

OVERVIEW OF THE STATE OF HUMAN RIGHTS IN SRI LANKA 2005

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1. Introduction

In the year 2005 Sri Lanka was trying to cope with the aftermath of the tsunami which struck the southern, northern and eastern coasts on 26 December 2004, and at the same time grappling with a disintegrating peace process. In terms of human rights protection, it was a year which saw increasing disregard for the rule of law, heightened insecurity and the beginnings of what many feared might be another era of terror ruled by emergency. The events of the year, i.e. the consequences of both the tsunami and the stalled peace process, brought into focus the artificial divide between civil and political rights and socio-economic rights and reiterated the intersectionality and interdependence of human rights. The year therefore provides a glimpse into the problems and politics of promoting and protecting human rights in Sri Lanka. Events of 2005 clearly showed the impact of the failure to include human rights and take into account the needs of the civilian population in both the peace process and the various mechanisms set up to deal with the post-tsunami reconstruction process.

Mahinda Rajapakse's victory at the Presidential elections in 2005 also resulted in a shift in the tenor of the approach to the peace process.² The election, which Rajapakse won by a slim margin, also saw people in the North and East being deprived of the most basic right of all, the right to franchise, due to being told not to vote by the LTTE. Rajapakse, who abandoned the soft peddling approach favoured by the UNP, came down hard on the LTTE for human rights and ceasefire violations. Due to his alliance with the Sinhala nationalist parties, the Janatha Vimukthi Peramuna (JVP) and the Jathika Hela Urumaya (JHU), he appeared to abandon a federal solution to the conflict and instead reverted to seeking a solution to the conflict within the unitary state.

The role of donors and non-governmental organisations (NGOs), particularly international non-governmental organisations (INGOs), and their impact on the peace process and on post-tsunami aid distribution was also placed on the public agenda. Unfortunately the debate, initiated by Sinhala nationalist groups, for the most part focused on the imagined threat these organisations pose to the national unity and territorial integrity of the country, rather than on issues such as transparency and the need to ensure donor programmes are suited to local needs. Hence, this appeared to be yet another attempt by government to stifle dissent and shrink the democratic space available for non-state actors.

In relation to Sri Lanka's international obligations, in 2005 Sri Lanka's report to the UN Committee Against Torture (CAT) was taken up and the UN Human Rights Committee delivered decisions on individual petitions submitted against the Sri Lankan government in terms of the Optional Protocol to the International Covenant on Civil and Political Rights.

2. Post-Tsunami Issues

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² Presidential elections were held on 17 November 2005.

According to World Bank statistics, 35,322 people lost their lives in the tsunami, which displaced 516,150 people.³ It is estimated that 150,000 people lost their source of livelihood and US\$900 million worth of assets were lost.⁴ Due to the magnitude of the loss and destruction, the state has had to deal with issues ranging from helping people regain livelihoods and dealing with double-displaced (conflict & tsunami), to meeting the challenges faced in dealing with the needs of groups such as women, who may be vulnerable and have particular needs. However, the state response to the tsunami has followed rather than led public and civil society efforts. There have also been claims of government inefficiency and failure to streamline relief operations.⁵ The shifting of control of relief operations from the government agents to the army and later to the President and the specialised task forces also added to the confusion on the ground. Where the public and civil society are concerned, there has been an overwhelming response to the tragedy with many individuals and the private sector coming forward to assist the victims. As with state efforts, in this case too issues of transparency, accountability and coordination impacted on effectiveness of relief and reconstruction efforts.⁶

In June 2005 the government enacted the Tsunami (Special Provisions) Act 2005 with the aim of mainly dealing with issues such as the issuance of death certificates in the case of missing persons, custody of children and young persons and property issues. The Act also contains enhanced penalties for certain offences. When the Bill was challenged in the Supreme Court prior to being passed by Parliament one argument related to the use of the term 'national policy' in the Bill, which the petitioner claimed was an attempt by the central government to supersede provincial council powers and circumvent the 13th amendment to the Constitution. The Court, however, stated that during times of disaster 'it becomes incumbent upon the state to formulate and provide direct National Policy to meet the consequent contingencies...and the contention that Article 127 (2) (a) and 27 (9) of the Constitution precluded the State from formulating any national policy, and that even under such catastrophic conditions as the devastation ...the State must refrain or was precluded from formulating such policy, is untenable'.⁷ In relation to the other grounds of challenge the petitioner and the government came to an agreement regarding amendments and the Bill was passed in June 2005.

The Government of Sri Lanka (GOSL) and the LTTE signed an agreement on June 24 2005 to establish a mechanism titled Post-Tsunami Operational Management Structure (P-TOMS) to disburse aid and speed up reconstruction and rehabilitation in the North and East. However, the agreement was never implemented due to many factors. Firstly, the agreement was challenged in the Supreme Court, mainly on the ground that there was no legal basis upon which the government could enter into such an agreement with the LTTE. It was contended that the powers of the Committees to be constituted under the agreement were governmental in nature and therefore could not be conferred upon those committees validly. Further, the petitioners claimed the provisions for the disbursement of monies were

³ Tsunami Recovery- Sri Lanka- Key Statistics, The World Bank, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/EXTITSUNAMI> , accessed on 20 May 2006.

