in charge guilty of failing to control the troops.¹¹⁰ Army and Home Guards hacked to death 80 Tamil civilians in Karapola, Polonnaruwa on 29 April 1992.¹¹¹ Following an LTTE ambush, soldiers killed 35 Tamil villagers in Mylanthanai on 9 August 1992.¹¹²

The bodies of 31 Tamils were discovered floating in or around the Bolgoda Lake near Colombo, following their arrest by security forces. Most of them had been strangled with plastic handcuffs at the STF headquarters in Colombo. The case against police STF personnel was dismissed after the accused and the Attorney General failed to appear in court.¹¹³ Hours after the Sri Lankan government imposed censorship, aircrafts bombed a school in Jaffna on 21 September 1995, killing 34 children and seriously wounding 150 others.¹¹⁴ Beginning in January 1993, the security forces killed over 100 Tamil civilians trying to flee across the lagoon from the Jaffna peninsula to the Sri Lankan mainland.¹¹⁵

Twenty four Tamil civilians, including 13 women and 7 children were massacred by

the Army in the village of Kumarapuram, near Trincomalee on 11 February 1996. A further 25 villagers were injured. Soldiers also raped and killed a Tamil woman.¹¹⁶ Sri Lankan Airforce helicopter gunships attacked Nachchikudah in Mannar on 16 March 1996 killing 15 Tamil civilians and injuring over 60 others. The Defence Ministry claimed that LTTE cadre had been killed.¹¹⁷

Batticaloa MP Ali Sahir Moulana told a visiting Amnesty International delegation in August 1997, that over 300 civilians had been killed in Army shelling and 400 others were wounded in the region, in the previous three months.¹¹⁸ The Airforce bombed refugee settlements within a Catholic church premises near Mankulam in Kilinochchi District, killing six Tamil refugees and seriously wounding 17 others on 15 August 1997.¹¹⁹ Over 50 policemen and Home Guards ran amok at Fourth Colony village in Amparai District on 23 September 1997, shooting and burning houses. Six Tamils were killed and 66 houses were set ablaze.¹²⁰ Troops went on the rampage, after the LTTE killed a soldier, in Sunny Village on Mannar Island on 19 July 1999 shooting and attacking civilians. Fourteen people were seriously injured.¹²¹

The Airforce bombed a crowded market at Puthukudyiruppu in Kilinochchi District on 15 September 1999, killing 23 Tamil refugees, including two children. Thirty five people suffered serious injuries.¹²² After a LTTE bomb blast, the Army shot dead nine Tamil orphans and wounded 20 others in Batticaloa town on 17 May 2000.¹²³ On 19 December 2000, Sri Lankan soldiers murdered and buried in a grave at Mirusuvil in Jaffna eight Tamils including a five year-old child whose knees and ankles had been broken, throat cut and stomach ripped.¹²⁴ The Sri Lankan Airforce attacked coastal villages in Mullaitivu in February and March 2001 killing 13 civilians and wounding 24 others.¹²⁵

Twenty four young Tamils in the Bindunuwewa Rehabilitation Centre near Badulla were massacred by Sinhalese mobs on 25 October 2000. This was facilitated by the security forces. Most of the victims had been unjustly sent to the Centre by the courts under Emergency Regulations, after the police failed to produce sufficient evidence to convict them for links with the LTTE or LTTE attacks. One of them was a Hill Country youth who had been working in Colombo to support his poor family. He was arrested at the bus stand when he arrived in Nuwara Eliya for a religious festival. The police did not produce any evidence of links to the LTTE but the court ordered him to be sent to the Bindunuwewa Centre.

In the face of mounting international criticism, President Chandrika appointed a Commission of Inquiry on 8 March 2001 and named Court of Appeal Judge B H K Kulatilleke as commissioner. The Commission had no mandate to recommend prosecution of the people who carried out the massacre and the Attorney General's Office did not take into consideration many of the most important findings of the Commission. Forty one people were indicted for the Bindunuwewa massacre in March 2002. The High Court sentenced five people, including two police officers, to death in July 2002. The others were acquitted.

"If not for the complicity of police officers, this would have been avoided...When the victims went running to policemen seeking protection, they were fired at by the police...Having considered the totality of evidence led before me, I have come to the conclusion that the conduct of the following officers on 25.10.2000, should be the subject of a disciplinary inquiry, for the reason that their inaction, and attitude at the time of the incident is indefensible. There is ample evidence that they were present at the time of the incident and made no effort either to avert the attack or to disperse the mob and arrest the offenders."

*- Sarath Ambepitiya, High Court Judge,
1 July 2003¹²⁶*

The case went to the Supreme Court on appeal and the Court acquitted all of them on 27 May 2005. Following the decision, international agencies condemned the Sri Lankan judicial system.

"These acquittals show a shocking failure of the police and judicial system in Sri Lanka to find justice for the dead and injured from this horrific incident. As the victims were all Tamil, the government needs to move quickly to start fresh investigations and to prosecute the perpetrators, some of whom were police officers, or it will only further distance aggrieved Tamils. The judgment of the Supreme Court calls into question its impartiality in dealing with cases related to the Tamil Tigers. The Court must put aside politics and personal feelings when dealing with criminal offences involving Tamils. To date, those in authority who should accept responsibility for the mob killing appear to be protected instead of investigated."

- Brad Adams, Asia Director, Human Rights Watch, 2 June 2005¹²⁷

Impunity

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

- Article 2, International Covenant on Civil and Political Rights

Successive Sri Lankan governments have encouraged impunity and have extended the enormous powers of the security

forces, by the introduction of Emergency Regulations. As observed by the UN Committee Against Torture in December 2005, they have failed to take adequate measures to punish those involved in human right violations.

"Some members of the security forces committed serious human right abuses...Security force impunity remained a problem...Unlike in previous years, there were no indictments, investigations, or prosecutions of security force personnel for past disappearances...In the majority of cases in which security forces personnel may have committed human rights abuses, the Government has not identified those responsible or brought them to justice."

- US State Department
Country report on human rights practices 2004,
February 2005

The Public Security Ordinance, under which a state of emergency is declared, excludes liability for acts done in 'good faith', but not in fact authorized by Emergency Regulations. The PTA also excludes liability for acts done in good faith, but not in fact authorized by the PTA. Following the violence against the Tamils in 1977, the government introduced the Indemnity Act in 1982, granting immunity from legal action against 'ministers, deputy ministers or any person holding office in the government in any capacity, whether naval, military, police or civil in respect of acts done during the period 1 August 1977 to 31 August 1977.¹²⁸ International agencies have repeatedly urged the government to repeal these provisions, which grant immunity for human rights violations.

"The Committee expresses its deep concern about continued well-documented allegations of widespread torture and ill-treatment as well as disappearances, mainly committed by the State's police forces. It is also concerned that such violations by law enforcement officials are not investigated promptly and impartially by the State party's competent authorities."

The State Party must ensure prompt, impartial and exhaustive investigations into all allegations of

torture and ill-treatment and disappearances committed by law enforcement officials...In connection with prima facie cases of torture, the accused should be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation...try the perpetrators and impose appropriate sentences on those convicted, thus eliminating any idea that might be entertained by perpetrators of torture that there is impunity for this crime."

- UN Committee Against Torture
Consideration of the Sri Lanka report, December 2005 ¹²⁹

In 2003, international human rights advisor Ian Martin recommended a thorough review of the cases under the PTA and payment of compensation to victims of human rights abuses and pointed out that a clear and comprehensive policy of remedying past injustices would go a long way in effective curtailment of future abuses. But the action taken by the government is insignificant in relation to the scale of the human rights violations that have been committed. This has encouraged impunity and has led to further violations.

Internally displaced people and refugees

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

- Article 33 (1), *Convention Relating to the Status of Refugees*

National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

- Principle 3 (1), *UN Guiding Principles on Internal Displacement*

In January 2001, there were nearly 800,000 displaced people in Sri Lanka, 97% of

whom were Tamils in the north-east areas. The level of displacement had remained the same for over ten years previously.

The government established 12 camps in Vavuniya for Tamils arriving from the Vanni and there were 23,000 people in these camps at the beginning of 2001. Many youths have disappeared from these camps and women have been subjected to sexual abuse by the security forces. Many spent over four years in the camps. In Jaffna, a large number of people remain displaced, including 66,000 who fled the high security zone around Palaly military base in 1995.¹³⁰ In 2006, these people still remain displaced.

"Refugees International visited the Poonthotham Welfare Center in Vavuniya and was shocked by the poor conditions there. The 1,400 residents of Poonthotham, a former school, live in rows of tiny shelters, with no light or air, blackened from years of cooking inside with charcoal. The school in the camp goes only up to Grade 5 and other services have diminished over time." ¹³¹

- Refugees International
Report of a mission to Sri Lanka, September 2005

In 1997, the US Committee for Refugees said that the government ministries and the military deliberately withhold or delay supplies for the displaced.¹³² The Tamil refugees lived in appalling conditions, particularly the Vanni, where many people have been displaced seven times or more. Besides the possibility of death or injury or further displacement, displaced persons had to worry about food and healthcare for their families. Besides food, displaced persons required more medicines and medical supplies, shelter material, water, better sanitary facilities and educational materials. In 2006, the situation has hardly changed.

