

HUMAN RIGHTS BENCHMARKS IN THE PEACE PROCESS

CENTRE FOR POLICY ALTERNATIVES
&
BERGHOF FOUNDATION FOR CONFLICT STUDIES

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Introduction

The Centre for Policy Alternatives (CPA), and the Berghof Foundation for Conflict Studies organised a consultation on 'Human Rights Benchmarks in the Peace Process' on 2nd April 2003 in Colombo, Sri Lanka. The seminar mainstreaming human rights norms in the peace process, was informed by a background paper by Dr. Alan Keenan, which looked at the tensions between human rights and conflict resolution, and how further progress could be made to incorporate international human rights norms and standards into the Sri Lankan peace process. This report identifies the themes and tries to synthesize the strands of what was an extremely fluid debate.

Mr. Kethesh Loganathan, Director, Centre for Policy Alternatives (CPA), in his welcome address, spoke of the continued and increasingly urgent need to emphasise the importance of human rights in the peace process.

Presentation of Human Rights Issues in Hakone, by Mr. Rohan Edrisinha, Director, CPA

Mr. Edrisinha first spoke of the Ceasefire Agreement, and said that while it was broadly welcomed, many were also aware of its limitations, especially regarding human rights and human rights monitoring. Mr. Edrisinha said that despite some clauses (like Article 2.1) which addressed the human rights dimension, the ceasefire agreement was a document that needed to be strengthened by active civil society participation and lobbying for greater inclusion and recognition of the inviolability of human rights.

Mr. Edrisinha said that at the 5th session of the first round of peace talks in Berlin, in February 2003 saw Mr. Ian Martin, former Secretary General of Amnesty International, was asked by both parties to prepare a human rights roadmap in time for the next session in Hakone. This roadmap was to identify substantive human rights activities and commitments to be implemented throughout the negotiating process and pay particular attention to effective mechanisms for monitoring.

The developments in Hakone, Mr. Edrisinha said, needed to be judged against this backdrop. Referring to the statement issued by the Royal Norwegian Government at the end of the 6th session of the first round of peace talks in Hakone, Japan, Mr. Edrisinha focused on two key points – the drafting of a Declaration of Human Rights and Humanitarian Principles and the strengthening of the Human Rights Commission of Sri Lanka to enable it to develop the capacity for increasingly effective monitoring throughout the country in close coordination with UNICEF in relation to child protection, UNHCR in relation to the protection of returning internally displaced persons and refugees, and SLMM in relation to acts against the civilian population. (See Annex 1)

The enlarged mandate of the SLMM to deal with human rights violations was flagged as problematic by Mr. Edrisinha. He spoke of the interactions between Mr. Ian Martin and civil society before Hakone, and said that many felt that the SLMM would not be suitable for monitoring human rights. He also said that the SLMM was already overstretched on the ground.

He also said that Mr. Ian Martin's human rights roadmap presented to the Government of Sri Lanka and the LTTE in Hakone was far more comprehensive than the three issues which were reflected in the statement at the end of the Hakone talks. He went on to say that Mr. Martin's roadmap was also drafted with the sensitivities and the concerns of the LTTE in mind - a document that emphasised collective rights as well as economic, social and cultural rights. The document also imposed

obligations on both parties and also emphasised effective monitoring and enforcement of human rights. Mr. Ian Martin, according to Mr. Edrisinha, had also proposed that the human rights agreement between the two parties would be operational for the duration of the peace process, at the end of which would be a new constitution enshrining human rights and effective monitoring, as well as repealing existing legislation such as the Prevention of Terrorism Act (PTA).

As part of the human rights roadmap, Mr. Ian Martin had flagged criteria for effective human rights enforcement mechanisms – the ability to talk to individuals and groups, the freedom of movement, the ability to conduct interviews in private, collect by any appropriate means information on human rights, the ability to make recommendations and a commitment by the parties to give their earliest consideration to these recommendations, guarantee the security of individuals and groups who raise human rights concerns etc.

Mr. Martin had also proposed that in addition to the monitoring by the Human Rights Commission, there should also be some international involvement as well.

Mr. Edrisinha then said that as far as he could gather, the LTTE was not in favour of such a comprehensive human rights roadmap, and the Government also did not adequately push the LTTE to recognise the importance of points brought up in Mr. Ian Martin's document. This, he said, raised the valid question of the commitment of both parties to human rights as part of the peace process.

Winding up his presentation, Mr. Edrisinha said civil society needed to address these issues. Sustained public confidence and approval of the peace process would only continue if human rights concerns were addressed, Mr. Edrisinha said.

