



**THE PROMOTION AND
PROTECTION
OF HUMAN RIGHTS**

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1. INTRODUCTION

During the past two decades, it was observed that Human Rights violations in the North and East of the island and in border villages were comparatively very high, owing to the conflict. An analysis of the situation further revealed that a majority of these violations were against the minority communities in such areas. Hence, it is recommended that special attention be given to this issue, in order to safeguard the rights of minority communities in Sri Lanka. The other vulnerable groups identified are women, children, elderly and disabled people. Despite the fact that reasonable legal provisions for these vulnerable groups exist, the legal remedies sought under the special laws for women, children and the disabled in our country are seldom made available to them.

Some of the major problems and issues that confront Sri Lankan society today are the ethnic conflict, poverty, unemployment, religious tensions, land and agriculture, and education. More recently, the problems of corruption among politicians and in law enforcement agencies, political interference, crime, sexual and domestic violence and child abuse have increased. Furthermore, there are a number of issues that are specific to particular regions or localities. These include security issues related to the Army and the LTTE, child recruitment for war, tensions between host communities and IDPs (problems pertaining to refugees/returnees), water contamination and seasonal labour.

The violation of human rights, individual rights and collective rights has become a primary cause for conflicts within and between communities.

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Furthermore, there are actions that should be taken to protect other human rights, in order to prevent conflict. They are:

1. Preventing all actions which could harm the dignity, security or freedom of an individual (The Right to Dignity)
2. Respecting the political rights of individuals (The Right to Civil and Political Rights)
3. Preventing the arbitrary arrest of persons (The Right to Civil and Political Rights)
4. Ensuring the right of individuals to be treated equally before the law (The Right to Civil and Political Rights)
5. Ensuring the prevention and intolerance of extra judicial killings (The Right to Life)
6. Respecting the right to the freedom of expression (The Right to Civil and Political Rights)
7. Ensuring that no person is subjected to torture or other forms of cruel, inhuman or humiliating treatment or penalization. (The Right to Protection from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)
8. Safeguarding the right of an individual to enjoy the freedom of engaging in religious, political, cultural, economic, social and vocational activities. (The Right to Economic, Social and Cultural Rights)

“Human Rights represent a new element in the development of mankind, and in the life of human society, for they signify the end of a period and the beginning of a new era in human relations.”¹

Human Rights relate to our lives in number of ways. A systematic approach to integrating the rights of individuals as well as of different ethnic and religious groups is a vital component in peacebuilding. Therefore, it is important to unify the efforts of individuals, communities and organizations in promoting and protecting human rights in order to build peace.

Basic Human Rights

What are Human Rights?

Human Rights are rights due to everyone irrespective of ethnicity, religion, caste, creed and gender. They are an essential part of a human being until death and they should ensure the sustainability of economic, social and cultural values.

¹ The Sri Lanka Foundation Institute, The role of the law enforcement officer in the protection of human rights.



“Human Rights represent a new element in the development of mankind, and in the life of human society, for they signify the end of a period and the beginning of a new era in human relations.”

The Preamble to the Universal Declaration of Human Rights states:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (Article 1, UDHR)

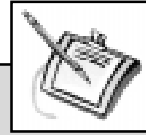
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article 2, UDHR2)

“Human Rights are universal. They are to be enjoyed by everyone regardless of race, colour, sex, language, religion, political or other opinion or orientation, national or ethnic origin, social origin, property or other status. Yet, for various reasons, certain individuals or groups experience the denial or transgression of their rights...

On the one hand, human rights apply to everyone regardless of culture and beliefs. On the other, they guarantee the right to practice and advocate those differences.

By their very nature, human rights are subject to conflict. One person’s conscientiously held belief (e.g., that one race is superior to all others) can violate another’s human dignity and human rights. Human rights education, for instance, includes exploring solutions to these kinds of conflicts, both those that occur in the local community (e.g., the right to free speech vs. the right to protection from “hate speech”) and those that occur on a global scale (e.g., the right to practice one’s culture vs. protection from harmful traditional practices). Resolutions are seldom easy and sometimes impossible. Nevertheless, placing such conflicts in a human rights framework is essential to their full understanding. **Resolution can only come through attitudes of equality and respect and through the skills of negotiation, mediation and consensus building, all of which are fundamental to human rights education.**

Human rights principles assert that all human beings are equal - all should thus be afforded ways to enjoy rights equally. Moreover, they recognize the reality that some groups are at a disadvantage when compared to others. In other words, some kinds of individuals and groups are more vulnerable to being victimized than others. Additional rights are identified for these vulnerable groups in order to ensure their protection. Among the so-called vulnerable groups are women, children, refugees, minorities, indigenous peoples, ageing persons and disabled persons.



All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.