⁴ Ibid.

⁵ Jehan Perera, *Tsunami Catastrophe and Conflict: Experiences from Sri Lanka*, speech at the Asia Campaign Seminar organized by the Ministry for Foreign Affairs, Finland and the University of Joensuu, April 3, 2006, at http://global.finland.fi/aasiaan/Tsunami_Perera.pdf.

⁶ *Post-tsunami Relief and Rehabilitation: A Violation of Human Rights*, Report of a Fact Finding Mission to Tsunami Affected Areas of Tamil Nadu, India and Sri Lanka, pp.8-9, at <http://www.hic-sarp.org/Tsunami%20Report.pdf>.

⁷ S.C. 8/2005, S.C. 9/2005

inconsistent with legal requirements since the Fund was not established by a parliamentary act and hence was not subject to the scrutiny of the Auditor General. Additionally, the petitioners argued that the setting up of the committees in the said areas (North and East) discriminates against those living outside those areas solely on the basis of their place of birth and residence and hence violates Article 12(2) of the Constitution.

In its decision, the Supreme Court issued an interim stay order on the provisions dealing with Regional Committees and the Regional Fund.⁸ Though the GOSL sought to proceed with the implementation of the rest of the agreement and appointed its representative to the P-TOMS, the LTTE did not reciprocate, since the establishment of the Regional Committee, which was the structure created to guarantee its interest, was barred by the Supreme Court. Hence, the process stalled. When the case was taken up by the Supreme Court on 22 November the counsel for the petitioners stated there was no need to proceed with the case since the creation of the proposed National Disaster Management Council Act would make the P-TOMS redundant.⁹ It has to be noted that those who petitioned against the agreement were members of the JVP who had successfully contested the previous election as nominees of the United People's Freedom Alliance (UPFA), the governing party. Two petitioners were Ministers and cabinet members while another two were Deputy Ministers. Hence, members of the governing coalition contested the agreement signed by the government. The political fall out of the P-TOMS was the JVP walking out of the Coalition, with the result being a minority government in power.¹⁰ Other Sinhala nationalist parties such as the JHU also stepped up their protest against the P-TOMS and the peace process in general.

The tsunami also brought to the fore the inherent tension between development and issues such as the right to livelihood and environmental protection. Regardless of whether or not some of the structures that were destroyed or damaged were illegally constructed on protected land without the requisite approval, the question of land rights and right to livelihood of groups such as fisherman cannot be ignored. Instead of attempting to resolve this tension the government appears to be totally unaware of it and appears to ignore the rights and needs of the people as well as environmental protection. This has brought into focus the nexus between the state and 'big business', which attracted controversy following reports of post-tsunami development and reconstruction plans being drawn up in favour of large companies and the business community with little regard paid to either the civilian population or the protection of the environment.¹¹ The Task Force to Rebuild the Nation (TAFREN), for instance, has 10 members of whom six are heads of companies which operate in the beach tourism industry and two are heads of national banks.

In the past, economic policies and development schemes implemented by consecutive Sri Lankan governments have at times exacerbated inter-community tensions and contributed to increased conflict. As the state appears to be in a position where it is unable to formulate policies to accommodate the needs and rights of all communities and groups, it is not surprising that the post-tsunami reconstruction process has led to further conflict. Immediately after the tsunami there was an outpouring of good will between communities and hopes were expressed that it might lead to the improvement of relations, for example between Muslims and Tamils in the East. However, after the initial honeymoon period,

⁸ S.C. 228/2005, S.C. 229/2005, S.C. 230/2005

⁹ Daily News, 22 June 2005 at <http://www.dailynews.lk/2005/06/22/>

¹⁰ Daily News, 16 June 2005, at <http://www.dailynews.lk/2005/06/16/>

¹¹ Sarath Fernando, *Justice to Tsunami Victims- Submission to the European Parliament Committee on Development*, MONLAR, 2005, at http://www.medico-international.de/projekte/suedasien/tsunami/200507monlar_submission_to_ep.pdf.

tension between the communities increased, with anxiety about encroachment and land grabbing heightening fears of losing land due to government allocation of land to those affected by the tsunami.¹² The Human Rights Commission in its report on the Eastern Province states that due to the ethnicization of Divisional Secretariats the government faced problems allocating land for resettlement as in some cases people did not wish to move to government allocated land due to the ethnic composition of neighbouring villages.¹³

Lack of government concern about the impact of policies on people and the environment is further illustrated by the designation of the buffer zone. Soon after the tsunami, TAFREN announced coastal buffer zones of 100 metres and 200 metres and prohibited reconstruction of houses within these zones. It was claimed the measure was taken to ensure the protection of coastal dwellers. Hotels, however, were given preferential treatment and were allowed to rebuild if they were partially damaged and if the cost of repair was below 40% of the replacement value of the building.¹⁴ Further, the government created Tourism Zones along the coast and allowed businesses that were unable to rebuild within the buffer zone preference in land allocation within the Tourism Zone free of charge.¹⁵ However, due to extensive lobbying by several groups, the Coast Conservation Department announced its decision to revert back to the set back zones demarcated in the 1997 Coastal Zone Management Plan.