More than 917,000 Tamils have fled abroad, including to India, seeking safety from persecution in Sri Lanka.¹³³ This means that nearly 55% of the three million Tamil populations in Sri Lanka has been displaced or fled abroad. Despite the

overwhelming evidence of persecution for several decades, documented by international human rights agencies, including UN bodies, less than 10% have been granted protection in other countries. A large number of Tamils were deported by Western countries during conflict, war and uncertainty in Sri Lanka. Many Tamils have died en route to other countries seeking refuge. Fourteen people, including eight children died when a boat capsized in the Palk Strait near Mannar Island on 14 October 1996. The dead were displaced from Jaffna and had fled to Kilinochchi on the Sri Lankan mainland to escape Army operations.¹³⁴ Ninety-two Sri Lankans were among the 280 refugees from the subcontinent believed drowned on 25 December 1996 between Malta and Sicily.¹³⁵ More than 130 Tamil refugees fleeing to India died when an overcrowded trawler capsized north of Mannar Island on 19 February 1997.¹³⁶ Following the ceasefire in February 2002, many people returned to home areas, but a large number still remain displaced.

"One of the major consequences of the armed conflict is the repeated and massive displacement of civilians. It is estimated that up to 1.7 million people have been displaced one or more times since 1983. Approximately 342,000 people who were uprooted inside the country as a result of decades of fighting have returned home since the truce. Another 380,000 IDPs still remain though."¹³⁷

- *European Union External Commissioner, December 2005*

In December 2005, there were some 70,000 Sri Lankan Tamil refugees in camps in the Indian state of Tamil Nadu.¹³⁸ Many refugees from India and other countries returned voluntarily after the ceasefire. But the violence and fear of resumption of war has led to people in the north fleeing the country again. People have also begun to flee to the Vanni from Jaffna.

"UNHCR field offices in Sri Lanka report that tensions remain high in many areas; that perceived harassment of civilians by security forces continues; and that some population

*movement persists... Tamils from Sri Lanka continued to arrive in southern India during the past week... The total number of Sri Lankan refugees arriving in Tamil Nadu, India, from 12-30 January now stands at 304... The number of newly displaced families known to UNHCR now totals some 5,900 in the northeast, compared to around 3,500 families reported a week ago... Over the past week, new arrivals of displaced have been recorded in particular in LTTE-controlled Vanni and in Mannar."*¹³⁹

- *United Nations High Commissioner for Refugees (UNHCR), 31 January 2006*

Tamil persecution and dehumanization

...the term "the crime of apartheid" shall apply to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group...over any other racial group...:

(a) Denial...of the right to life and liberty of person:

(i) By murder of members of a racial group...;

(ii) By the infliction..., of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment...;

(b) Deliberate imposition...of living conditions calculated to cause...physical destruction in whole or in part;

(c) Any legislative measures and other measures calculated to prevent a racial group...from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular by denying to members of a racial group or groups basic human rights and freedoms, including the right to work, the right to form recognized trade unions, the right to education, the right to leave and to return to their country, the right to a nationality, the right to freedom of movement and residence, the right to freedom of opinion and expression, and the right to freedom of peaceful assembly and association.

- *Article II, International Convention on the Suppression and Punishment of the Crime of Apartheid*

The Tamil community has suffered dehumanization and persecution since independence in Sri Lanka. The US State Department report for 2004 says institutionalized ethnic discrimination against Tamils remains a problem. Successive governments have carried out discrimination against the community through legislation, regulations and administrative orders. The Citizenship Act 1948, the 1949 amendment to the Election laws, Official Language Act 1956 and the constitutions of 1972 and 1978 are examples of discriminatory legislation. Nearly 100% of the people who suffered torture at the hands of the security forces, until the ceasefire agreement was signed, were Tamils. The people who disappeared between 1984 and 2002, except for the period 1988-1989, were mostly Tamils. The security forces have extra-judicially executed a very large number of Tamils. In addition, a large number of Tamils have been killed in pogroms in 1956, 1958, 1977, 1981 and 1983. In 1977 and 1983 government officers and the security forces actively encouraged or took direct part in the pogroms. The recommendations of the Sansoni Commission on the 1977 pogrom were not implemented and no enquiry was conducted into the major violence in 1983.

On 20 July 2001, President Chandrika appointed a Truth Commission headed by former Chief Justice S Sharvananda. The Tamils believe that this was done in order to ensure the support of the Tamil parties to prevent a political collapse. The Tamil parties severely criticized the appointment of the Commission and its mandate as a political deception in order to divide the Tamil parties. The Commission was mandated to probe ethnic violence between 1981 and 1984, particularly the July 1983 violence and ascertain persons, groups and institutions directly or indirectly responsible for the violence and to decide the nature of relief to victims. The Commission submitted its report in 2004. President Chandrika said that the Commission found evidence of nearly a

1,000 killings.¹⁴⁰ The people who encouraged the violence and the perpetrators have escaped punishment.

Almost 97% of the 800,000 internally displaced people before 2002 were Tamils. In 2004, more than 76% of the 353,000 conflict-displaced people were from the north-east. In addition, more than 58% of the 571,000¹⁴¹ people displaced by the tsunami are from the north-east, who continue to suffer without adequate assistance from the government. Almost all of the 917,000 people who have been forced to flee the island as a result of the conflict are Tamils. The 70,000 refugees in India are all Tamils.

The Emergency Regulations and PTA, which fall far below international standards, are almost exclusively used against the Tamils. All the detainees under these laws have been Tamils. Some remain in custody under the PTA for many years and currently arrests of Tamils are taking place under Emergency Regulations. In over fifty recorded cases of rape committed by the security forces in the north-east, all the victims were Tamil women. An economic blockade was imposed on Tamil areas and freedom of movement of Tamils in Sri Lanka was extremely restricted. Restrictions on movement and livelihood occupations such as fishing in Tamil areas are being imposed after Emergency was reintroduced in August 2005. The government imposed restrictions in December 2005, on foreigners travelling to Tamil areas in the north-east. These actions by the Sinhalese-majority governments and the Sinhalese people are seen as part of a process of dehumanization of the Tamil people.

Sinhala Buddhist racism, fostered by sections of the Buddhist clergy and supported by successive governments, has overshadowed Sri Lanka's political development. The Buddhist clergy have now directly entered party politics and elections, seeking entrenchment of such

racism in all affairs of the country and relegation of the minorities to the political and economic fringe. Sinhala Buddhist racism is based on several myths:

- 1) The Sinhalese were the first to populate Sri Lanka and therefore have a superior claim over the entire island.
- 2) The Sinhalese are a majority in the island and therefore have a superior claim to rule the entire island.
- 3) The Sinhalese are Aryans and the Tamils are Dravidians. In this light, the Sinhalese are a superior race and have a superior claim over the island.
- 4) The Sinhalese are the guardians of Buddhism, which is threatened by Hindu encroachment.

None of these arguments survives a critical scrutiny of its merits.¹⁴² Nevertheless, they have repeatedly been brought forward in various contexts, even by scholars, in order to justify discrimination and repressive policies against Tamils. Even President Chandrika Kumaratunge, during her visit to South Africa in October 1998, declared that the Tamils are not the original people of Sri Lanka implying that the Tamils have less rights than the Sinhalese. These claims are in direct violation of the International Convention on the Elimination of All Forms of Racial Discrimination. Since 2004, the Jathika Hela Urumaya has been calling for an amendment to the Constitution to make Buddhism as the State religion of Sri Lanka and has been engaged in a virulent campaign against Tamil rights, culture and aspirations.

Recalling that dehumanization is understood to be the denial of human status and individuality as well as processes by which the usual moral institutions against violence become weakened, it is apparent that the Tamil people are, according to this ideology, viewed not as equal citizens of Sri Lanka but are portrayed as a dangerous element within.

Government commitment to human rights

States Parties shall assure to everyone within their jurisdiction effective protection and remedies through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms...

- *Article 6, International Convention on the Elimination of All Forms of racial Discrimination*

In most cases of human rights violations in Sri Lanka, no investigations have been initiated despite the demands of international human rights agencies. Successive governments say they are committed to human rights but no effective action is taken to curb abuses. Scores of commissions and committees, many in relation to human rights have been appointed by these governments. Continuing violations of human rights indicate that these bodies are ineffective. The appointment of commissions by the President, against whose government accusations are made, has been criticized by the UN Human Rights Committee as contrary to the principles of fairness. Human rights NGOs complained that the Human Rights Task Force (HRTF) had failed to carry out its duty imposed by Emergency regulations. The HRTF was dismantled in June 1998 amidst concerns over the manner in which the decision was taken to close the monitoring body.¹⁴³

The Sri Lankan Human Rights Commission (SLHRC), which replaced the HRTF, has come under severe criticism for its ineffective actions. The first SLHRC did almost nothing and the second SLHRC appointed in early 2000 inherited 11,000 pending cases. The SLHRC has failed to

use even its limited powers granting redress to victims, particularly where use of such powers will be against government authorities. Amnesty International says that measuring any impact of the SLHRC's work has been made more difficult due to lack of transparency. None of its annual reports, which by law must to be submitted yearly to Parliament, has been made public. Amnesty has questioned whether the infrequent visits of the SLHRC to detention centres can act as an effective deterrent against torture. The limited powers of the SLHRC to receive and investigate reports of torture have not been properly used. Amnesty has said that many people, including detainees who were tortured in custody and subsequently complained to the SLHRC, have not received any response from the SLHRC.¹⁴⁴

SLHRC's mandate is limited to violations of a limited number of fundamental rights guaranteed by the Sri Lankan Constitution and its powers are limited to mediation or conciliation. The Supreme Court has so far failed to prescribe rules that would allow the SLHRC to refer cases to the courts. The SLHRC also lacks the capacity to conduct detailed investigations of a criminal nature into complaints of torture. The Act establishing the SLHRC needs amending in order to strengthen it and give it both credibility and effective powers. This includes adequate financing, financial independence and powers to enforce its decisions.¹⁴⁵ The Tamil Information Centre has received information that the Commission suffers from internal conflicts that affect the work and that some officers totally lack the commitment and integrity needed for such an important institution. There are also concerns over the suitability of members appointed to the Commission and there is a need for greater scrutiny to ensure integrity and independence.