The Promotion & Prot of HR



Mediation & Negotiation

Main Human Rights Principles

Inherent Dignity of Human Beings: Human Rights derive from the “inherent dignity ... of all members of the human family” (UDHR). Thus, although Human Rights may be formalized in Treaties, Declarations and Bills, their origin and justification are essentially pre-or extra legal. Human Rights, in other words, are not the creation of Laws or legislators and they do not exist simply because Governments or States say so, rather they are a moral entitlement that derives from our membership in the “human family” and represent standards against which law may be tested.

Equality and Non-discrimination: Human Rights by virtue of their very nature are possessed by all in equal measures. ‘All human beings are born free and equal in dignity and rights’. It further states that the same rights and responsibilities apply equally to all women and men, boys and girls, by virtue of their humanity regardless of any role or relationship they may have.

Indivisibility and Interdependence: Human Rights should be addressed as an indivisible body including civil, political, social, economic and collective rights. Human Rights as well as human rights violations are interrelated. The loss of ones rights detracts from other rights and similarly, the protection of human rights in one area supports the human rights of another area. All human rights should therefore be seen as having equal importance and of being equally essential to respect for the dignity and worth of every person.

Inalienability: The right that individuals have cannot be taken away, surrendered or transferred.

Responsibility:

Government responsibility – Human Rights are not gifts bestowed at the pleasure of the governments, nor should governments withhold them or apply them to some and not others. If they do so, they should be held accountable.

Individual responsibility - Every individual has the responsibility to teach, respect human rights and to challenge institutions and individuals that abuse them. Every organ of society shares the responsibility for the promotion of Human Rights.”²

The Human Rights manual of the Diplomacy Training Program, at the University of New South Wales outlines the following rights pertaining to individuals and groups:

“Civil Rights – are rights of individuals to be protected from arbitrary interference by government in their life, liberty and property. Examples are the right to life, liberty, and security, freedom to travel and the right to due process.

Political rights – are rights of individuals to interfere and participate in the affairs of government such as the right to vote, stand for election and participate in state and social management, the freedom of speech, of the press and of assembly.

² Consortium of Humanitarian Agencies, Promotion and Protection of Human Rights - A Training Manual, Colombo, 2003. Section 3, p.2.

Social, Economic and Cultural Rights – are the progressive demands of the people to improve their standard of living such as the right to education, to work, to a healthy working environment, the right to equal pay for equal work, the right to practice religion, use one’s language and enjoy one’s culture.”³

Individual and Collective Rights

“Many human rights, by their very nature, are rights of individuals. Some human rights combine individual and collective aspects, i.e., the freedom to manifest religion or belief can be exercised individually or in community with others.”⁴

In the document, Promotion and Protection of Human Rights - a Training Manual, it states that rights that may be exercised by every individual such as those in the UDHR can be termed Individual Rights. There are some rights which give attention to the special needs of groups. By virtue of their nature and subject matter, these are Collective Rights.

This document notes that Collective/Group Rights are rights given to a specified vulnerable group, which may be exercised because of their membership in such a community, such as the right to development, women’s rights, children’s rights and indigenous people’s rights. These are also known as ‘prioritized’ rights. Collective rights include the rights of the ethnic minorities, the rights of indigenous people and people’s rights. People’s rights include the right to self-determination, the right to development, to peace and security and to a safe and healthy environment.

“Critics of collective rights have argued that individual and collective rights are inherently irreconcilable. Increasingly, it is accepted that individual and collective rights are concerned with conceptually distinct claims and can exist concurrently.”⁵

Peace and Human Rights

Every instance in which a particular action can be justified as a correct application of the principles of human rights can equally well be justified as a correct application of the principles of non-violence and the promotion of peace.

“The Universal Declaration of Human Rights (1948) does begin to make some connections between rights and peace. Specifically, the eloquent “Preamble” asserts that the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of Freedom, Justice and Peace in the world. It further states that one should actively support others in their efforts to learn about, understand, achieve and enjoy their rights.

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy



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³ Ibid., Section 3, p.3, ⁴ Ibid., Section 3, p.3, ⁵ Ibid., Section 3, p.4

freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.....

Violence consists of the abuse of any person's rights. Such violence can be in deeds or words. A substantial part of the violence which occurs in the world lies in "systemic" (institutional, structural) violence: accepting and using institutions, rules, and practices which unjustly benefit some at the expense of others."⁶

The participants in the group were of the opinion that:

If sustainable peace is to prevail, different social groups and communities need to respect and protect each others' (group/communities) collective rights.

Mutual respect among different ethnic and religious groups towards each other's due rights ultimately leads to peace.

A common consensus on group/community rights can only be initiated with the protection and promotion of each other's individual rights.

Who Can Promote Human Rights Through Peacebuilding?

- * Human Rights Activists
- * Persons working at the grassroots level
- * Human Rights practitioners
- * Members of civil society working in the area of peacebuilding
- * Decision/policy-makers and persons working at the national level.