The lack of public participation in local area institutions and in decision making processes regarding reconstruction, aid distribution etc, and lack of coordination between the central decision/policy making body and regional actors, such as Grama Sevakas, who are involved in the actual disbursement of aid and dealing with affected persons, has also been flagged as a concern by many rights groups.¹⁶ For example, it has been reported that it took more than two months for the new guidelines relating to the buffer zone to reach District Secretariats. Since many local authorities were unaware of the revised guidelines, permission to build within the 100/200 metre buffer zone was refused to residents.¹⁷

The lack of coordination and confusion was also probably due to the fact that numerous agencies have been set up by the government to deal with post-tsunami issues, with no common overarching body entrusted with the responsibility to ensure inter- and intra-agency coordination. Immediately following the tsunami, the government established the Centre for National Operations (CNO) at the national level along with three task forces, the Task Force for Rescue and Relief (TAFRER), the Task Force to Rebuild the Nation (TAFREN) and the Task Force for Logistics and Law and Order (TAFLOL). The CNO was disbanded in February 2005 and the Task Force for Relief (TAFROR) was created to take over the tasks of CNO, TAFRER and TAFLOL. In November 2005 additional structures were created in the form of the Reconstruction and Development Agency (RADA), which replaces TAFREN, TAFOR and several other subsidiary bodies and is intended to be the government's focal point for all 'reconstruction and development activities relating to all Natural and Man made Disasters post-Tsunami and post-conflict areas throughout the nation'.¹⁸ Another trend identified by the Human Rights Commission is the unwillingness of

¹² 'The Human Rights Situation in the Eastern Province- An Update by the National Human Rights Commission', *LST Review*, Volume 16, Issue 215, September 2005, p.13.

¹³ Ibid

¹⁴ Fernando (2005) at p.6

¹⁵ Ibid.

¹⁶ *Reflections on Tsunami One Year On: Lessons to be Learnt*, Discussion Paper prepared by The Centre for Policy Alternatives, March 2004, p.2, at www.cpalanka.org

¹⁷ Ibid.

¹⁸ RADA website at <http://www.tafren.gov.lk/portal/index.jsp?sid=3&nid=18&cy=2005&m=10&d=14>

government structures and officials to take charge of reconstruction and rehabilitation and instead hand it over to INGOs that have little local knowledge.¹⁹

With an influx of aid there is also concern whether transparent, accountable and efficient disbursement of aid will be possible within the chaotic, uncoordinated, top-down system that exists at present. Several issues were raised in relation to equity and fairness of aid distribution. There have been reports of reconstruction in certain parts of the country, such as the South, taking place at a faster pace than in the conflict zones. In Hambantota (in the South), for example, more houses than necessary have been built, while in other affected areas, such as the North and East, progress has been slow.²⁰ There is also tension between the conflict affected and tsunami affected as the benefits and support available to the tsunami affected far outstrips the benefits/relief available to those affected by the conflict.²¹ Further, the Muslim people in the East, the group most affected by the tsunami, have been marginalized and have not had the space to voice their concerns or needs. For example, when the President held talks with parties about the joint mechanism to disburse tsunami aid and deal with reconstruction issues, Muslim political parties were not invited and did not participate in the negotiations that took place to discuss the Post-Tsunami Operational Management Structure (PTOMS).²² In relation to equity and fairness, disparity in the standard of the welfare centres and shelters was also pointed out. For example, the smaller camps run by NGOs and IGOs had access to water, sanitation and in some case psycho-social support. Camps in villages also appear to be of a better standard as the number of people in each camp was small and knew each other. However in larger camps in urban centres the conditions were grim.²³ In many cases people complained they had no idea who was in charge of maintenance and even stated they had not been visited by either a government, NGO or INGO representative.²⁴ Even in the case of construction of temporary shelters, there are claims of lack of uniformity or adherence to a basic plan that meets local needs. Many shelters are not suited for the local climate and inadequate to accommodate the number of people living in the shelter at any given moment.²⁵

It is now fact that more women than men lost their lives in the tsunami.²⁶ In the case of survivors, concerns were raised that women maybe discriminated against in the aftermath and their particular needs ignored. Many women have lost their means of livelihood through the loss of the family income earner. For example, a welfare centre in the Point Pedro area consisted mainly of war and tsunami widows.²⁷ The highly bureaucratized atmosphere at these centres provides very little space for women's participation in decision making and it is highly likely the particular needs of women will be ignored. It is men who are in charge of disbursing aid at camps and in some cases women reported embarrassing comments directed at them during distribution of underwear and sanitary products.²⁸ Further, women reported a

¹⁹ LST Review (September 2005) at p.15.

²⁰ CPA (2004) at , p.11

²¹ Ibid, p.14

²² LST Review (September 2005) at p.4.

²³ Ibid at p.16.

²⁴ Harvey M. Weinstein, 'After the Tsunami: Human Rights of Vulnerable Populations', A Case Study of Sri Lanka, LST Review, Volume 16, Issue 218 (December 2005), p.27.

²⁵ Ibid.

²⁶ *Tsunami's Impact on Women*, Oxfam International at

http://www.oxfam.org.uk/what_we_do/issues/conflict_disasters/downloads/bn_tsunami_women.pdf;

<http://www.reliefweb.int/rw/RWB.NSF/db900SID/MIRA-6DR8BS?OpenDocument>

²⁷ Based on visit by author.