Presentation of paper on Democratizing Human Rights, Strengthening the Peace: Sri Lanka's Historic Challenge, by Dr. Alan Keenan

Dr. Alan Keenan, who spoke after Mr. Edrisinha, addressed a general anxiety that pressing too hard for mainstreaming human rights risked weakening the peace process. However, he said that arguments in favour of human rights, when properly phrased and understood and could serve as tools of conflict resolution when coupled with principles of de-escalation and consensus building.

Dr. Keenan's thesis is captured in the paragraph from his paper:

“...human rights discourse and practice can and needs to be understood as a tool of constructive conflict management, informed by basic common sense conflict resolution principles of de-escalation and trust building. The challenge for human rights advocates is to initiate processes of collective reflection and criticism, within and across communities, that can offer insight into the reasons for Sri Lanka's bitter divisions and methods for crafting ways of preventing further wrongs, re-escalation, or re-polarization. Such an approach, I am suggesting, would allow for the democratization of human rights politics, whereby members of all ethnic communities would transform human rights principles into tools for expanding democratic space throughout the country and for establishing effective practices of accountability with respect to all forms of political power, whatever organization or party happens to be in charge.”

A participant expressed concern over the effectiveness of an international human rights monitoring body. Any perceived ineffectiveness of the human rights monitoring mission could, the participant went on to say, undermine and in time erode the public support and confidence in the peace process. The operation of this body, it was stated, also needed to be transparent.

With regards to the SLMM, a participant noted that the country chairing the SLMM was also the same country functioning as the facilitator to the peace process in Sri Lanka. This he saw as a clear conflict of interest, which in part could explain the dilatory determinations of ceasefire violations in the recent past. The more immediate and dangerous outcome of this configuration, the participant went on to say, was the SLMM determination that a 'third party' in the North-East was responsible for some of the recent ceasefire violations. The participant saw this as a precarious situation which could give wrong signals to the perpetrator of the violations.

Another participant said the key question was how to operationalize human rights mechanisms. The participant also said that human rights were important in a developmental framework. The Needs Assessment document, the participant said, which was in the process of being finalised for the donor meeting in Tokyo in June 2003, would look at Sri Lanka holistically. The objective should also be to build a broad consensus amongst bi-lateral donors on the importance of human rights for sustainable development, recognizing that not all donors place the same degree of emphasis on human rights in the peace process.

Dr. Norbert Ropers, echoing these sentiments, said that bi-lateral donors were arguably in a better position to address issues related to human rights and developments than civil society, especially since they had formulated a comprehensive needs assessment for Sri Lanka in a very short time.

A participant spoke of the conflict of interests between the Government and the LTTE on account of different perspectives of human rights, and said that bridging these differences would not be an easy task. Human rights were fundamental to the peace process and conflict transformation would have to recognise the inviolability of human rights as the harbinger of a just and lasting peace. Signing agreements should not take precedence over addressing the conditions and root causes of the conflict.

Another participant spoke about the need to re-fashion the approach to human rights, given the resistance of both the Government and LTTE to uphold human rights. Human rights, needed to be presented as something beneficial to the parties and the peace process, and not merely as a tool that would hold them accountable for human rights violations.

Civil society, another participant said, also needed to recognise two dilemmas facing the peace process – the tension between human rights advocacy and conflict transformation, and the tension between donor aid and the wider process of democratisation.

Human rights in the Needs Assessment document, a participant said, would be weak, a reflection of a distinct lack of enthusiasm by both the Government and the LTTE to highlight it in more concrete terms. Although human rights would be mainstreamed into the Needs Assessment, the participant went on to say, it was unlikely that there would be any section dealing with human rights in detail. The importance of the Needs Assessment document would be in part, the participant said, the space for dialogue it

opened up between the parties to the conflict. This would be part of the validation process, where aspects of the document would be discussed amongst stakeholders.

The participant went on to speak about reconciliation, and said that a workshop held recently at Killinochchi illustrated the ambivalence on the part of the two parties on the need and effectiveness of reconciliation processes. The LTTE for instance expressed four concerns – (i) that it was too late for reconciliation – decades of active discrimination and the failure of successive governments to address this discrimination; (ii) that it was too early to talk about reconciliation – since there was still no parity of status between the LTTE and the Government, discussions on reconciliation would be premature; (iii) Too risky and dangerous – discussion on reconciliation could undermine the peace process and the negotiating strength of either party; (iv) It is more important for the Government to engage in a process of reconciliation between parties in the South rather than begin a process of reconciliation between the North-East and South.