Tools for The Promotion of Human Rights

Tool 1 : Human Rights Education (HRE)

"Human Rights Education (HRE) is a process of transformation that begins with the individual and branches out to encompass society at large. The goal of HRE is empowerment. The result is social change that involves the exploration of Human Rights principles and the promotion of critical reflection and inquiry."⁷

As embodied in the Universal Declaration of Human Rights and the main international rights treaties, human rights education can be defined as: training, dissemination and information efforts aimed at the building of a universal culture of human rights through the imparting of knowledge and skills and the moulding of attitudes.⁸



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⁶ Morton, Prof. Joe, "Fundamental Relations between Nonviolence and Human Rights" in The Acorn, Spring 1998.

⁷ Slaughter, Marcy, Educational Program Designer – CHRF IHRTP Reading Manual, 2002, in CHA, Promotion and Protection of Human Rights - A Training Manual, 2003, Section 2, p.1.

⁸ Arab Institute for Human Rights, Documentation, Information and Training Center for Human Rights of Morocco – Workshop Report, Human Rights Resource Centre. Email: hrusa@umn.edu Web: www.hrusa.org in Ibid., Section 2, p.2.

The purpose of human rights education is to empower people to bring about social change. It is important to raise human right awareness in civil society keeping in mind those who are at the grassroots level and those who are affected by conflict. Human rights education strengthens the respect for human rights and fundamental freedom, the full development of the human personality and the sense of its dignity. **It also promotes understanding, tolerance, gender equality and friendship among all communities.** It enables all people to participate effectively in a free society and bring about peace. The practice of human rights education is founded on reciprocal learning.



**Tolerance of Diversity
& Reconciliation.**

Human Rights education → enhances knowledge → develops critical thinking → assists in the process of attitudinal change → increases solidarity → brings about peace.⁹

Raising Awareness through Human Rights Education and Training

The increase in knowledge through Human Rights educational and awareness raising programmes is essential to minimize human rights violations, as well as to promote human right practices so that it will collectively contribute to peace among different social groups. Such education should be made available to both those who are likely to violate human rights and those who are vulnerable to such violations. They are:

- a) Potential perpetrators of human rights, i.e., security forces, the police, stakeholders, government officials, politicians and militants.
 - i Educate and raise awareness on the need to abide by law and justice
 - i Create human rights cells, which will function as a monitoring body, assisting victims to take legal remedies and obtain redress as a follow up of the educational programmes.

- b) The vulnerable groups, e.g. women, children, the disabled, the elderly as well as persons living in conflict-affected areas.
 - i Organize awareness programmes for such groups on human rights entitlements. Each social group, such as women and children, are to be enlightened on the special rights available to them, including women's and children's rights entitlements.
 - i Educate and raise awareness on existing legal mechanisms and remedies.

The following is an example of how the promotion of Human Rights Education enabled the Army to reduce human rights abuses committed by its officers.

⁹ CHA, Promotion and Protection of Human Rights - A Training Manual, 2003, Section 2, p.2.

Steps taken:

A special training programme was conducted: With the aim of minimizing human rights violations, the Army, together with the ICRC and NGOs, formed a Core Group and a Working Group which met periodically to take decisions and directions pertaining to such activities. As a result, the following were initiated:

The establishment of the Directorate of Humanitarian Law in the Army Headquarters in January 1997 to implement IHL and laws of war in the ongoing conflict and which has now been expanded as the Directorate of Human Rights and Humanitarian Law.

The issuance of Standing Orders to service personnel with regard to arrests/detentions handing over to the Police or release to the next of kin.

The issue of a receipt, introduced by the Ministry of Defence, to the next of kin, by the Arresting Officer, when a person is arrested under Emergency Regulations.

The issuance of Standing Orders pertaining to the establishment of Human Rights cells at different levels.

The education of troops on Human Rights and common occurrences of Human Rights violations.

Monitoring and reporting to the Commanders of all levels as to whether persons adhere to Standing Orders in respect of arrests/detentions/handing over to the Police/release.

Interviewing suspects to ascertain whether any Human Rights violations have taken place. This is done during the period of detention, particularly prior to handing suspects over to the Police or releasing them to the next of kin.

The regular monitoring by the Directorate of Human Rights and Humanitarian Law with regard to arrests made and receipts issued. A monthly return is called for from field formations to monitor all arrests.

Forwarding a monthly return to the Ministry of Defence (MOD) and other relevant HQs/agencies with regard to all arrests made by the Army.

The maintenance of Registers of persons under detention in camps and rehabilitation centres. Allowing the relatives of detainees to visit them at stipulated times.

Maintaining a Hot Line in Jaffna to attend to complaints/inquiries regarding detainees.

Maintaining cordial and working relationships with the Colombo-based ICRC HQ and the Human Rights Commission.