²⁸ *Gender Specific Issues Relating to Post Tsunami Displacement*, Briefing note 2, 15 January 2005, CATAW Press Release 2, 15 January 2005.

sense of insecurity in the camps where their personal safety was concerned and complained of incidents of sexual harassment.²⁹ Even though women collected household rations, the cash allowance was paid to the 'head of the household' defined as the person who earned income. The Human Rights Commission has pointed out the difficulties in this method in the case of, for example, separated husbands who might have collected the allowance and Muslim widows who, because of the mourning period they have to observe, are unable to leave their place of residence and therefore unable to collect the allowance.³⁰ As immediate relief moves to medium- and long- term reconstruction and rehabilitation, the women will become further isolated from decision making processes and will have little say in how their lives are 'reconstructed'. Other risks pointed out in relation to the violation of the rights of women are connected to land rights. Due to the matrilineal system of property ownership in the Eastern province, 60% of the land is owned by women.³¹ However, since it is the male who is recognised by government land policy as the head of the household, it is feared that women may risk losing their lands or not gain access to land during the reallocation process.³²

3. Prevention of Domestic Violence Bill

Though the Prevention of Domestic Violence Bill became law in 2005 the final version of the Bill that was passed was a weak piece of legislation.³³ During the debate on the Bill in Parliament it became evident that members of parliament were anxious about the effect of the Bill, anxiety which appeared to be based on misunderstanding resulting from lack of adequate information about the purpose and content of the Bill. During the parliamentary debates many MPs questioned the suitability of the Bill, which they considered to be contrary to the culture and tradition of Sri Lanka.³⁴ Some concerns raised during the debates relate to the possible break up of the family as the result of baseless complaints lodged by a spouse who might apply for a protection order for personal gain.³⁵ This is highly unlikely considering the inaccessibility of the legal system, the cost of legal action, and societal norms, which prevent people, especially women, from resolving private matters in the public sphere. Many parliamentarians also appeared apprehensive about the role of the police, specifically the section in the Bill that allows a police officer to apply for a protection order on behalf of an aggrieved person.³⁶ The debates therefore clearly showed the prevailing misconceptions regarding violence against women in Sri Lanka and the possible problems that will be encountered in devising ways and means of protecting and promoting the rights of women. Most importantly, the parliamentary debates and discourse surrounding the Bill reiterated the need to also seek non-legal methods of dealing with the issue of violence against women, which focus on changing mind sets and dispelling myths regarding the issue.

4. The Peace Process

²⁹ Ibid.

³⁰ LST Review (September 2005) at p.20

³¹ Sarala Emmanuel, *Sri Lankan Women's Small but Significant Gains in the Post Tsunami Reconstruction Process*, Asia Pacific Forum on Women, Law and Development, http://www.apwld.org/tsunami_reconstruction.htm.

³² Ibid.

³³ For a detailed analysis of the Bill see State of Human Rights 2005.

³⁴ 'In Parliament on Tuesday', *Daily News*, Wednesday February 23, 2005, p.26.

³⁵ Ibid.

³⁶ Ibid.

In the days following the tsunami, it appeared the government and the LTTE would take a conciliatory stance towards the other and cooperate in providing relief to the affected. As both were estimated to have suffered heavy losses to personnel and military hardware, the potential for peace appeared strong. However, in the following weeks both parties hardened their stance. The government claimed the LTTE prevented relief workers from entering the areas under their control, while the LTTE complained that the Special Task Force (STF) prevented aid from coming into LTTE controlled areas and asked that all aid be channelled through Tamil Rehabilitation Organisation (TRO), an organisation that is alleged to be affiliated with the LTTE.³⁷ Other events such as the government advising the UN Secretary-General not to visit the North and UNICEF reports of LTTE recruitment of children orphaned by the tsunami further deteriorated an already shaky ceasefire. Both the government and the LTTE appeared to fear the other would use the opportunity to consolidate its position and hence were unwilling to take any action that might portray them as weak. The arrival of US marines and India's offer to help develop the Trincomalee harbour further complicated the issue and deepened distrust between the parties.³⁸

Ceasefire violations continued in the conflict affected areas throughout the year with new players such as the Karuna faction (an LTTE splinter group) contributing to the increase in political killings. Even on Christmas eve, Tamil National Alliance MP, Joseph Pararajasingham was killed while attending mass in church.³⁹ As of September 2005, the Sri Lanka Monitoring Mission (SLMM) recorded 1466 reports of abductions and at least 641 violations of the ceasefire.⁴⁰ SLMM reported over 200 killings in 2005 with violence and killings becoming a daily occurrence in the last few months of the year.⁴¹ As Amnesty International states, most of those killed were civilians ranging from journalists and farmers to teachers.⁴² Apart from the obligations under the ceasefire agreement, both the GOSL and the LTTE are bound by Common Article 3 of the Geneva Conventions, which applies to non-international armed and prohibits violence against non-combatants.⁴³ The Eastern Province has been particularly affected by Karuna's defection from the LTTE, with a heightened sense of insecurity affecting every aspect of life from livelihoods of persons such as fisherman and the education of children who are not sent to school for fear of recruitment.⁴⁴ In the first three months of the year alone, 32 incidents of violence were reported in the East and an increase in the number of checkpoints.⁴⁵ The killing of the LTTE's Batticaloa political head Kausalyan only added to the deterioration in trust between the parties and the insecurity in the East. In response to the political killings and child recruitment, the EU imposed a travel ban on the LTTE in September.