Human rights was perceived by the LTTE, the participant said, as a benchmark that undermined its international credibility. It could be used by spoilers in the South to derail the peace process. These considerations could not be ignored, the participant went on to say, in any discussion of human rights and the peace process in Sri Lanka.

The participant also spoke of the experience of South Africa, in which all the parties formulated a common platform for human rights – making the process both inclusive and durable. This common platform of human rights, the participant said, could be a model for Sri Lanka, by bringing in more political parties and stakeholders under the umbrella of a shared understanding of the importance of human rights in the peace process.

Another participant said that amongst the middle and lower level cadre of the LTTE, there was very little awareness of developments and decisions taken by the top-level leadership at the peace talks. The participant went on to say that there was little awareness and understanding of the role of institutions like SIHRN amongst the middle and lower level cadre, who saw it as a government instrument to dominate the North-East.

Report of Working Group 1 addressing tensions between Human Rights and Conflict Resolution in the Peace Process

The Rapporteur for the group said that there was a general consensus in the group that all the main parties to the conflict were uncomfortable with human rights, and that this was the reason for the human rights roadmap, prepared by Mr. Ian Martin, to be reduced in its scope and mandate for the next session of the peace talks.

There was concern that a mere declaration of principles on human rights by both parties would not suffice, and that what was really needed was a firm agreement by both parties, which bound them to upholding human rights and the creation of effective and sustained human rights monitoring mechanisms. Given the statement at the end of Hakone, this was importance since whatever agreement or declaration made would have to last for the entirety of the peace process, culminating in a final settlement.

There was also consensus that internationally recognised human rights norms and principles needed to be integrated and reflected in the declaration or agreement between the two parties on human rights.

The Rapporteur also said that the group felt strongly about the need to examine the mechanisms that that would enable the HRC to continuously consult civil society on issues related to human rights and human rights monitoring. Furthermore, it was reported that the group also felt the need to mainstream human rights into the activities of sub-committees, like SIHRN, set up as part of the peace process.

The possible disconnect between decisions taken at the peace talks, and a lack of implementation on the ground was flagged as a problem – a human rights declaration or agreement it was felt, needed to be operationalised and realised on the ground, and not just in word.

The group, it was reported, also agreed that the Government was perhaps the principal violator of human rights, and that reconciliation, - looking at past mistakes to avoid a recurrence of the same mistakes in the future – needed to be reflected in the declaration and agreement of human rights between the two parties.

The importance of lucid guidelines for human rights monitoring was flagged by the Rapporteur, who said that the group agreed that if the Human Rights Commission was going to monitor human rights violations, clear guidelines were essential in framing its mandate.

It was felt by the group that transparency and accountability also needed to be mainstreamed into the peace process, and not just limited to the work of human rights monitoring.

Plenary Discussion

A participant said that information on decisions taken at top-level negotiations needed to percolate down to the grassroots level, failing which people on the ground would be unaware of their rights and available channels to address their fears and concerns. It was also felt by this participant that civil society input was needed to formulate the range and powers of human rights monitoring to be undertaken by the Human Rights Commission.

The question was posed by a participant whether the human rights monitoring body should have punitive sanctions. Going further, the participant said that if development and developmental aid were to be taken as the engine of the current peace process, then international donors were uniquely placed to link aid with ‘benchmarks’, or certain conditionalities that would have to be met as part of the peace process. Human rights in this sense needed to be looked at holistically, rather than just civil, political, economic or social rights.

A participant said that a possibility could be to replace the Ceasefire Agreement with a document, signed by both parties, that was more comprehensive, inclusive and that concretely addressed human rights issues.

Another participant raised the question as to whether the LTTE will fully accept the HRC as a monitoring body for human rights, since it is a body that was constituted in the South with no participation, input or representation from the LTTE itself.

Dr. Norbert Ropers, after summarising the discussion, said that there was also the need to look at the transformative character of human rights.

Report of Working Group 2 addressing the challenge of Introducing Human Rights and Related Monitoring Mechanisms into the Sri Lankan Peace Process

The Rapporteur began by saying that the group thought it was essential to have a separate human rights monitoring mechanism, rather than to dovetail human rights monitoring into the mandate of the SLMM. Although the core of such a monitoring mechanism would have to be formed by the HRC, the Rapporteur went on to say that international participation and representation in the body would be essential – this participation could be from the UN and donor countries in the form of persons with human rights backgrounds to actively participate in the monitoring.