Assisting all agencies inquiring into persons reported to be missing and assisting agencies such as the Human Rights Commission, the ICRC, the MOD and inquiry teams/commissions in their search efforts. Every effort is to be made to obtain reports from Field Commanders when persons are reported missing.

Entertaining petitions, complaints etc., of alleged excesses and involuntary removals committed by the Army.

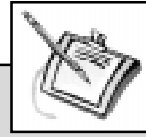
Conducting Tamil language classes for members of the military in an attempt to bridge the communication gap.

Tool 2 : Capacity Building

Capacity building may be defined as:

“The development of individual and collective abilities or capabilities to transform the violent expression of conflict into an non-violent, positive, constructive force. Collectively, capacity building also refers to the strengthening of civil institutions (local government, judiciary etc.), which allow society to address and resolve disputes non-violently. (International Alert, 1996, III: I).”¹⁰

An example of capacity building is given below:



“The development of individual and collective abilities or capabilities to transform the violent expression of conflict into a non-violent, positive, constructive force.

The Formation of Community Protection Networks

A Community Protection Network (CPN)¹¹ would consist of key institutions and individuals from district level organizations working towards the promotion and protection of human rights and peacebuilding, who could form the nucleus of a community protection network.

Its functions could be as follows:

- To meet on a regular basis to identify, analyze and act on protection issues
- To explore remedies/redress at the local level as a first instance/first resort
- To further educate, raise awareness and expose organizations/individuals to current human rights practices/monitoring and complaint mechanisms available, remedies available locally, nationally, regionally as well as internationally.
- To guide/provide support in making submissions to national mechanisms.
- To guide/provide support in pursuing legal remedies available in terms of responsive and remedial action that could be taken by organizations in the district.

The formation of such a network would aim to strengthen the capacity of civil society organizations at the district level through sharing information, effective monitoring and follow-up initiatives. This network increases community links, enhances awareness of human right issues at the district level, provides a forum for information sharing, avoids duplication of work and enables the systematic review of action and follow-up.

¹⁰ Schmid, Alex P, Thesaurus and Glossary of Early Warning and Conflict Prevention Terms (Abridged Version), London: FEWER Secretariat, 1998.

¹¹ The Consortium of Humanitarian Agencies, Guidelines for the Formation of a Community Protection Network 2003. Unpublished.

2. CASE STUDIES

The following case studies are examples of how Human Rights education and enhancing the capacity of individuals, communities and organizations had enabled the protection and promotion of human rights.

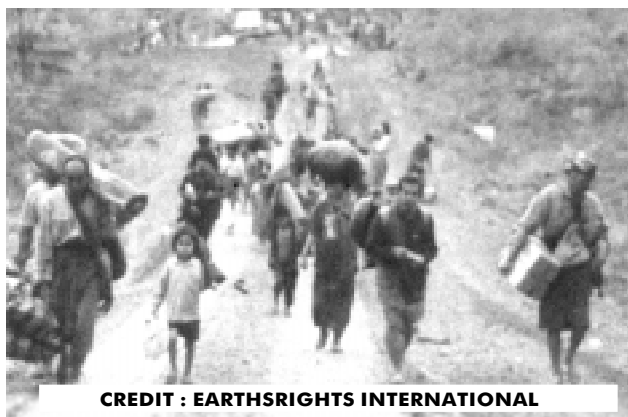


Case Study 1

The Forcible Eviction of Northern Muslims

Background

In 1990 an incident occurred which roused the people all around the country. This was the eviction of the Muslims in the North by the militant group the Liberation Tigers of Tamil Eelam (LTTE). The Muslims, who are a minority in the North, have lived for a long time with the other communities, i.e. the majority Tamils and the minority Sinhalese, in this region. The northern parts of Sri Lanka, to which the armed forces of the Sri Lankan state had no access, were occupied by the LTTE. These areas included Vavuniya, Mannar, Mullaithivu, Kilinochchi and Jaffna.



CREDIT : EARTHSRIGHTS INTERNATIONAL

One morning, the LTTE made a public announcement that all the Muslims living in the northern areas had to leave immediately. If they refused to do so, they would have to face severe consequences. This was a great shock to the Muslims, as they had to leave everything behind in a matter of hours. They tried to negotiate with the LTTE to change their mind, but the attempt failed. As there was heavy rain in the period in which the announcement was made, the people requested the LTTE to extend the time given to them to leave, but this was not granted. Although the Tamil community in the area opposed the decision of the LTTE, the LTTE did not relent. Everyone, including infants, the sick and the elderly, was included in this decision. The Tamil community bade a final farewell to the Muslims and provided them with food to eat on the way.

In a very short period of time, 72,000 Muslims from 69 villages in the 5 districts in the north left their homes.