SLHRC's "Zero Tolerance Policy" against torture, announced on 19 April 2004, has come under criticism by international human rights agencies.

*"Under international law torture is regarded as one of the most heinous of crimes. Under the law of Sri Lanka, torture has been defined as a serious crime. When it comes to crimes such as murder, rape, etc., we do not talk of 'zero-tolerance'; we talk of them as crimes, and the perpetrators as criminals. To begin with anything less is to soften the fight against torture... The soft expression used by the HRC speaks to its past practices on torture. Until not very long ago HRC officers settled torture cases for small sums of money, if anything. In some cases the settlement was Rs 1,000. Torture inquiries were reduced to arbitration... One of the criticisms of the HRC from its very inception has been the lack of an investigation procedure... there has been no attempt at all to lay down such a procedure... If the beginning of an investigation is to be a meaningful exercise the HRC must lay down a procedure for its investigations and make it known to the investigators and the public... In the future too the main burden will remain with civil society. Whether the Human Rights Commission of Sri Lanka will change its inadequate policies and practices will depend very much on the pressure of these groups."*¹⁴⁶

- Asian Human Rights Commission, 12 May 2004

The inadequacies of the SLHRC have been brought many times to the notice of the Sri Lankan government by human rights agencies as well as other governments. But the government is unwilling to amend the law that created the SLHRC to give it adequate powers to effectively deal with human rights violations.

The government has also failed to develop effective regulations to prosecute and punish military and police personnel responsible for torture. Amnesty International says that despite the long-term existence of legislation to punish torture, and enactment of the Torture Act in 1994, this violation continues to be committed with impunity and while a handful of cases are reportedly pending in courts, so far no one has been convicted in relation to the crime of torture in Sri Lanka.¹⁴⁷ The IGP criticized the Police Commission in 2005 for the suspension of 106 policemen accused of involvement in human rights abuses, including torture.

In June 2001, the Sri Lankan government appointed Janaka Perera, who has been accused of crimes against humanity, as High Commissioner to Australia. Despite the protest by human rights agencies throughout the world, Sri Lankan Foreign Minister Lakshman Kadirgamar assured the Australian government that Mr Perera was man of integrity. It is relevant to note that in 1999, Australian courts denied asylum to a soldier who was involved in crimes against humanity by participating in the massacre of Tamil refugees in a camp in Jaffna, including the killing of a pregnant woman, on orders given by military authorities.

The three commissions on disappearances submitted their reports in September 1997 and the fourth commission submitted its report in August 2000. Charges have been brought against very few of the 4,000 offenders identified as perpetrators. Many of the perpetrators continue to serve in the security forces or have been promoted. The Hong Kong-based Asian Human Rights Commission (AHRC) urged the Sri Lankan government in January 2006 to make a policy statement highlighting the government's commitment to prevent all forced disappearances, to investigate all cases of disappearances and to prosecute all perpetrators irrespective of rank, position or political affiliation.¹⁴⁸

*"...many victims of disappearance in Sri Lanka have not received any reparations recommended by the Presidential Commissions... Although a number of victims have received compensation, payments made have only been small sums of money and varied considerably according to the status of the victim. Several thousands of complaints of disappearances have still to be inquired into. Persons who had been involuntarily removed, tortured, detained and released or escaped from custody have not received any form of reparation."*¹⁴⁹

- Redress, London-based NGO with mandate to assist torture victims, 31 October 2005

On 22 December 2005, the newly elected president Mahinda Rajapakse and the

cabinet decided to ignore the 17th Amendment to the Constitution and to transfer the powers of the independent commissions to government ministries.¹⁵⁰ The Amendment provides for the establishment of a Constitutional Council, which would in effect choose the commissioners of the independent commissions [Human Rights Commission, Public Service Commission, Police Commission, Bribery and Corruption Commission, Finance Commission, Delimitation Commission, Election Commission]. The Council also approves the appointment the judges of the Supreme Court and the Court of Appeal, members of the Judicial Service Commission, the Attorney-General, the Inspector-General of Police, The Parliamentary Commissioner for Administration and the Secretary-General of Parliament. The 17th Amendment was introduced for the promotion of good governance, transparency and accountability and to protect the rights of the people. The Constitutional Council, the National Police Commission and Public Service Commission are currently not functioning. The Election Commission has not been appointed. The term of the Human Rights Commission ends in March 2006. The cabinet decision to transfer the powers of constitutional bodies to administrative bodies is a clear violation of the Constitution of Sri Lanka and an undemocratic act aimed at placing all the powers of the commissions again in the hands of the executive President.¹⁵¹

Militarization

1. In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited.

2. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.

3. It is prohibited to employ methods or means of warfare which are intended, or may be expected to cause widespread, long-term and severe damage to the natural environment.

- Article 35, Protocol I Additional to the Geneva Conventions

The war in Sri Lanka cost the country the equivalent of its GDP for two years at 1996 rates, said a study conducted by the Colombo-based Institute of Policy Studies (IPS). The annual expenditure for defence was relatively small prior to 1997. Since 1997 however, the expenditure rose rapidly, with the result in the decline of welfare expenditure. From Rs 33 billion (1.1% of GDP) in 1982 the defence expenditure increased to Rs 83 billion in 2000 (5.6% of GDP). In 2001, while defence expenditure as a proportion of total public expenditure was 14.2%, the proportion of expenditure for education, health, poverty reduction and rehabilitation was 2.6%, 3.8%, 2.4% and 0.47%.¹⁵² In 2004, the IPS said that 'defence expenditures continue to absorb, on average, nearly 5 per cent of GDP per annum, while the country has been unable to shore up investor confidence sufficiently to raise its volume of foreign direct investment over the years'.¹⁵³

In 1995, the government introduced a 4.5% tax, named National Security Levy (NSL), on all goods and services. The money raised by the tax went directly into the war effort. All organizations and international agencies, including UN agencies were forced to pay the tax. NSL rose to 7.5% in 2001. International agencies did not protest, but continued to

contribute towards the war. All the Tamils were forced to pay this tax and the money was used to purchase arms, which were used against them. Even after the ceasefire the defence expenditure has continued to rise. The defence expenditure for the year 2006 increased by 23% to nearly \$700 million.¹⁵⁴

The Executive Director of the Institute of Policy Studies in Sri Lanka Saman Kelegama calculated the cost of the conflict for the period 1984 to 1995 as \$16 billion, which included forgone investment and production opportunities, damage to various sectors and rehabilitation costs. The north-east is completely militarized with hundreds of army camps, naval and air force bases, police Special Task Force stations and checkpoints. The increased military activities also contributed to the environmental crisis in the Tamil homeland. Indiscriminate bombing and shelling from air, land and sea caused extensive damage to the bio diversity and the physical environment. The military camps continue to exist after the ceasefire and thousands of soldiers still occupy houses, government and private buildings and schools in the north-east.

The government obtains weapons from many countries, including Britain, China, France, the US, Israel, Russia, Ukraine, India, Iran, Singapore, Pakistan, the Czech Republic, Argentina, Spain and Italy. According to reports, before the ceasefire, Israeli and Ukrainian personnel piloted airforce planes on raiding missions to the north-east. Military experts from a number of countries, including the US and France, continue to provide training and advice.¹⁵⁵ The London-based Campaign Against Arms Trade (CAAT) criticized arms sales to Sri Lanka, which has a poor human rights record. European nations claim to comply with the European Union Code of Conduct but pay little attention to Sri Lanka's human rights record. In 2001, Sri Lanka purchased 1,000 Russian-made, shoulder-launched rockets with fuel-air

warheads, which contain inflammable liquid mixed with explosives.¹⁵⁶ The NATO has banned these weapons. They can have a devastating impact on the body, burst eyeballs from their sockets and crush internal organs.¹⁵⁷

The government continues to acquire weapons from other countries, including banned weapons referred to above. Civilians and combatants in the north-east are in danger of being affected by these weapons. This may encourage the LTTE to acquire new weaponry to counter the threat, thus leading to further militarization and a cycle of destruction.

Demand for separate state

Nothing could show more clearly the will for emancipation than the struggle undertaken in common with the risks and immense sacrifice it entails. The struggle is more decisive than a referendum, being absolutely sincere and authentic.

- Opinion of Judge Ammoun in the Western Sahara case, International Court of Justice, 1975

The Tamil people have always regarded themselves as a distinct nation. But, the awareness has grown since 1972, when the Sri Lankan government set about promulgating a new Constitution for the country, which removed the fundamental rights and freedoms accorded to national minorities, and resulted in creating conditions for the political alienation of the Tamils, deepening the gulf between the two nations. The Tamils, led by the Federal Party made representations, but the government was unwilling to consider any of the serious issues that were raised. As a result, the Tamils were forced to withdraw from the Constitution-making process.

The Tamils attempted, by a gradual process, to persuade the Sinhalese people to adopt a fair political system, including a federal state. Having failed in all attempts

to find a solution to live together in a unitary state as two different peoples, and confronted by steadily mounting national oppression, frustrated by the failures of the democratic political struggle demanding basic human rights, the Tamils looked for other solutions. The Tamil parties converged into a single movement - the Tamil United Liberation Front (TULF). In May 1976, the Vaddukkottai Resolution adopted by the TULF Convention declared:

"On the eve of Sri Lanka's independence in 1948, the power was transferred to the Sinhalese nation over the entire country on the basis of a numerical majority, thereby reducing the Tamil nation to the position of a subject people. Since independence, the Sinhalese-led governments have encouraged and fostered the aggressive nationalism of the Sinhalese people and have used their political power to the detriment of the Tamil people."