Civil society representation in the areas in which the human rights monitoring was to take place was also considered important by the group. Furthermore, in addition to the human rights monitoring mission headed by the HRC, the group also felt the need for an independent civil society body to look into the status of human rights in the country. This body, the group felt, would be constituted from civil society actors from the North-East as well as from the South.

The findings and reports of the human rights monitoring mission, the group felt, needed to be incorporated into the discussions between the top-level leadership of the Government and the LTTE and the peace talks. This would ensure that the peace talks are informed by the realities from the grassroots level.

Furthermore, the credibility of the human rights monitoring mission, the group felt, would stem from its work and its transparency. Also, the possibility of linking up with existing UN mechanisms on human rights was debated within the group.

Plenary Discussion

A participant pointed out that the Human Rights Commission is the institution that by default is positioned to monitor human rights, augmented and strengthened by the participation of international monitors.

The participant went on to say that the participation of the independent civil society body to oversee human rights be extended to include the co-chairs of the Tokyo Donors Meeting – the European Union, Japan and the United States of America, excluding Norway since it is the facilitator to the peace process.

This group could, by meeting quarterly and issuing statements on human rights and the peace process, create a linkage between the qualitative aspects and the developmental aspects of the peace process, engendering a holistic perspective of the whole process.

A participant also said that without looking to the UN, international monitors could be drawn from foreign civil society organisations with a background in human rights and human rights monitoring. A combination of international and local civil society involvement would be needed for human rights monitoring to function effectively.

Mr. Keenan, responding to the discussions said that it is important to extend the monitoring of human rights to the South as well. Mr. Keenan said that if the *raison d'être* of human rights monitoring was to look at conflict areas, then by definition, monitoring would also have to take place in the hill country, in the East and even in places like Colombo, in helping to deal with communal violence.

Report of Working Group 3 addressing Development Aid and Human Rights

The Rapporteur began by saying that the group had agreed that the LTTE had thus far expressed scepticism about the linkage of development and human rights, but that bi-laterals were increasingly concerned about the human rights situation on the ground. The group did not know how effectively these concerns would be addressed, or be reflected in the Needs Assessment Report.

The group also raised the question of identifying benchmarks – how for instance, to formulate a benchmark, make it acceptable to the stakeholders and make them adhere to it. Human rights, the group noted, was at least in the vocabulary of the peace process. The group thought that in time, the actual operationalising of verbal and written commitments to human rights could take place in the peace process.

The problem of conditionalities was also addressed by the group, who debated whether ‘benchmarks’ could in fact have a negative impact on the peace process. However, as the Rapporteur stated, there was consensus in the group that ‘benchmarks’ were important and that the peace process would be strengthened on account of them – the resilience of the peace process to these benchmarks was also proof of its maturity.

The group also felt that the operationalisation of human rights declaration and agreements needed to be seen by the grassroots communities for the success of the peace process. Furthermore, the commitment of the South to a human rights monitoring mechanism was not very clear, according to the Rapporteur, and the emphasis seems to be only on the LTTE. This problem, the group felt, needed to be addressed for any real progress.

A forum or fora where people could express their views on previous commitments to human rights by the parties to the conflict, and their actual application on the ground, the Rapporteur said, could help strengthen the envisaged human rights monitoring mechanisms by addressing the short-comings of previous attempts.

The group also felt there was a need for civil society and donors to meet to discuss and formulate important benchmarks before the Tokyo Donors meeting in June 2003.

Plenary Discussion

In the plenary, it was noted that the benchmarks should facilitate a process of dialogue between the donors and the stakeholders to the conflict, along with civil society participation. Benchmarks would not necessarily mean that donors would stop giving aid if they were not met, but would hopefully serve to highlight the importance of issues like human rights in the broader framework of development and peace building.

Concluding Remarks by Dr. Norbert Ropers

Dr. Ropers said there was a need to expand the peace process to incorporate a rights based perspective to conflict transformation. Furthermore, the dilemmas between human rights and conflict transformation could, he said, be addressed if the process was premised on a rights based approach.

He also spoke on the need for a holistic approach to human rights in the peace process– not just to look at civil and political rights but also to look at social and economic rights as well.

The stronger involvement of the donor community in the peace process to help parties address human rights issues, he said, was accepted by the majority present at the seminar. Further thought, he said, must also be given to addressing human rights issues in the South, and linking these with issues in the North-East.