Name of District	No. of Villages	No. of Muslims
Mannar	44	38,000
Mullaitivu	6	5,000
Jaffna	6	18,500
Killinochchi	2	1,500
Vavuniya	11	9,000
5 Districts	69 villages	72,000

From this number, 18,000 people from Mannar District travelled a distance of 56 sea miles in boats to the Kalpitiya area in Puttalam District. The rest of the people came on foot for 45 miles through the forests to Vavuniya. As they had no place to stay, they lodged in schools. This led to the closure of schools for a considerable period of time. Then they were settled by the government in the districts of Puttalam, Anuradhapura and Kurunegala and they built temporary huts in which to live in these areas.

From 1996 these displaced people have been relocated in various villages. For more than 13 years, they have lived in these areas with innumerable problems and with no proper attention paid to them. The areas to which they were relocated have insufficient water and sanitation facilities. The children of this community have no education, primarily because of poverty. These people had had such facilities in the areas in which they had been living before 1990. However, the efforts to resettle them in their native places cannot yield positive results, as these areas have been destroyed completely and irreparably by the war. At present, more than 80,000 thousand people are displaced.

On 22nd February 2001, a ceasefire agreement was signed between the government and the LTTE, bringing the two-decade long war to a temporary halt. Since then, displaced persons, like the Muslims from the north, are being resettled by the government.

The areas from which these people have been evicted are not under the control of the Sri Lankan state. Furthermore, the decisions about this whole process are not in the control of the affected communities. The government has provided them with a place to live and basic needs such as water, dry rations and has also given them revolving loans.

From 1990, NGOs have been working to improve the quality of life of the IDPs in the villages in which they have been relocated by assisting them to acquire their basic needs with the support of UN agencies and other international NGOs.

Lesson Learned

- In situations where there have been forced, mass eviction of communities, it is necessary that both state and non-state agencies respond as quickly as possible to provide immediate basic needs of the people as well as work on long-term solutions to this problem



Good Governance.



Case Study 2

The Violation of the Basic Human Rights of the Plantation Community of Indian Origin and the Involvement of Civil Organizations'

“All human beings are born free and equal in dignity and rights.” (Article 1, UDHR)

Background

The plantation community of Indian origin has a history of nearly two centuries in Sri Lanka, commencing from 1823, when the first group of Indian migrants arrived in the plantations. They were entitled to citizenship with the granting of universal franchise in 1931. However, the majority of them lost their citizenship, when the Citizenship Acts were passed in 1948 and 1949 immediately after Independence from British rule.

The deprivation of the citizenship and voting rights of the plantation community is considered one of the worst forms of human rights violations directed against a social group in the history of post-independence Sri Lanka. The denial of their citizenship rights has affected this social group both as individuals and as a community. The infringement of their rights includes the following:

- In the Parliamentary election of 1947, 7 members were directly elected as their representatives. However, as soon as the two Citizenship Acts were passed, they lost this representation. For instance, in the 1953 elections, no one was elected to represent them.
- With the establishment of the Citizenship Act of 1948, the community lost its elected representation in Parliament as well as in other constitutional bodies in Sri Lanka.
“Everyone has the right to take part in the Government of his country, directly or through freely chosen representatives.” (Article 21(1), UDHR)
- They are denied public benefits and employment opportunities in government departments as well as in public services.
“Everyone has the right of equal access to public service in his country.” (Article 21(2), UDHR)
- Ownership of land was denied to the plantation workers.
“Everyone has the right to own property.” (Article 17(1), UDHR)
- They were denied free education at the tertiary level.
“Higher education shall be equally accessible to all on the basis of merit.” (Article 16(1), UDHR)
- As non-citizens, their right to free movement abroad is denied.
“Everyone has the right to leave any country, including his own.” (Article 13(2), UDHR)

The following steps were taken at different levels in order to restore their rights:

- Ø Many efforts were made by the Sri Lankan and Indian governments for the restoration of the citizenship rights of this community. This includes the 1964/1974 Indo-Ceylon Agreements and 1986/1988 Special Citizenship Acts.
- Ø At the national level, lobbying resulted in a dialogue session with 65 parliamentary members belonging to all parties. A memorandum was submitted by the Basic and Civic Rights Forum of Plantation People to the MPs on this occasion, with the promise of follow-up action by these MPs.
- Ø The Plantation Peoples Forum for Basic and Civic Rights decided to take up this issue at the union level as nearly 350,000 people of Indian origin, of whom more than 80 percent belong to the plantation community, remained non-citizens and stateless as of 2001 and as the representatives of these people, who include political and trade union leaders, failed to deliver their promises.
- Ø Networking was done among social organizations in plantation areas. It was decided that a delegation consisting of many representatives of the plantation based NGOs would be sent, on behalf of the plantation community, to the UN Conference on Racism, scheduled for December 2001 in Durban, South Africa.
- Ø A memorandum was submitted by this delegation to the Human Rights Commission of the Durban conference. The UN Commission summoned both the plantation community delegates and the Sri Lankan representatives to the conference and gave some guidance to the Sri Lankan government for the immediate resolution of the above issues.