The first national Convention of the Tamil United Liberation Front meeting at Pannakam (Vaddukoddai Constituency) on the 14th day of May 1976 hereby declares that the Tamils of Ceylon, by virtue of their great language, their religions and separate culture and heritage, their history of independent existence as a separate state over a distinct territory for several centuries till they were conquered by the armed might of the European invaders, and above all by their will to exist as a separate entity ruling themselves in their own territory are a nation distinct and apart from the Sinhalese and their constitution announces to the world that the Republican Constitution of 1972 has made the Tamils a slave nation ruled by the new colonial masters, the Sinhalese who are using the power they have wrongly usurped to deprive the Tamil nation of its territory, language, citizenship, economic life, opportunities of employment and education thereby destroying all the attributes of nationhood of the Tamil people."

The Resolution adopted by the Convention included the following:

"The Convention resolves that the restoration and reconstitution of the free, sovereign, secular, socialist state of Tamil Eelam based on the right of self-determination inherent to every nation has become inevitable in order to safeguard the very existence of the Tamil nation in this country."

At the 1977 general election, the TULF demanded a clear mandate from the people to launch a national struggle to establish sovereignty in the Tamil homeland. The 1977 election took the character of a referendum and the Tamil speaking people voted overwhelmingly in favour of secession. Thus a new historical era in Tamil politics began in 1977, ushering a struggle for national independence. However, as the struggle for national freedom began to crumble under severe government oppression, and the democratic popular agitations and peaceful campaigns failed against the onslaught of the government, the emergence of the armed resistance movement amongst the Tamils became inevitable. The armed struggle, which is the historical product of intolerable national oppression, is the extension and advancement of the political struggle of the Tamil nation. Today, the armed struggle of the LTTE is sustained and supported by wider sections of the Tamil people.

Self-determination

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

- Article 1, International Covenant on Civil and Political Rights

Article 1, International Covenant on Economic Social and Cultural Rights

The Sri Lankan Tamils are a distinct people, sharing a common heritage, ancient culture, language and religions and have inhabited a homogeneous and contiguous territory for many centuries. Since independence in 1948, the Tamils have suffered from marked discrimination in all fields of national life, persecution and violence amounting to genocide at the hands of the Sri Lankan state.

Today, International Law provides that all peoples may freely utilize resources based upon the principle of mutual benefit. Like in many former European colonies, in Sri Lanka, the European educated aristocracy assumed the office of their forebears after independence and continued where they left off. The prevailing norm is that the state determines the 'best interests of the nation', and the extraction of natural resources to benefit the ethnic majority. It should be noted that Sri Lanka is also a signatory to the International Covenant on Civil and Political Rights.¹⁵⁸ The planned and deliberate deprivation of the right to use natural resources of the community is another important reason for the rebellion of the Tamils of the north-east parts of the island.

The recognition of the right to self-determination has been a prime demand of the Tamils. Self-determination formed the basis of the Vaddukkottai Resolution and the Thimpu Principles. At the Forty-ninth Session of the Commission on Human Rights, fifteen NGOs made a joint statement on 8 February 1993, under Agenda Item 8, which relates to the rights of peoples to self-determination, and urged the members of the Commission to:

- a) accord open recognition to the existence of the Tamil "homeland" in the North and East of the island: and
- b) recognize that the Tamil population in the North and East of the island constitute a "people" with the right to self-determination.

Over the years, the international community has recognized the importance of basing the solution to the Tamil national problem on the principle of self-determination. At the peace sessions in Oslo in December 2002, the international community fully supported the agreement of the Sri Lankan government and LTTE to explore a solution on the basis of internal self-determination. Subsequently

however, the Sri Lankan government has made it clear by word and deed that it will not recognize this fundamental right of the Tamil people. The denial of the right to self-determination would lead to disastrous consequences, as has already been pointed out.

*"...Where governments recognize and respect the right to self-determination, a people can effectuate it in a peaceful manner. Where governments choose to use force to crush or prevent the movement, or where they attempt to impose assimilationist policies against the wishes of a people, this polarizes demands and generally results in armed conflict. The Tamils, for example, were not seeking independence and were not using violence in the 1970s. The government response to further deny the Tamil people equal expression of their distinct identity led to armed confrontation and a war of secession..."*¹⁵⁹

- UNESCO International Conference of Experts, 1998

Peace Negotiations

After independence in 1948, Tamils adopted non-violent means to seek remedies for their grievances. Tamil leaders entered into agreements with successive Sri Lankan governments in power. Despite a mandate for the establishment of a separate state, Tamil political parties have continued negotiations with the Sri Lankan governments.

- **Bandaranaike-Chelvanayakam Agreement**

Prime Minister S W R D Bandaranaike, who was leader of the Sri Lanka Freedom Party (SLFP), and Tamil leader S J V Chelvanayakam made an attempt to find a solution to the Tamil question in 1957, by entering into an agreement (popularly known as Bandaranaike-Chelvanayakam Pact). The agreement recognized the traditional homeland of the Tamils - the Northern and Eastern Provinces - as a region for separate administration, and granted a measure of autonomy. This was met with violent opposition by the

Buddhist clergy and other Sinhalese parties, particularly the United National Party (UNP), which was then in opposition. The UNP leader J R Jayewardene himself was in the forefront of the opposition and undertook a protest march from Colombo to Kandy on 4 October 1957, which led to adverse propaganda among the Sinhalese, resulting in a major pogrom against Tamils in May/June 1958. The Pact was unilaterally abrogated by Prime Minister Bandaranaike.

- **Senanayake-Chelvanayakam Agreement**

Another attempt was made when Dudley Senanayake, the leader of the ruling UNP was in power. An agreement was signed (referred to as the Senanayake-Chelvanayakam Pact) in 1965 for the establishment of district councils, again recognizing the Tamil territory of the north-east and granting a measure of autonomy. The Pact was vehemently opposed, this time by the SLFP, along with the Buddhist clergy. The government succumbed to the pressure and the Pact was never implemented.

- **The Thimpu principles**

In 1985, the Sri Lankan government and Tamil representatives met at a peace conference in Thimpu, Bhutan under Indian auspices. The Tamil parties - militant as well as moderate - jointly put forward four cardinal principles, which have come to be recognized as the “Thimpu Principles”, as the basis for a negotiated settlement:

- 1) Recognition of the Tamils of Sri Lanka as a distinct nationality.
- 2) Recognition of an identified Tamil homeland in the north-east of the island.
- 3) Recognition of the right of self-determination of the Tamil nation.
- 4) Recognition of the right of citizenship and other fundamental rights of all Tamils

who look upon the island as their country.

The Sri Lankan delegation rejected these principles outright and as a result the conference failed. Since the Thimpu conference, the Tamil people, their representatives and Tamil organizations have consistently invoked the Thimpu Principles in campaigns for their rights. In November 2000, speaking in Colombo, British Foreign Office minister Peter Hain declared that in the case of the Sri Lankan Tamils, the principle of self-determination would be supported by the international community.

- **The Thirteenth amendment**

The Thirteenth Amendment to the Constitution was introduced following the Indo-Sri Lanka Agreement of 29 July 1987 and remains in force. The Indo-Sri Lanka Agreement recognized explicitly that Sri Lanka is a “multi-ethnic, multi-lingual, plural society” and that “each ethnic group has a distinct cultural and linguistic identity which has to be carefully nurtured”. The Agreement also recognized the “Northern and Eastern Provinces as the historical habitation of the Sri Lankan Tamil speaking people”.

The Thirteenth Amendment, which came into force in October 1987, provided for a Provincial Governor, a Provincial Board of Ministers with a Chief Minister and a Provincial Council. A Provincial Councils Act was also introduced. The Governor, though not elected, holds all the power, and the ministers, though elected, virtually have no power. There is in reality no devolution of power to the provinces, as the following provisions demonstrate.

The President selects the Governor and is subject to the control of the President. The Governor can exercise his executive power either directly or through the Board of Ministers or through the members of the provincial public service. The disciplinary control of officers of the province is vested

in the Governor. The Governor will also determine terms and conditions of their employment. The Public Services Commission will also be appointed and controlled by the Governor. In this circumstance, the Board of Ministers in effect becomes redundant.

The Chief Minister must communicate all decisions of the Board of Ministers to the Governor. The ministers also must respond when the Governor calls for information. The Governor will exercise executive power also in respect of all provincial legislation passed by the Provincial Council. The Governor is empowered to make rules for allocation of business among ministers. The Governor can further summon the Provincial Council, including ministers, and give instructions. Whether any matter requires the advice of the Chief Minister will be decided by the Governor on the direction of the President and this cannot be called into question in any court. The Governor has the discretion to ignore the advice of the Chief Minister and Board of Ministers.

Under the 13th Amendment, a Finance Commission, appointed by the President, will recommend the amount to be allocated for the province and the President will decide the amount. The Provincial Council cannot pass any laws imposing, altering abolishing any taxes in the province without the recommendation of the Governor. No money can be withdrawn from the Provincial Fund without the sanction of the Governor.

If the President is satisfied that a situation has arisen in which the provincial administration cannot be carried out (for example, if the Provincial Council does not act in accordance with the recommendation of the Governor in the case of taxes), the President can take over the functions of the Governor, the Chief Minister and the ministers and also declare that the powers of the Provincial Council

are vested in the central Parliament. This cannot be called into question in any court.