2005 also witnessed the rapid shrinking of democratic space, particularly in the conflict affected areas. There is virtually no space for dissent available to the people in the conflict affected areas and rights activists have not been able to engage freely in their work without

³⁷ LST Review (September 2005) at p.7.

³⁸ Tamilnet, January 1 2005 at <http://www.tamilnet.com/art.html?catid=13&artid=13822>

³⁹ The Hindu, 26 December 2005

<http://www.hinduonnet.com/thehindu/thscrip/print.pl?file=2005122606141600.htm&date=2...>, accessed on 5 September 2006.

⁴⁰ Essential Background: Overview of human rights issues in Sri Lanka, Human Rights Watch, 2006, p.1 at http://hrw.org/english/docs/2006/01/18/slanka12252_txt.htm

⁴¹ Sri Lanka: A Climate of Fear in the East, Amnesty International, 2006 p.10 at

<http://web.amnesty.org/library/print/ENGASA370012006>

⁴² Amnesty International (2006) at p.2.

⁴³ Ibid.

⁴⁴ Human Rights Watch (2006) at p.3.

⁴⁵ Ibid, p.5.

fear. According to Human Rights Watch, several rights activists, particularly in the East, have either stopped their work, gone into hiding or left the country.⁴⁶

The recruitment of children continued to be an issue that garnered a lot of attention. The LTTE failed to abide by the action plan it signed with the GOSL to release child soldiers and continued to recruit children during 2005. After the tsunami there were reports of LTTE child abductions from welfare centres and on 28 March 2005 the LTTE and the STF clashed in Ampara over a child who had been abducted by the LTTE but escaped and taken refuge with the STF.⁴⁷ Though recruitment is reported to have decreased soon after the tsunami, the temple festival season in mid 2005 saw an increase in recruitment.⁴⁸ As the Human Rights Commission said in its report in the Eastern Province, though it is not clear if the recruitments are sanctioned by the leadership in Vanni, the LTTE leadership remains responsible for the actions of its cadres at all levels.⁴⁹ According to UNICEF, 483 cases of child recruitment were recorded in the first nine months of 2005 and 146 children were released by the LTTE.⁵⁰ These numbers do not necessarily reflect the total number of child recruits as many cases may go unreported due to fear and intimidation. The Human Rights Commission reported that the LTTE releases child soldiers to the North East Secretariat on Human Rights (NESOHR) instead of UNICEF. After examining the list of released children furnished by NESOHR, UNICEF has reportedly said that most of them were returned home,⁵¹ which means that it is not possible to ascertain the actual number of children released. Further, children so released will not benefit from UNICEF re-integration programmes.

Each act of violence and ceasefire violation in 2005 contributed to the weakening of the ceasefire agreement and made the path to peace harder. While both the GOSL and the LTTE continued to reiterate their commitment to the peace process, both parties also engaged in ceasefire violations, which raised doubts about their sincerity and commitment to seeking a negotiated settlement to the conflict.

5. Emergency Regulations

Following the tsunami, the government declared a state of emergency. While conceding the state might require extra powers to deal with such a natural disaster, there is cause for concern as Sri Lanka has been ruled by emergency for the larger part since independence. On 4th January a state of emergency was declared in fourteen tsunami affected districts. Since the regulations lapsed after fourteen days because it was not approved by Parliament according to law,⁵² a second state of emergency was declared on 3rd February 2005. According to Article 155 (7) of the Constitution, if a Proclamation lapses due to non-approval by Parliament, then ‘...no Proclamation made within thirty days next ensuing shall come into operation until the making thereof shall have been approved by a resolution of Parliament’. Hence, the Proclamation of 3rd February came into effect only on 11th February 2005 when Parliament passed the resolution. On 13 August 2005, after the assassination of Foreign

⁴⁶ Ibid. p.2.

⁴⁷ LST Review (September 2005), p.11.

⁴⁸ Ibid p.10 & Human Rights Watch (2006) p. 2.

⁴⁹ LST Review (September 2005), p.10.

⁵⁰ Human Rights Watch (2006), p.2.

⁵¹ LST Review (September 2005), p. 11.

⁵² According to Article 155 (6) of the Constitution a ‘Proclamation shall expire after a period of fourteen days...unless such Proclamation is approved by a resolution of Parliament’.

Minister Lakshman Kadirgamar, a state of emergency was declared again and led to heightened insecurity and fear amongst the people.

6. Integrity of the Person

2005 saw the deterioration of the rule of law and the steady rise of such violations as torture and extra-judicial executions. The assassination of Foreign Minister Lakshman Kadirgamar in August and of TNA MP Joseph Pararajasingham on Christmas eve marked important turning points in the peace process. These events strained a shaky ceasefire agreement and exacerbated tense relations between the government and the LTTE, with both parties trading blaming and accusing the other of carrying out these murders. Further, the assassination of Pararajasingham in a church during mass was a clear violation of a fundamental humanitarian principle which decrees that places of worship are protected humanitarian spaces.