The results of these initiatives are as follows:

- For the first time, following the Durban Conference, the stateless persons in Sri Lanka were officially included in the UN Declaration.
- This issue was addressed at the parliamentary level in order to work towards a positive resolution of the matter.
- All these processes have contributed positively to the enactment of the Citizenship of Indian Origin Act of August 2003. It is a remarkable achievement that this Act provides a permanent solution to the issue of citizenship rights, which has been pending for more than 50 years.

Lessons Learned:

- A community deprived of its basic rights need not depend solely on its political leadership. Instead, grassroots awareness and community-oriented support can yield positive results.
- This achievement can be considered an example of the involvement of civil organizations' in winning basic human rights for a social group.



Case Study 3

Safeguarding Peace by Protecting Labour Rights

Background

The village of Neluwa in the Galle district is a poor village in a hilly area, which lacks basic amenities such as transport, hospital facilities, schools and markets. The main plantation crop is tea. Except for a few large estates, the rest of the tea land in this area comprises medium sized blocks belonging to small-time businessmen and planters. As most of the villagers possess their own small block of tea land only a very few make a living as labourers. The larger estates have their own labour force, but the owners



of the medium sized lands have to bring labour from outside to work on their land. Most of these labourers are persons of Tamil origin living in the villages nearby.

A Sinhala businessman, who is associated with this incident, owned a tea estate of about 20 acres in extent. He had brought in four Tamil families from outside to work on his land and had given them residence facilities on the estate itself. The owner of the estate had obtained the services not only of the adults but also of the children of school-going age in these families.

A Tamil youth named Thiagaraja who belonged to one of these families came to the office of The Human Rights Protection Organization in Galle and informed them of the situation prevailing on this estate and sought relief for these families. According to his complaint, the businessman concerned was keeping these families virtually “imprisoned” and forcing them to do all the work on the estate. They were paid no wages in cash. Children of school-going age and women were made to work very hard. They were given only the provisions needed for their daily food and were not provided with any of their other requirements. They were not allowed to have any type of association with anyone from outside the estate. When they asked for their wages, both men and women were mercilessly assaulted. Thiagaraja informed the HRPO that even as he was making the complaint, his father was tied to a tree and being beaten up.

The Human Rights Protection Organization, which attended to this complaint, took the following action:

Firstly, they accompanied the Tamil youth to the Police Station and advised him to lodge a complaint against the businessman.

They accompanied police officers to the estate.

They secured the release of all the people in the custody of the businessman.

They gave the workers asylum until they obtained employment elsewhere.

They encouraged the people to make a complaint against the businessman to the Assistant Commissioner of Labour in Galle.

A Human Rights Citizens Committee was formed in Neluwa by the Human Rights Protection Organization, with the participation of the people of Neluwa.

The workers were able to find employment under another businessman for the families.

The organization was able to restore to a group of families, specially the women and children belonging to that group, the right to life and privileges due to them as workers.

In the process of responding to this situation the HRPO faced many challenges:

The police were reluctant to intervene at the beginning, but the HRPO, as a Human Rights organization, was able to explain and convince the police about their duties and obligations.

The businessman prevented the organization from entering the estate. By getting the police to explain the charges to the businessman they were able to get access to the estate.

The persons released from the custody of the businessman had to be provided with food and accommodation. The Human Right Organization got the assistance of the church, with which they work closely, to provide the families with food and accommodation.

The HRPO had difficulty in filing legal action against the businessman owing to his influence. They overcame this by obtaining the assistance of lawyers who work closely with them.

The victims had to be re-employed in places that respect labour rights and practices. The HRPO made use of available data and directed the families through one of their members to a suitable estate for employment.

Lessons Learned

- Human rights organizations should be able to identify when a violation occurs and act promptly. The Human Rights Protection Organization in Galle managed to identify at least 5 main human rights violations these victims had suffered and took action immediately.

These rights were:

- The right to the dignity and integrity of a person
 - The right to an adequate standard of living
 - The right to basic needs (i.e., water, sanitation, food, shelter, clothing)
 - The right to education
 - The right to protection against torture and other cruel or degrading treatment or punishment
- The rights of these victims could be protected by the proper implementation of the strategy followed by the organization to ensure the rights of labourers.
 - By raising awareness and giving wide publicity to this incident through the media, e.g., the press, the community was encouraged to reveal similar cases of violations related to labour rights taking place in other estates.
 - The importance of community mobilization as demonstrated by programmes, such as a Peace March with the participation of the people of Neluwa, and the “Sadu janarawa” peace song programme, through which an attempt was made to bring people living in all parts of Sri Lanka together and raise awareness on the need for peace action.