Under the 13th Amendment, the Chief Minister and the Board of Ministers can advise the Governor only in respect of matters on which the Provincial Council can pass laws. Over other matters, such as police and land settlement they cannot even advise. The IGP, who is under the direct control of the President, will be the head of all provincial police forces. Under the Sri Lanka constitution, judicial power is exercised by Parliament through the courts. The President appoints the judges of the Supreme Court and Court of Appeal on recommendations made by the Constitutional Council. Under the 13th Amendment, there will be a High Court for the Province. The Chief Justice chooses the High Court judge for a province from among the High Court judges appointed by the President.

The 13th Amendment provides for three lists: 1) **Provincial Council List** - The Provincial Council may make laws applicable to the province in respect of matters in this list. 2) **Concurrent List** - Both the Sri Lanka Parliament and the Provincial Council may legislate on matters in this list. 3) **Reserved List** - Only Parliament may make laws in respect of matters in this list.

Despite this, the central Parliament will be able to legislate by a simple majority on all subjects on grounds of national policy. The law-making powers of the Provincial Council do not include national policy. Parliament can also legislate in respect of any subject in the Provincial Council List if such law is necessary for implementing any treaty, agreement or decision at an international conference. This would enable Parliament to legislate in respect of any matters in all three lists.

- **Provincial Councils under the Thirteenth Amendment**

At provincial elections held on 19 November 1988, a North-East Provincial Council (NEPC) controlled by the Eelam People's Revolutionary Liberation Front (EPRLF) was elected. Even the meagre devolution provisions under the Thirteenth Amendment were frustrated and negated by administrative action and inaction. Overlaps and ambiguity in power boundaries between the provincial administrations and the central government provided opportunities to override or supersede delegated powers of the councils through ministerial directives. In 1995, less than 1% of the estimated provision of Rupees 43 billion for capital investment of the country was allocated to the north-east. The NEPC was dissolved in 1990 and the powers and functions of the Council have since been exercised by the President through central government administrative bodies.

"The Thirteenth Amendment...failed to introduce substantial and secure devolution of powers. The Amendment failed to grant complete control over any subject to a provincial council. It was also easy for the centre to retake power. A major flaw...was that the first phase in the reserved list (for central government) completely undermined powers apparently devolved in the provincial council list. It provided that 'national policy on all subjects and functions' could be determined by the central parliament"

- Roban Edrisinha, *Creating peace in Sri Lanka: Civil war and reconciliation, 1999*

- **PA government's devolution proposals**

The PA government at the time of elections in 1994 admitted that severe problems faced by the Tamils led to the call for secession, but made public its devolution proposals on 3 August 1995, only after peace talks with the LTTE broke down. The policy of the government changed from 'peace' to 'war for peace'. A revised watered-down version of the

proposals, referred to as the 'legal text', was placed before a Parliamentary Select Committee in January 1996. In October 1997, a draft constitution incorporating the government devolution proposals was presented to Parliament. The government announced on 8 August 2000 that the Bill for the new constitution will not be pursued after failing to muster enough support among MPs to ensure the two-thirds majority required for its passage in Parliament, following widespread opposition. At the time of the 1994 elections, President Chandrika said that Article 76 of the Constitution, which precluded devolution, should be repealed. But, the same provision appeared verbatim in the new draft constitution.

The proposals indicated that there was no real intention to devolve power, but reinforce the idea that Sri Lanka is a Sinhala-Buddhist state. The proposals called for overwhelming power to be concentrated in the hands of the majority community and totally rejected the principles of equality and non-discrimination. The draft constitution did not provide for judicial review of legislation, but allowed laws that are inconsistent with fundamental rights to exist. Most of the provisions were contrary to the very concept of devolution. Issues such as higher education, employment opportunities, freedom of vocation, state-aided colonisation, freedom of expression, personal security, control over resources and decision-making right on local affairs were left to the whims of the central government.

"...when viewed from the perspective of modern constitutionalism, as the basis for the introduction of pluralism amid liberal democratic values or as a foundation for conflict resolution and a durable solution to ethnic conflict, the new draft constitution is woefully inadequate. It is simply a reconditioned version of the 1978 constitution...Perhaps the most dangerous feature of the 1996 draft was that it moved further away from the idea of the secular state...inadequate checks on the possible abuse of the central

government's power to intervene in a region in a situation of emergency...Amazingly, even the provisions of the Thirteenth Amendment, presently in operation, contain better safeguards to prevent Provincial Councils from arbitrary dissolution...the overwhelming mandate received by the Kumaratunge administration in 1994 for constitutional reform, for democracy and peace, and the opportunity it created, have been squandered by a constitutional reform project which lacked vision, imagination, commitment to principles and professionalism."

- Rohan Edrisinha, Creating peace in Sri Lanka: Civil war and reconciliation, 1999

- **The Fox agreement**

British Foreign Office Minister Liam Fox brokered a bipartisan agreement in April 1997, between the ruling PA and the main opposition UNP. Bipartisanship is considered important in light of the fact that agreements for Tamil autonomy have failed in the past, because of violent protests by the opposition party, usually the UNP or the PA's main constituent, the SLFP. Furthermore, it would be difficult for the government to obtain the two-thirds majority in Parliament, needed for the replacement of the constitution, without the support of the Opposition. The two major parties have shown little inclination to implement the agreement with the objective solving the Tamil question.

- **PA-LTTE peace talks**

Peace talks between the LTTE and the PA government began in December 1994. The government team comprised of President Kumaratunge's personal friends and totally lacked negotiating skills. They were ill-prepared and did not have delegated power to make any decision. When personalities of the team were changed, there did not appear to be any induction and briefing to ensure continuity, the building of institutional knowledge and a seamless handover. There was also no attempt to include any of the people who had direct

experience of negotiations with the LTTE in 1990.¹⁶⁰ The talks were held only for few hours on four occasions and verbal agreements were reneged after the government delegates returned to Colombo. There was no agreement on several issues and the LTTE gave three weeks notice of abrogation of the Cessation of Hostilities Agreement, although the agreement itself provided for only 72 hours notice for termination. The LTTE further extended the notice by two weeks at the request of the government. Predictably, the talk failed, as the government showed little sincerity in solving the conflict through negotiation, but was intent on providing primacy to the demands of the military.

- **Norwegian involvement**

The LTTE had been demanding third-party mediation for several years, but the Sri Lankan government had always rejected foreign involvement. In January 2000, however, the government relented and the Norwegian government became involved in shuttle diplomacy and appointed parliamentarian Erik Solheim as a peace facilitator. Mr Solheim proposed a Memorandum of Understanding (MOU) for the initial measures by the parties for confidence building.

The LTTE released prisoners and declared a unilateral ceasefire in December 2000, which was extended up to April 2001. Despite international demands, the government failed to reciprocate the ceasefire and launched a massive military operation in Jaffna. During the ceasefire, government forces killed 160 LTTE combatants and wounded over 400. The government forces also continued, during the ceasefire, to commit war crimes and crimes against humanity by engaging in torture, rape of Tamil women, arbitrary killing of Tamil civilians, and shelling and bombing populated areas. More than 10,000 civilians were displaced and Chavakachcheri and some other towns in

Jaffna were completely destroyed. The government was less than honest in the release of prisoners. The government announced the release of ten LTTE prisoners, but it turned out that only one was an LTTE cadre.

- **Ceasefire Agreement 2002**

A ceasefire agreement was signed between the United National Front (UNF) government and the LTTE on 22 February 2002. The agreement provided for an international ceasefire monitoring body, SLMM, composed of representatives from Nordic countries.

The agreement prohibits offensive military operations such as armed raids, ambushes, assassinations, abductions, destruction of property, suicide missions, action by deep penetration units, aerial bombardment and naval action. The agreement provided for establishment of demilitarized zones in the north-east extending 600 metres between forward defence lines of the Sri Lankan military and the LTTE forces. In this zone, each party has right of movement within 100 metres from its own defence line, keeping a minimum of 400 metres between both sides. The parties are prohibited from moving munitions and military equipment into areas controlled by the other party. Both parties have agreed to abide by international law and refrain from committing hostile acts against the civilian population, including torture, intimidation, abduction, extortion and harassment.

Both parties separately announced a cessation of hostilities from 24 December 2001. All military checkpoints in Colombo were removed and the Vavuniya-Jaffna road was opened. The government also took action to ease the economic blockade of the north-east.

Since the ceasefire agreement was signed between Prime Minister Ranil Wickremasinghe and LTTE leader V Prabhakaran, the Sri Lankan President

Chandrika Kumaratunge severely criticized both parties and sought to undermine the agreement. The President demanded the review of some provisions of the agreement, because they impinge on national security. She argued that the agreement is inadequate on the rules of engagement at sea and naval powers regarding interdiction of illegal arms shipments. The President also criticized the provisions granting freedom of movement to LTTE cadre for political work in government-controlled areas.

- **UNF-LTTE Peace talks**

The government removed the ban on the LTTE under the PTA on 4 September 2002. The first round of peace talks between the government and the LTTE was held in Thailand on 16 September 2002. At the second session at Thailand three sub-committees were formed – Sub-Committee on Political Issues (SPI), Sub-Committee on Immediate Humanitarian and Rehabilitation Needs (SIHRN) and Sub-Committee on De-escalation and Normalization (SDN). SIHRN was given the task of identifying needs, implementing agencies and allocation of funds for projects.