6.1 Decisions of the UN Human Rights Committee and Sri Lanka's Obligations under International Law

In relation to Sri Lanka's obligations under international law, the United Nations Human Rights Committee (the Committee) considered a petition submitted to it under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) by a lay litigant who was sentenced to one year rigorous imprisonment by Sri Lanka's Supreme Court for contempt of court

In its Communication of Views,⁵³ the UN Committee found that the sentence amounted to a violation of Article 9(1) of the Covenant, which forbids any 'arbitrary' deprivation of liberty. The Committee stated that courts, notably in common law jurisdictions, have traditionally enjoyed authority to maintain order and dignity in court debates by exercising a summary power to impose penalties for 'contempt of court'. But here, the only disruption indicated by the State party was the repetitious filing of motions by the victim for which an imposition of financial penalties would have been sufficient, and one instance of 'raising his voice' in the presence of the court and refusing thereafter to apologise. The Committee pointed out that no reasoned explanation had been provided by the court or the State party as to why such a severe and summary penalty was warranted in the exercise of the court's power to maintain orderly proceedings. Hence, the Committee found that the imposition of a draconian penalty without adequate explanation and independent procedural safeguards falls within the prohibition of Article 9(1). Importantly, the Committee pointed out the fact "that an act constituting a violation of Article 9(1) is committed by the judicial branch of government cannot prevent the engagement of the responsibility of the State party as a whole."

In further developments in the context of the implementation of the views of the Committee, in the case of *Sarma vs. The Government of Sri Lanka*⁵⁴, the Committee found the State party, i.e. the government of Sri Lanka, liable for violations of Articles 7 and 9 of the ICCPR in relation to the applicant's son, and Article 7 in relation to the applicant and his wife. The Committee directed the GOSL to pay appropriate and adequate compensation to the complainants in a Communication of Views delivered in 2003. Following the decisions of the Committee, the Attorney-General of Sri Lanka advised the Ministry of Foreign Affairs to

⁵³ *Tony Michael Fernando vs Sri Lanka* (Communication No 1189/2003 – Adoption of Views by the United Nations Human Rights Committee – 31, March, 2005.

⁵⁴ Communication No. 950/2000.

refer the matter to the Human Rights Commission of Sri Lanka to make recommendations with regard to the computation of payment of compensation. In 2005, the Human Rights Commission in its recommendation, while basing its reasoning on international standards relating to compensation, determined the amount to be awarded as compensation based upon the economic realities of Sri Lanka.

The recommendation of the Commission is important since it clearly makes a policy statement by saying that ‘in cases of violations by the state, reparation can have a symbolic value, as it is a public acknowledgment of human rights violations, which can be particularly important in cases of systemic violations, such as disappearances. Therefore, remedies for public wrongs are particularly important because it is a reflection of public policy and the state’s commitment to protecting and promoting human rights.’⁵⁵ The recommendation of the Commission is also extremely detailed in its analysis of existing standards for determining compensation and sets out clear guidelines. Since Sri Lankan courts generally award compensation without stating specific reasons for the particular amount awarded and do not appear to follow any particular reasoning or standard, the guidelines of the Human Rights Commission will be useful in ensuring the compensation awarded fits the harm caused.

The Commission also awarded non-pecuniary damages recognising the mental anguish the family must have experienced during the 16 years their son was ‘disappeared’, which acknowledges the serious impact of disappearance on families and the community at large. Further, the Commission stated that the failure of the state ‘to conduct a full inquiry into the matter is a serious breach of both its obligations under the ICCPR and its positive duty to protect the citizen from human rights violation. Moreover the failure sets a bad precedent in relation to public policy regarding the protection and promotion of human rights.’⁵⁶ The award of exemplary damages in recognition of this fact is a step forward in battling impunity in Sri Lanka.

6.2 Disappearances

The Supreme Court of Sri Lanka also delivered a landmark judgment in the case of *Kanapathi pillai Machchavallavan v Officer in Charge, Army Camp, Plantain Point, Trincomalee and Others*⁵⁷ where it implicitly advanced the right to life by affirming the right not to be disappeared. Currently the only reference to right to life is found in Article 13 (4) of the Constitution in relation to the right not to be ‘punished with death or imprisonment except by an order of a competent court’, though the right not to be tortured and then deprived of life has been advanced by the Supreme Court in the past few years. In the case of *Machchavallavan*, a father and his two sons were arrested in a cordon and search operation conducted by the army in Plantain Point, Trincomalee. Though the father was released later that evening his sons were not released and upon inquiry he was told his sons were not at said army camp. An eyewitness, however, substantiated the appellant’s claim that his sons were last seen at the army camp. Though the Supreme Court did not find the 1st respondent (Officer in Charge) personally responsible, it held the State responsible for the disappearance of the persons while detained at the Army Camp and later presumed dead. Hence, the Court held that if a person is arrested or held by the security forces and subsequently disappears then it will be assumed the person was killed by members of said security forces. Hence, since death was without ‘an order of a competent court’ it violates article 13 (4) of the Constitution.

⁵⁵ Decision on file with author.