Case Study 4

The following case study deals with a number of human rights issues such as Land rights, Civil and Political Rights and the Right to basic needs within this locality.

The Right to Basic Needs

Background

Mellagama is a state-owned block of land of about 22 acres, located in a hilly area in the Sabaragamuwa Province. There were no proper roads in this area. This particular block of land was situated in the midst of several traditional villages. As it was state-owned, there was no one living on it and it was, therefore, fertile ground for corrupt people in power to engage in illegal activities. These people allowed unscrupulous racketeers to cut down the rare, old and valuable trees on this land for timber, which caused much destruction to the environment.

In 1960, this block of state land was illegally occupied by about 40 poor families from the surrounding villages who had no land of their own. The majority of these people belonged to depressed castes. Their main vocations were farming, manual labour and domestic work. They

were uneducated and had large families, as they lacked information on family planning methods. This also contributed to their poverty and the other problems they faced.

What was more important was the fact that there were Tamil and Muslim families among them and they were able to live in unity and harmony. With the increase in their number, their political power also grew and they began to receive more attention from those outside their community.

As they were illegal occupants, they did not possess or have a right to basic amenities such as water, electricity, roads, housing and sanitary facilities. However, they got together as a community and by agitating to the government, they were able to win their basic right which was legal ownership of the land.

The village gradually developed and the people built permanent houses instead of the huts in which they lived before and obtained facilities such as water and electricity. They were able to gain these victories through their united and organized actions. However, they still did not have one of their most basic needs, which was an access road to the village. The villagers suffered a great deal because of this as they faced difficulties when they had to take their sick to the hospital and their dead to the cemetery. They realized that only if they unite and fight they could they win their demand for an access road.

Although they submitted their request to the relevant government institutions, the authorities did not give due attention to their demand because of their attitude to people who were poor and uneducated.

By this time, the village was occupied by the second generation of inhabitants. The community had now developed to a state where they could present their views and assert their rights. They tried to get the assistance of the political authorities to win their rights. The politicians who wanted to achieve their narrow objectives responded by using their influence and deceived these people. The people in the villages who possessed the land earmarked for the access road reacted angrily and the situation grew into a serious conflict.

A significant feature of this incident was that a Tamil person resident in Mellagama played a leadership role and supported the common rights of the villagers. The people who held the ownership of the land, which was to be used for the access road, targeted the Tamil persons in the community and the issue was turned into an ethnic problem. A complaint was made to the police about a visitor who was a relative of this Tamil person, and the police acting on their complaint, took all of them into custody. The villagers who were convinced that this story was fabricated, made representations to the police and got the Tamil people released. This act prevented the furtherance of an injustice and the violation of a human right.

However, this villager, with the assistance of politicians, built an access road to the village. The HRPO, a community-based network, identified this as a possible situation which could grow into a serious conflict and explained the legal position to the villagers. They were also told that they should not take the law into their hands but go before the Courts of Law. As the HRPO had won

the goodwill of the people both parties accepted their advice and sought a legal solution. The Lower Courts approved a three-metre wide access road. The villagers did not accept this as a solution to their case and appealed to the Higher Courts pleading that they be granted an access road which was motorable.

Lessons learned

- Mediation by an independent group that is impartial can prevent the occurrence of conflicting situations and can encourage and direct people to lawful actions to fight for their Human Rights and Fundamental Rights.
- The people of different communities could safeguard the civil and political rights of a Tamil person irrespective of the differences in their ethnicity.
- The most appropriate and fruitful way to win rights is to resort to united and lawful means.



Case Study 5

No one shall be subjected to Torture or to Cruel, Inhuman or Degrading Treatment or Punishment. (Article 5, UDHR)

Violence Against Women

Background

There is a high rate of illiteracy among women in the plantation sector, in comparison with those of other communities in Sri Lanka. Following the integration of the Plantation-based schools into the national stream from the late 1970s onwards, the number of educated youth in the plantations increased. This number included young women who could not have access to many employment opportunities. However, a few of them, including the educated young women, were able to find jobs in the urban centers close by. These young women had to walk from their workplaces back to their homes, late in the evening, mostly through isolated areas in which there was little movement of people.

Young women from the plantations become vulnerable to many forms of harassment, particularly by people from the towns. Many incidents of sexual violence against such young women were reported in recent times from various plantations, particularly those closer to urban centres. The present case study is about such an incident.

The Imbulpitiya Plantation lies three kilometres north of Nawalapitiya, a plantation-based town. Especially in the evening, the people who work in the town have to walk most of the distance back to their homes.

Umadevi was a young educated lady from the Imbulpitiya Plantation. Her parents worked as labourers in the plantation. She served as a volunteer teacher and later found work at a trading centre in Nawalapitiya. One day she failed to return home at the usual time. After a long search, the family members found her body lying among the bushes in an area adjoining the plantation. The Medical Report confirmed that she had been gang raped and murdered by strangulation.