- **The Oslo Declaration**

The decisions at the third session of the talks in Oslo in December 2002 constituted the Tokyo Declaration and laid down the fundamental principles for a negotiated settlement to the Sri Lankan conflict. The parties agreed to explore a solution founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka (The term ‘areas of historical habitation’ refers to the Northern and Eastern Provinces, claimed by the Tamils as the Tamil homeland. The term ‘Tamil-speaking peoples’ includes Tamils and Muslims).

Guided by this objective, the parties agreed to initiate discussions on power-sharing between the centre and the region, as well as within the centre. Discussions were also to be held on geographical regions for devolution, human rights protection, political and administrative mechanisms, public finance and law and order. The parties agreed to appoint a committee of women to explore the effective inclusion of gender issues in the peace process and that the LTTE will engage in a partnership with the UNICEF to draw up an action plan for restoring normalcy to the lives of children. It was also agreed that the government would, in order to arrive at the broadest consensus possible, establish an appropriate mechanism for consultation with all segments of opinion, as part of the peace process.

- **Nakhon Pathom and Hakone decisions**

At the Fourth Session of the peace talks at Nakhon Pathom in Thailand from 6 to 9 January 2003, it was agreed that a Muslim delegation would be invited to the peace talks at an appropriate time for deliberations on relevant and substantive political issues. At the Sixth Session at Hakone in Japan, from 18 to 21 March 2003, the parties requested international human rights advisor Ian Martin to develop three aspects of the proposed roadmap on human rights for adoption: 1) drafting a Declaration of Human Rights and Humanitarian Principles, pending their full entrenchment in the eventual constitutional arrangements; 2) planning a programme of human rights training for government officers and LTTE cadre, with assistance from UNICEF, UNHCR, ICRC and the Office of the UN High Commissioner for Human Rights; 3) suggesting proposals for strengthening the Sri Lankan Human Rights Commission for effective monitoring throughout the country.

- **Tokyo Conference on reconstruction aid**

A conference to pledge reconstruction assistance was announced for June 2003. But a pre-Tokyo pledging seminar, chaired by US Deputy Secretary of State Richard Armitage, was held in Washington on 14 April 2003, without the concurrence of the LTTE. The LTTE was also excluded from the seminar on the ground that the inclusion of the LTTE in US list of terrorist organizations would not permit an invitation. The government had earlier admitted that it was engaged in building an international safety net of nations to keep the LTTE within the parameters of the peace process. The LTTE viewed the holding of the seminar in the US, being fully aware that the LTTE remains on the terrorist list of the US, as an attempt by the Wickremasinghe government to deliberately exclude them and to consolidate the international safety net against them. The LTTE declined to participate in the June 2003 Tokyo Conference and announced on 21 April 2003 that it was withdrawing from the peace talks as a protest against the exclusion from the aid seminar in Washington and non-implementation of the terms of the truce agreement and the decisions taken at the various sessions of the peace talks.

Fifty one nations and 22 international agencies participating in the *Tokyo Conference on Reconstruction and Development of Sri Lanka* on 9 and 10 June 2003, pledged \$4.5 billion in aid for reconstruction. The LTTE did not attend the conference. Norway was named co-chair of the conference along with Japan, the US and the European Union (EU). The decisions of the conference are contained in the Tokyo Declaration.

• The Tokyo Declaration

The Declaration stressed the importance of further promoting the peace process founded upon the principles of the Oslo Declaration. Government and LTTE partnership was urged in priority-setting and implementation in the north and east with adequate safeguard for the interests of all communities. The Conference expected the government to ensure the assistance pledged for reconstruction and development of the north and east is specifically utilized for that purpose and urged the parties to move expeditiously to a lasting and equitable political settlement, based upon respect for human rights, democracy and the rule of law. The Conference welcomed the LTTE's commitment to the negotiated peace process and urged the LTTE to return to the peace process.

The Declaration made clear that manifest commitment by both parties to further the peace process would be necessary for the provision of international assistance for reconstruction and development in the north-east. The Declaration called for assistance by the donor community to be closely linked to substantial and parallel progress in the peace process towards the fulfilment of the objectives agreed in Oslo.

The Conference encouraged the parties to enter into discussion as early as possible on a provincial administrative structure to manage the reconstruction and development aspects of the transition process and called for the expeditious development of a roadmap with the following milestones: a) Full compliance with the ceasefire agreement by both parties. b) Effective delivery mechanisms relating to development activity in the north-east. c) Participation of a Muslim delegation as agreed in the Fourth Session of the talks. d) Parallel progress towards final settlement based on the Oslo Declaration. e) Solutions for those displaced due to the armed conflict.

f) Effective promotion and protection of the human rights of all people. g) Effective inclusion of gender equity and equality in peace building, conflict transformation and the reconstruction process, emphasizing an equitable representation of women in political fora and other decision-making levels. h) Implementation of effective measures in accordance with the UNICEF-supported Action Plan to stop underage recruitment and to facilitate the release of underage recruits and their rehabilitation and reintegration into society. i) Rehabilitation of former combatants and civilians in the north-east, who have been disabled physically or psychologically due to the armed conflict. j) Agreement by the Sri Lankan government and the LTTE on a phased, balanced and verifiable de-escalation, de-militarization and normalization process at an appropriate time in the context of arriving at a political settlement.

The Conference expressed the view that the intensity and continuity of involvement on the part of civil society organizations are essential. The Conference further said that it is encouraged by the dynamic role played by private enterprise and recognizes the contribution of academic communities, trade unions, professional groups and religious organizations. The Declaration said that in view of the linkage between donor support and progress in the peace process, the international community would monitor and review the progress in the peace process, and in implementing its own assistance programmes, that the donor community intended to take into consideration the results of these periodic reviews. Japan, the US and the European Union, were appointed to undertake necessary consultations to establish the modalities for this purpose.

The decisions, although laudable, were made without the participation of the LTTE, which represents one of the parties to the conflict. The appointment of the co-chairs - Japan, US, European Union,

Norway - to monitor the progress of the peace process without any consultation with the LTTE is a disappointment. The unsuitability of these nations, for taking forward any positive peace measures in consultation with both parties to the conflict, has been pointed out. The US has included the LTTE in its list of terrorist organizations and is legally constrained from contacts with the LTTE. The UK, which led the EU for the past year, has also proscribed the LTTE. As peace facilitator Norway is not suited for the task and Japan is a Buddhist nation.

- **Sri Lankan government proposals 2003**

In response to the LTTE demand for an interim administration, the Sri Lankan government submitted proposals on 18 July 2003, under the title "Provincial administrative structure for the Northern and Eastern provinces".

Under the proposals, a Provincial Administrative Council for the Northern and Eastern provinces would be set up, consisting of members nominated by the government, LTTE and the Sri Lanka Muslim Congress (SLMC), with a majority for the LTTE. There will be two Chairmen, one representing the LTTE and the other government, each with the right to veto any proposal. In the alternative, any decision affecting either the Muslim or Sinhala community could be taken only if supported by a majority of the Council and majority of the Muslim or Sinhala representatives. The proposals said that adequate arrangements will be made to enable the Council to participate effectively in the powers and functions currently exercised by the government in respect of regional administration, including policy making, implementation and monitoring and rehabilitation, reconstruction and resettlement.

The Council will determine the use of funds derived from the government and

the donors that would be utilized by state and other agencies for rehabilitation, reconstruction and development projects. In addition to the North-East Reconstruction Fund (NERF), there will be a Special Fund for funds that are not channelled through NERF. A District Committee for each district in the Northern and Eastern provinces will be established. These will function directly under the Council and will be responsible for implementing the decisions of the Council, co-ordinating development activities within the district and formulating proposals for consideration of the Council.

The proposals further said that a Muslim delegation will participate in the peace talks and it is open to the SLMC to submit proposals pertaining to the Provincial Administrative Structure and that the contemplated arrangements will be in operation for a limited period agreed upon by the parties, subject to review every six months.

- **LTTE proposals for an ISGA**

As a response to the government proposals July 2003, the LTTE submitted a proposal on 31 October 2003 to the government on the establishment of an Interim Self-Governing Authority (ISGA) for the north-east region. According to the proposals, an ISGA for the north-eastern districts consisting of members appointed by the LTTE, the Sri Lankan government and the Muslim community in the north-east, with an absolute majority for the LTTE, will continue until a final negotiated settlement is reached and implemented.

The ISGA will have plenary powers for the governance of the north-east including powers in relation to resettlement, rehabilitation, reconstruction and development, including improvement and upgrading of existing services and facilities, raising revenue including imposition of taxes, revenue, levies and duties, law and order and over land. These powers will

include all powers and functions in relation to regional administration of the government.

A Finance Commission will make recommendations to the government as to the amount to be allocated, out of the consolidated fund, to the north-east. All government expenditure in the north-east will be subject to control by the ISGA. The NERF, a new North-East General Fund and a Special Fund will be under ISGA control. Accounts will be audited by an Auditor General. The auditing of monies from international sources will be subjected to approval by an internationally reputed firm appointed by the ISGA.

The ISGA will have powers to borrow internally and externally, provide guarantees and indemnities, receive aid directly and engage in or regulate internal and external trade. ISGA will have direction and control over all administrative structures and personnel in the north-east. ISGA will have power to alienate and determine the appropriate use of all land in the north-east that is not privately owned. The government must pay compensation to owners for past dispossession of land by the armed forces. The ISGA will have control over marine and offshore resources of the adjacent seas and power to regulate access thereto. It will also control natural resources in the north-east.

The ISGA will have power to appoint a Human Rights Commission, Election Commission, Finance Commission, Auditor General, District Committees for administration of districts and a Special Commission on administration of land.