⁵⁶ Ibid.

⁵⁷ S.C. Appeal No.90/2003, S.C. (Spl) L.A. No.177/2003

6.3 The Bindunuwewa Massacre

In the case of *Munasinghe Arachige Sammy & Ors v Attorney-General*, or better known as the Bindunuwewa case, the decision of the Supreme Court was disappointing. In this case the Court acquitted all defendants⁵⁸ accused of killing 27 Tamil detainees at the Bindunuwewa rehabilitation centre on 25 October 2000. The rehabilitation centre housed detainees aged from 12 to mid thirties. Some detainees had escaped from the LTTE while others had been arrested under the Prevention of Terrorism Act. None of the detainees had been charged even after a year in detention. While reports on the mob killing point to failure on the part of the police to prevent the violence and protect the detainees (65 officers were stationed at the centre at the time), this incident also points to several larger issues ranging from prevailing impunity and inability to treat LTTE suspects as equals before the law, to the dismal state of the juvenile justice system (for example, all detainees shared the same facilities violating guidelines on juvenile detention which state that children should be housed separately from adults⁵⁹) and the inability of the state to cope with the fallout of the war, such as societal reintegration of former child soldiers. Writers have also pointed out the lack of strategy in the approach of the Attorney-General's Department which failed to charge the most senior officers involved, and even in the case of the other officers only filed cases in relation to the most serious crimes.⁶⁰

6.4 Torture and Custodial Deaths

Torture and custodial deaths continued to take place in 2005 with the Human Rights Commission reporting nineteen custodial deaths.⁶¹ Police torture of children was also reported. The Committee Against Torture, after considering the reports submitted by Sri Lanka under Article 19 of the Convention Against Torture, in its Conclusions and Recommendations stated that it is concerned about the 'lack of an effective systematic review of all places of detention, including regular and unannounced visits to such places by the Human Rights Commission of Sri Lanka and other monitoring mechanisms'.⁶² The Committee has reiterated the need for the GOSL to allow full access to and monitoring of all places of detention by independent human rights monitors. Sexual violence and abuse of women and children in custody are amongst the concerns put forward by the Committee which requires the GOSL to have mechanisms in place to monitor the behaviour of enforcement officials and investigate and prosecute complaints of sexual violence and abuse.⁶³ The Committee also requested the GOSL to take preventive measures and set up women's and children's desks in the conflict affected areas.⁶⁴

6.5 Extrajudicial, Summary or Arbitrary Executions

⁵⁸ 5 of the 41 accused were given death sentences which were overturned by the Supreme Court.

⁵⁹ Article 37 (c) Convention on the Rights of the Child 1989.

⁶⁰ Alan Keenan, 'Making Sense of Bindunuwewa- From Massacre to Acquittals', *LST Review*, Volume 15, Issue 212 June 2005, p. 29.

⁶¹ *LST Review* (September 2005), p.2.

⁶² Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Committee Against Torture, 35th session, 7-25 November 2005, *LST Review*, Volume 17 Joint Issue 216 & 217, October & November 2005, p.3.

⁶³ *Ibid*, p. 4

⁶⁴ *Ibid*.

Philip Alston, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, undertook a mission to Sri Lanka in the latter part of 2005 upon the invitation of the government. In his report Alston focuses on political killings related to the ceasefire and the role of paramilitaries and the impact of the Karuna split. He also discusses the use of civilian proxies by the LTTE in attacks on Sri Lankan army soldiers and states that while ‘it was denied that the LTTE gives commands to these civilians, it was acknowledged it does have substantial ‘influence’ over them’.⁶⁵ The use of violence to control Tamil civilians, particularly by the LTTE, was also raised in the report which focuses on the use of violence, intimidation and threats in the Eastern Province.⁶⁶ The importance of calling upon armed groups to abide by human rights standards is reiterated in the report. Alston discusses the tension between the LTTE’s control of specific territory, its governance experiment in the Wanni where it has civil administration, judiciary etc and its identity as an armed group which is subject to bans and proscription. He rightly points out that ‘the international community does have human rights expectations to which it will hold the LTTE, but it has long been reluctant to press these demands directly if doing so would be to “treat it like a State”’.⁶⁷

Where political killings are concerned Alston points out there is a failure to investigate the killings due to reasons ranging from ‘[the] police force’s general lack of investigative ability’⁶⁸ and lack of ‘sufficient linguistic ability and cultural sensitivity to interview witnesses’⁶⁹ to apathy and fear that the cases are too controversial and hence might jeopardise the ceasefire.⁷⁰ Lack of forensic skills and equipment also means that in many cases ‘too much evidence simply bleeds out onto the floor.’⁷¹ Lack of witness protection programmes is also pointed out as one of the reasons for non-effective prosecution as many witnesses are simply afraid to come forward. The report also points to the militarization of the police force which Alston says has ‘transformed into a counter insurgency force’⁷² It is reported that between 1 January and 30 October 2005, 221 complaints of police assault and torture were made to the National Police Commission.⁷³ According to the report, summary executions are also being carried out by the police with no inquiries conducted in cases of the shooting of suspects.⁷⁴ Alston also points to reports of the re-appearance of enforced and involuntary disappearances, particularly of Tamil youth. The Human Rights Commission reported 16 complaints of disappearances in the North in December 2005.⁷⁵

7. Freedom of Expression and Attacks on the Media

In 2005 attacks on the media and attempts to restrict freedom of expression through violence, intimidation and threats, by both the state and the LTTE, became increasingly common. This created a climate of fear and resulted in self-censorship amongst journalists. In April, Dharmaratnam Sivaram, a well known pro-LTTE journalist was gunned down in

⁶⁵ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Phil Alston, Mission to Sri Lanka, 28 November to 6 December 2005, *LST Review*, Volume 16, Issue 221, March 2006, p.5.