The incident caused much agitation among the plantation people, both in that particular plantation and in the region. Since the victim, Umadevi, was a plantation Tamil, there was widespread speculation about the involvement of other ethnic groups in the incident.

There was undue delay by the Nawalapitiya Police in tracing and prosecuting the culprits. Furthermore, there was much speculation that the perpetrators were from affluent families. As a result of all this, the suspicion among the Tamils and other ethnic groups intensified with regard to this incident.

A plantation-based social organization took up this issue as part of its main programme. The many representations they made to the local Police did not yield results. The Nawalapitiya Police was able to arrest and remand a Muslim youth, but the people were not satisfied with this arrest, which they considered to be an excuse for not arresting the actual culprits. In the meantime, the good relationship that prevailed between the Tamils and Muslims had turned into a hostile one.

The particular NGO concerned also took up this issue with other NGOs, trade unions and religious organizations in the area. Finally, a mass procession and demonstration was staged in Nawalapitiya town, in which a memorandum was submitted to authorities, including the Deputy Inspector General of the police for the Kandy District, under which the Nawalapitiya region falls. People from all ethnic groups, i.e. Tamils, Sinhalese and Muslims, participated actively in this protest march in which there were nearly 5,000 people.

The Deputy Inspector General transferred the proceedings under his direct supervision. A separate investigating team from the Kandy Crime Branch was assigned to probe into this incident in June 2002.

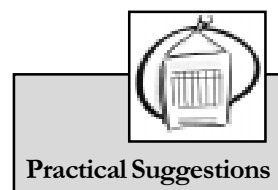
Subsequently, the seven suspects were produced in the Magistrates Court and remanded. At present, the court proceedings are in progress, with the real wrong-doers being brought before the law.

Lesson Learned

- People can be mobilized to safeguard the human rights of women, irrespective of ethnic or religious differences, if social organizations, including the NGOs, take initiatives to support them and obtain due redress and justice.

3. PRACTICAL SUGGESTION AND CAUTIONS

Practical Suggestions



a) Promote Human Rights activism

In all societies there are people who are comparatively more sensitive to moral issues and can be active agents to create awareness and take action on human rights and peace efforts.

Senior level students of all ethnic groups can be considered a group that is sensitive to social issues and could be potential actors in safe-guarding human rights. Therefore, the following activities could be implemented:

- i. Organizing residential human rights and peace camps for senior students from different ethnic groups.
- ii. Forming senior student human rights promotion teams among them as a follow-up activity
- iii. Making arrangements to coordinate such student-based activities.

b) Strengthening the operational and service capacity of the Human Rights Commission.

The Human Rights Commission was established under the Parliament Act No 29 of 1996. The Human Rights Commission is the most appropriate legal instrument for the protection and promotion of human rights in Sri Lanka. Nevertheless, it is observed that in practical terms it does not possess the required capacity, resources, structure and legal authority to dispense more effective services. As such, the following suggestions are made to strengthen its capacity:

- i. At present, the branches of the Human Rights Commission function mostly at the provincial level, with one centre for each province. This should be extended to the district-based divisional level branches and services.
- ii. The mandate of the Human Rights Commission should be enhanced in terms of its capacity for implementation.
- iii. Legal aid services and consultancy services should be incorporated in a more effective manner as they are vital components of the Human Rights Commission.

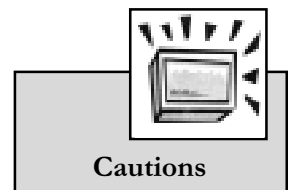
c) Constitutional provisions on Human Rights.

In Sri Lanka, the legal remedy for Human Rights could be sought within the framework of the Constitutional Provisions on fundamental rights. The scope of these provisions and the procedure for legal action on Human Rights matters need reconsideration. Suggestions with regard to this are as follows:

- i. Carry out an in-depth study on all UN Declarations on human rights (UDHR) and add the needed and appropriate rights to the Constitution of Sri Lanka.
- ii. Ease the procedures for filing human rights cases including the provisions for filing fundamental right cases in the lower courts as well, instead of confining them to the Supreme Court.
- iii. Extend the time bar for the filing of fundamental right cases from the present one-month limitation.

Cautions

Human Rights education



- When strengthening human rights awareness in civil society to ensure respect for equality, it is important to target those at the grassroots level and to ensure the equal representation of gender and ethnicity in these efforts.
- In order to avoid discrimination based on ethnicity, caste, race etc. Human Rights Education should always be conducted in the local languages of the participants with appropriate material which is translated into the local languages. This could avoid assumptions of discrimination and ensure effective delivery of knowledge.

Capacity Building

- The formation of networks to enhance capacity should ensure the equal participation of institutional representatives as well as grassroots and community based organizations with a representative geographical coverage of the area/district.

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