- **Chandrika's intervention after ISGA proposals**

On 4 November 2003, within four days of the LTTE proposals, President Chandrika dismissed three Cabinet ministers, while Prime Minister Ranil Wickremasinghe was

away in the US to discuss the island's peace process with President George Bush. She also prorogued Parliament. She sacked the secretaries of ministries and brought the state media under her control. In an address to the nation on 4 November, the President said: *"The disturbing developments of the past few months culminating in the events of the last few days and the ineffective steps taken by the administration to ensure national security have led me to take the view that firm and steadfast action is necessary to remedy the situation"*. The President continued to accuse the UNF government of granting too many concessions to the LTTE.

As a result of the division within the Sri Lankan government, the Norwegian diplomats suspended their participation in peace efforts on 14 November 2003, declaring that there is no space for further efforts by the Norwegian government until clarity is established as to which leader held political authority to ensure continuation of the ceasefire and resumption of peace talks. Norway expressed concern that although the parties were committed to maintaining the ceasefire, it will be much more difficult to sustain in a political vacuum and if progress in political negotiations becomes impossible, the ceasefire will be increasingly fragile.

President Chandrika undemocratically dissolved Parliament on 7 February 2004, nearly four years before the six-year term of Parliament would have ended. The new election was announced for 2 April 2004, the third election since October 2000. The United People's Freedom Alliance (UPFA) won the elections. Then onwards, without taking any tangible action to take forward the peace process, she turned her full attention to extending her term of office for a further year. She also sought to amend the constitution, not in order to provide for devolution that will eventually bring peace, but to facilitate her entrance to Parliament so that she could continue her political life.

Her party, the SLFP had signed an agreement of co-operation with the JVP on 20 January 2004 forming the UPFA. The JVP has long been opposed to any talks with the LTTE or devolution of power to the Tamil regions and has advocated a military solution. The agreement said that the government-LTTE peace process has caused Sri Lanka to face the prospect of losing its territorial integrity and the establishment of a parallel Tamil state in the north-east.

• General election 2 April 2004

The Tamil National Alliance (TNA), backed by the Liberation Tigers of Tamil Eelam (LTTE) gained 22 seats while nine Buddhist monks contesting on the ticket of JHU (National Sinhalese Heritage) entered Parliament.

On 22 April 2004, President Chandrika contacted Norwegian Prime Minister Kjell Magne Bondevik and requested the resumption of Norway's role as peace facilitator. The Norwegians indicated that a similar request must come from the LTTE. LTTE's Chief Negotiator Anton Balasingham said that a decision will be taken only after the government's position is clarified on three issues: 1) acceptance of the LTTE as the sole representatives of the Tamils; 2) acceptance of the LTTE as an equal partner in the peace process; 3) resumption of peace talks on the basis of the LTTE's ISGA proposals.

• LTTE's emphasis on ISGA

The LTTE continued to insist that peace talks can be held only on their proposals for an ISGA for the north-east region and

indicated that the ISGA should be institutionalized before negotiations can begin on a permanent solution.

After the meeting with Mr Helgesen on 27 July 2004, the Presidential Secretariat announced that President Chandrika was prepared to recommence peace negotiations on an interim authority within the framework of a united Sri Lanka. This was a considerable shift from her earlier position that parallel talks should be held on the ISGA and a permanent solution to the conflict. But, the very next day, JVP's Propaganda Secretary Wimal Weerawansa condemned President Chandrika's offer indicating that the JVP would be prepared to quit the government if peace talks were held on the ISGA. Due to JVP pressure, President Chandrika was forced to retract her offer at a meeting of the UPFA Executive Committee on 2 August 2004.

• Tsunami devastation

The tsunami of 26 December 2004 devastated the coastline of Sri Lanka causing death and destruction on an unprecedented scale. The percentage of the coastal population affected, ranged from an estimated 35% in Kilinochchi to 80% in Mullaitivu and 78% in Amparai. The coastal population affected in the southern districts of Galle, Matara and Hambantota was below 20%. The table below shows the damage in the north-east and the south.

• Joint mechanism for tsunami relief

Following intense negotiations, the Sri Lankan government and the LTTE signed a MOU on 24 June 2005 for the establishment of a Post-Tsunami

Sri Lanka: Tsunami of 26 December 2004 – Affected people						
Zone	Affected Families	%	Displaced Families	%	Displaced Persons	%
North-East	109,521	64.2	78,438	75.6	418,265	76.4
South	61,173	35.8	25,351	24.4	128,929	23.6
Total	170,694		103,789		547,194	

Operational Management Structure (P-TOMS). The agreement envisaged the appointment of structures, with the government, LTTE and Muslim representatives participating, for the equitable allocation and disbursement of funds and distribution of aid provided by donors.

Other nations and international agencies welcomed the agreement and the

sum of \$3 billion pledged by foreign donors as tsunami aid, was expected to be released soon after the signing of the agreement. It was also expected that the agreement would lead to the recommencement of the peace talks suspended in April 2003.

• Opposition to P-TOMS

However, relentless opposition from the JVP and the party of Buddhist monks, the JHU has effectively destroyed the establishment of the P-TOMS. On 16 June 2005, the JVP left the ruling UPFA over disagreement with the SLFP regarding P-TOMS. Observers point out that contrary to the claims of the JVP, the joint mechanism will unite the country, engender goodwill, dispel mistrust, provide an opportunity to work together and will have a beneficial effect on the peace process. The government's writ currently does not run in large parts of the north-east and joint mechanism will help the government to have role in providing relief in these areas. The administrative structures of the Provincial Councils and the central government already exist in the north-east and the LTTE has been working with them for many years.

The JVP filed a case against the P-TOMS agreement on 27 June 2005, demanding an injunction. In July, the Supreme Court issued an interim injunction on key aspects of the agreement pending a final determination. In the petition to the Supreme Court, the JVP said that there is

no legal basis for the government to enter into an agreement with the LTTE, which is not an

entity recognized by law and which is identified with terror, violence, death and destruction. The court rejected the JVP's argument and held that the exercise, performance and discharge of executive power and functions are primarily vested with the President. But the court granted an interim injunction suspending key elements of the P-TOMS. The interim injunction blocked the main powers of the Regional Committee, including management of funds and powers to approve and manage projects for post-tsunami relief, rehabilitation, reconstruction and development. The court said that these were clearly government functions and could not be handed over to another body. The court prohibited the location of the Regional Committee in Kilinochchi, urging it to be located in an area to enable it to make decisions without fear.

The Sri Lankan Supreme Court, in its June 2005 decision made a number of statements about the importance of the P-TOMS and even went to the extent of using its inherent jurisdiction to consider measures to convert a situation of illegality to one of legality to allow the structure to function. The Supreme Court said that if the MOU is not implemented immediately, urgent humanitarian assistance could not

Sri Lanka: Tsunami of 26 December 2004 – Deaths and damage						
Zone	Deaths	%	Missing Persons	%	Houses damaged	%
North-East	20,507	66.8	3,314	67.1	73,817	66.1
South	10,211	33.2	1,625	32.9	37,864	33.9
Total	30,718		4,939		111,681	

be granted to the people in the north-east, 'who have suffered and continue to suffer, untold hardship and tragedy from the natural disaster'. In view of these statements, a positive decision, which takes the sufferings of the tsunami victims into consideration, was expected when the case was heard on 21 November 2005.

- **Supreme Court decision**

But after the new President was elected in November 2005, the court has inexplicably granted an indefinite injunction against the P-TOMS and has postponed the enquiry indefinitely. The Presidential election had been held [on 17 November 2005] between these two decisions, and Mahinda Rajapakse, had been elected as President of Sri Lanka. Many people, within and outside Sri Lanka, have expressed their suspicion to the TIC that this change is due to political intervention or some devious political deal, which has undermined the independence of judiciary, peace process and the mechanism to rebuild the lives of the affected people.

Because of the court decision, thousands of people affected by the tsunami in the north-east will continue to suffer. The P-TOMS would have had the potential of creating trust and public confidence in the peace process. The international community also fully supported the creation of P-TOMS and continued to call for its establishment.

- **The new President**

President Mahinda Rajapakse signed electoral alliance agreements with the JVP and JHU before the presidential elections. The JVP agreement says that the P-TOMS agreement shall not be re-activated, enforced or implemented in whatsoever manner and that a new programme will be formulated and for the purpose of accelerating, expediting and regularizing the provision of the necessary relief services to all the people affected by the

tsunami. The agreement prohibits negotiations with the LTTE on the ISGA or any such political or administrative structure.

The 12-point agreement rejects federalism as the basis for a peace deal with the LTTE. The JVP and Mr Rajapakse have also agreed to protect, defend and preserve the unitary nature of the Sri Lankan State under any solution for the resolution of Sri Lanka's conflict. The agreement also calls for a full revision of the ceasefire agreement of 22 February 2002 and review of the facilitator role of Norway, accusing the Scandinavian nation of bias and partiality towards the LTTE. The JHU agreement has similar provisions and rejects the concept of a Tamil homeland in the north-east region. In effect, these two agreements reject all the principles of the Oslo Declaration, which has the support of the international community.

International action and the role of the International Community

The international community is obliged to address the gross violations of human rights in Sri Lanka. Except for condemnation of denial of Tamil rights by non-governmental organisations at the United Nations human rights forums and elsewhere, and by certain rapporteurs and working groups of the United Nations Commission on Human Rights, the Tamil cause and situation have received only sporadic attention by governments and the United Nations as a whole. Even in these instances governments and agencies seem to exhibit some kind of partiality. Divisions are observable between various governments and international agencies in policy and practice in relation to Sri Lanka. In order to receive results, it is essential that the international community is united in its actions and equally condemns all human rights violations whether they are committed by the Sri Lankan state or the Tamils.