⁶⁶ *Ibid*, p. 6

⁶⁷ *Ibid*, p.7

⁶⁸ *Ibid*, p.9

⁶⁹ *Ibid*.

⁷⁰ *Ibid*.

⁷¹ *Ibid*, p.15

⁷² *Ibid*, p.13

⁷³ *Ibid*, p. 14

⁷⁴ *Ibid*.

⁷⁵ *Ibid*, p.19

Colombo.⁷⁶ Relangi Selvaratnam, a presenter for the Sri Lanka Rupavahini Corporation (SLRC) and the producer of a program critical of the LTTE, and her husband were killed in August.⁷⁷ Relangi's husband was a former member of militant group PLOTE, which raised speculation that it maybe part of the larger cycle of violence associated with deteriorating relations between the government and the LTTE. Investigation into both murders saw no progress and no arrests were made.

Violence against journalists, particularly Tamil journalists, also became a common occurrence in 2005. On Dec, 19 three Tamil journalists working at the Tamil daily *Thinakkural* were assaulted by the army in Jaffna when they were covering a student demonstration against harassment by the army.⁷⁸ The same week in Jaffna, the office of the Tamil newspaper *Namathu Eelanaadu*, which is supportive of Tamil nationalism, was searched by the army.⁷⁹ Senior reporter P. Parthipan of *Thinakkural* and two computer technicians were detained while they were on their way home from work that very week and were questioned, videotaped and fingerprinted.⁸⁰ Offices of several newspapers were also subject to attack. The office of Tamil nationalist, pro-LTTE newspaper *Sudar Oli* was subject to a grenade attack in August, which killed a guard and injured two staff members.⁸¹ The same month, Premachandran Yaturshan, a *Sudar Oli* reporter was attacked at a JVP rally and his personal effects were taken away from him.⁸² The printing presses of the *Sunday Leader* were attacked in October by an unidentified group which set fire to bundles of newspapers on fire after threatening to harm the manager if he continued printing.⁸³

Veiled and sometimes outright threats were issued to editors and journalists by members of the government, which functioned as a form of non-formal, non-legal censorship. For instance, *Sunday Leader* editor Lasantha Wickramatunge requested police protection in May after a member of the coalition government called him a 'terrorist'.⁸⁴ Two reporters working for Sirasa TV, a station owned by the Maharajah group known to be supportive of the United National Party, were verbally and physically assaulted outside the 54th anniversary rally of the governing Sri Lanka Freedom Party.⁸⁵ Sirasa TV and Swarnawahini were also abused by Mervin Silva, M.P. outside court, as Silva was leaving court after a hearing on a shooting incident involving his son.⁸⁶ All these events, alongside escalating violence associated with the deteriorating ceasefire, severely restricted freedom of expression in 2005.

8. Conclusion

In Sri Lanka in 2005, both the tsunami and the deteriorating peace process emphasised the importance of respect for human rights and the need to seek solutions within a rights framework. While the tsunami illustrated the interdependence and intersectionality of human

⁷⁶ Reporters Without Borders, Sri Lanka – Annual Report 2006

http://www.rsf.org/print.php?id_article=17362

⁷⁷ International Press Institute, "World Press Freedom Review 2005: Sri Lanka",

http://www.freemedia.at/cms/ipi/freedom_detail.html?country=KW0001/KW0005/KW01

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid; 'Sri Lanka: Violence Against Tamil Journalists Escalating', *Asia Media: Media News Daily*,

<http://www.asiamedia.ucla.edu/article-southasia.asp?parentid=29294>

⁸² Ibid.

⁸³ World Press Freedom Review (2005)

⁸⁴ Asia Media (2005)

⁸⁵ World Press Freedom Review (2005)

⁸⁶ Ibid.

rights, the failing peace process drove home the need for a just peace, i.e. not just an end to armed conflict, but the creation of a democratic space within which human rights are protected and promoted. In relation to the peace process, the ceasefire and human rights violations brought to the fore several questions relating to the specific elements that are required in the post-settlement situation to prevent a return to violence, in terms of structures of governance and decision-making and features of political culture.

The importance of the promotion of wide policy dialogue and ensuring public participation in governance, in both the peace process and the tsunami reconstruction and rehabilitation process, also became evident in 2005. Though engaging on the issue of human rights is not easy, the importance of doing so became obvious and hence it became vital to find strategies to do so without jeopardising the still fragile negotiation process. Therefore, the rights issues that took centre stage in 2005 serve to reiterate the need to rebuild public trust in the state, judiciary, police and military; increase accountability of public institutions, and change institutional culture within a political atmosphere and a peace process that may act as constraints upon possible reform.