The Tamil people of Sri Lanka base their life, rights and development on the principles of peace, justice and liberty. The dishonesty and hypocrisy of successive Sri Lankan governments have led to the current impasse and their repeated promises to improve the human rights conditions of the Tamil people have proven to be empty. Continuing oppression, injustice, corruption, and disrespect for human dignity have characterized successive regimes in Sri Lanka under whom the Tamils have continued to suffer. The governments of Sri Lanka have lost their credibility with the Tamils and there is a belief among many Tamils that there can be no peaceful co-existence with the Sinhalese people while governments continue to carry out physical, ethnic and cultural genocide of the Tamil people. Although at times it appears that the only way open is force, in the light of the enormous obstacle to achieving legitimate rights guaranteed in international law, the Tamil people have not forsaken the path of peace. What the Tamil people want is for the international community to listen to their grievances, recognize and respect their rights and take appropriate action. The Tamil people have lost almost everything, but this does not paralyze them, because the commitment to struggle against injustice is embedded deeply in their collective heart and mind. The Tamil people are a tree whose fruits have been plucked, branches shorn and the trunk burned. But their historical roots lie deep and strong and will continue to flourish undeterred.

While we, the Tamil Information Centre, a non-governmental organization working to promote human rights and community development, acknowledge the efforts taken by the international community in some areas of humanitarian concerns affecting the Tamil speaking people urge vigorous and consistent action for their protection, in taking into consideration the following contexts and principles:

The Tamil people are only seeking to live on their lands where they have lived pursuing a cooperative way of life for many centuries in harmony and peace with other communities, organizing themselves to develop alternatives, benefiting from the natural resources for their present and future well being. The contiguous north-eastern province is the homeland of the Tamil people and the Muslim people. They are the rightful owners of the areas where they have lived traditionally and which they rely for their survival. These territories are the conditions for life and are essential to the maintenance of the respective social, cultural, spiritual, economic and political distinctions of those who inhabit the contiguous homeland. They will persist in striving for complete legal recognition of this one-ness between land and people.

The Tamil people believe that any permanent political solution to the conflict in Sri Lanka, whether by international mediation or through political negotiations, must take into consideration the legitimate aspirations of the Tamil and Muslim people to determine their own political, economic, social and cultural destiny. This plea by the Tamil and Muslim people should be respected by the community of states.

Successive Sri Lankan governments have continued to undermine democratic institutions and democratic processes. An election observer noted in 2000 that the progressive destruction of the political process in Sri Lanka has led to both domestic and international tolerance of an enormous amount of violence by the government against its citizens. The observer also said that increasingly it seemed that the government of Sri Lanka is accountable to no one – not its citizens, and not its foreign counterparts.¹⁶¹ The international community must play a positive role and enhance its interventions in safeguarding, promoting and

strengthening democratic institutions.

The interests of democratically elected governments committed to the rule of law cannot be furthered by ignoring, much less supporting, the actions of the Sri Lankan government in respect of the Tamil people, whatever the reasons adduced. While unequivocally condemning the human rights violations committed by the LTTE, the international community should also publicly and without reservation condemn the barbaric deeds of the Sri Lankan government. The international community should also speak out about human rights breaches of the Sri Lankan government, provide all support for the investigation of such infringements, maintain a human rights agenda and help to establish appropriate human rights mechanisms.

The brutality of warfare, oppression and human rights violations including torture, which was to a large degree directed against Tamil civilians, was covered up by control of the media and censorship. The media cover-up continues. The reporting culture of the Sri Lankan mainstream media has had a serious impact on the human rights of the nation's population, communal harmony, and the social and economic stability of the country. The media strives relentlessly, with sinister intentions, to undermine the Tamil cause. Highlighting only incidents affecting the majority Sinhalese community and the total black-out of atrocities committed by the state apparatus against the Tamil speaking people, false propaganda, demonizing the Tamil people and writing explicit racist opinions, have inflamed the situation and aggravated the conflict. Effective international pressure is required to force the government to allow free reporting and access to foreign journalists and fact-finding missions to freely visit the conflict areas.

International aid is reported to have been channelled for military purposes in Sri Lanka. In April 2000, the Sri Lankan

government announced that development works considered non-essential are suspended for three months to divert funds to the war effort. Before the ceasefire, humanitarian agencies and some foreign governments contributed the National Security Levy, which was a direct financial contribution to the war. While using aid as a lever to make the Sri Lankan government move towards a peace settlement, donor countries and international agencies should investigate the use of aid towards military purchases which fuel the conflict, and ensure that economic aid is used for development.

Despite the ceasefire, reports indicate arms flow into the country. The supply of arms by the international community to a conflict region, particularly when grave human rights violations continue to be committed, cannot be justified. It is understood that electronic weapons supplied by some countries, are used by the Sri Lankan security forces for torture, which is a crime against humanity. Further, it is important to realise that increasing the technological capability or the size of the arsenal deployed will not resolve the conflict but will only prolong the war and the suffering of civilians. The countries which provide military hardware and assistance to the warring parties, therefore, should refrain from promoting the war effort and take positive diplomatic measures to discuss with the government and the LTTE, encouraging them to end the conflict and create conditions for sustained peace negotiations.

The Tamil community welcomes the appointment of a Swede to head the SLMM. The peace facilitation role of Norway and its position as leader of the SLMM have created more problems rather than providing solutions. The international community must ensure that peace facilitation and ceasefire monitoring remain separate and the SLMM is strengthened with additional resources and personnel.

The Tamil and Sinhala communities are polarized in Sri Lanka and increasingly the Muslim community is becoming polarized due to the inability of the LTTE to handle Muslim concerns. The consequences of the prolonged conflict have been devastating. Although the road to peace is long and littered with many obstacles and dangers, there have been positive developments recently towards finding a peaceful settlement to the conflict. The ceasefire agreement signed between the Sri Lankan government and the LTTE continues in force. Peace negotiations were suspended in April 2003, but new talks began in February 2006 in Geneva. Both parties expressed commitment to upholding the ceasefire and agreed to take all measures to ensure that there will be no intimidation or acts of violence. The international community must ensure that the peace negotiations are sustained, continue to provide the necessary assistance to take the peace process forward and sustain pressure to de-escalate the conflict, promote human rights and observance of international humanitarian law.

For almost two decades, international and local organisations have responded to the crisis in the Tamil homeland despite enormous government obstacles, providing significant humanitarian assistance, which must be sustained and strengthened. By not taking genuine measures to remove the obstacles in implementing the P-TOMS agreement, the government has failed to alleviate the suffering of the people of the north-east. The international community must realize that although international agencies continue to provide assistance in the north-east, in the prevailing political climate and the existence of physical constraints, the needs of the people will not be satisfied without a joint mechanism for the distribution of aid. A proper joint mechanism, introduced in consultation with the civil society, will avoid failure and promote goodwill, and further address issues such as human rights, good

governance, transparency and accountability.

Insufficient attention has been paid to the development needs of the Tamil speaking people in the north-east. Despite several constraints, civil society and community institutions have undertaken notable initiatives to address the situation. The international community should assist local development initiatives, especially people-focussed development. If local initiatives could be supported, the people trained and educated, community institutions and administrative structures strengthened, then poverty can be reduced.

Before the ceasefire, although the government claimed that the war was directed against the LTTE, examination of the documented cases of extra judicial and arbitrary killings reveal that the overwhelming majority of the victims have been non-combatants, unarmed and uninvolved Tamil civilians, and frequently women, children and old people. In most cases, the bodies were destroyed in order to erase all evidence. Some were buried in unmarked mass graves, others disposed of in rivers or burned. Since the ceasefire, attacks and killings involving Tamil groups have continued, with the security forces supporting one side or the other. There have also been arbitrary killings of civilians and reprisal attacks by the security forces. Incidents of rape by security forces have also been reported. Search operations and mass arrests of Tamils in the north-east as well as the south have resumed. UN and human rights agencies have expressed concern over disappearances in Jaffna in December 2005 after arrest by the security forces and continuing torture by the police. Following concerns raised by the UN Committee Against Torture in December 2005, the Sri Lankan Chief Justice has accused the international community of interfering in Sri Lanka's internal affairs. Thousands of Tamils died as a result of the government economic blockade of the north-east in breach of the Geneva

Conventions, and others are still undergoing immense suffering. The international community has the responsibility to ensure that the government adheres to its international obligations.

Legal provisions introduced to facilitate human rights abuses continue in force. The government should be urged to adopt measures to prevent killings, extra judicial executions, disappearances, torture, rape and arbitrary arrests and detention, particularly repeal of the PTA and the Emergency Regulations and improve judicial remedies available to Tamils targeted by the security forces. The government should also be urged to comply with its obligations under Article I and IV of the Genocide Convention to charge the perpetrators of genocide and try them before competent domestic courts.

Arbitrary power and absence of democracy have led to human rights violations. The state is accountable to the people of Sri Lanka and the international community. Sri Lanka has signed many international treaties agreeing to abide by their provisions. State-building in Sri Lanka has been a failure. The communities, particularly the minorities, are denied equitable access to resources. The government lacks good governance, transparency and accountability. It has consistently failed to take effective action against corruption and has effectively ignored the civil society. The international community must recognize the need for democratization with improvement of civil institutions, take appropriate measures to strengthen the civil society and ensure that the government is made accountable.



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