Concluding Remarks by Dr. Alan Keenan

Dr. Keenan spoke of balancing participation in the peace process – on the one hand, of trying to bring in as many actors as possible into the process, and on the other, setting up mechanisms of like minded people and like minded civil society organisation to proactively inform and shape the agenda of the on-going negotiations and the peace process.

The other challenge he identified was the coordination of the different bodies setup as part of the process – the different agencies, stakeholders, frameworks etc – to help move the process forward as opposed to creating a multitude of different agendas with little or no cohesion.

Finally, Dr. Keenan also spoke about the accountability of donors, and said that donors and the stakeholders to the conflict must be mutually accountable for their actions, and transparent in their activities.

- ENDS -

**CENTRE FOR POLICY ALTERNATIVES AND BERGHOF FOUNDATION
FOR CONFLICT STUDIES**

**SEMINAR ON ‘HUMAN RIGHTS BENCHMARKS IN THE PEACE
PROCESS’**

AGENDA

- 9.30 am - Welcome by Dr. Paikiasothy Saravanamuttu, Executive Director, CPA
- 9.45 am - Presentation of Human Rights Issues in Hakone, by Mr. Rohan Edrisinha, Director, CPA
- Presentation of paper on Democratising Human Rights, Strengthening the Peace: Sri Lanka’s Historic Challenge, by Dr. Alan Keenan
- 10.00 am - Plenary Discussion, facilitated by Dr. Norbert Ropers, Director, Berghof Foundation for Conflict Studies
- 10.45 am - Tea Break
- 11.00 am - Working Groups
- Group 1 - Tensions between Human Rights and Conflict Resolution in the Peace Process
 - Group 2 - The Challenge of Introducing Human Rights and Related Monitoring Mechanisms into the Sri Lankan Peace Process
 - Group 3 - Development Aid and Human Rights
- 12.00 pm - Reporting and deliberations (15 minutes per working group)
- 12.45 pm - Plenary
- 1.15 pm - Concluding Remarks by Kethesh Loganathan, Director, Conflict and Peace Analysis Unit, CPA

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ANNEXURE 1

Royal Norwegian Ministry of Foreign Affairs

Sri Lanka Peace Talks – Agreed Statement on behalf of the Parties 21 March 2003

The Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE) held the sixth session of peace talks at Hakone, Japan from 18 to 21 March 2003.

The parties met amid growing security concerns following recent incidents on land and at sea. While they acknowledged that parallel progress is needed in negotiations on security, economic and political issues, the parties left no doubt that they must now give top priority to improving the security situation, in particular at sea. The parties undertook to enforce better compliance with the Ceasefire Agreement by their personnel.

The Government of Sri Lanka and the LTTE are deeply concerned about the latest incidents at sea, including on 10 March. To prevent future incidents at sea that could threaten the stability of the ceasefire, the parties have agreed to convene senior naval and political representatives from both sides within three weeks to work out effective arrangements for the operation of naval units in keeping with existing treaty obligations. The meeting will be convened by the Royal Norwegian Government and the Head of the Sri Lanka Monitoring Mission (SLMM) and will immediately start preparing the meeting with military leaders on both sides. The parties agreed to instruct their naval units to exercise restraint, as required by the Ceasefire Agreement, and to avoid provocative actions in the crucial period prior to the establishment of appropriate procedures.

In this context, the parties agreed to strengthen the mandate and capacity of the SLMM to undertake preventive measures to avoid serious incidents at sea and on land. As a fundamental precondition for the SLMM to take on a stronger role, the parties pledged to ensure full compliance with the rulings of the SLMM, guarantee the security of its personnel in all situations, and take disciplinary action against anyone endangering the lives of SLMM personnel.

The parties also agreed to take steps to further strengthen the security situation on land, including the establishment of procedures with the cooperation of the SLMM for handling soldiers and cadres apprehended by the other party.

In their political discussions, the parties reiterated their commitment to develop a federal system based on internal self-determination within a united Sri Lanka. As the point of departure for planning how to give effect to the general principles of federalism in a final settlement of the ethnic conflict, the parties discussed the essential elements of fiscal federalism.

The parties discussed preliminary issues and a framework for political matters and agreed to expand this into a complete plan at the seventh session of talks. The plan will outline the next steps to be taken by the parties and the topics that must be addressed in order to negotiate a federal solution for Sri Lanka. The parties recognise that a considerable amount of time will be required to address this wide range of topics, which will include geographical regions and the division of powers between the center and regions. In this context, the parties decided to invite the Forum of Federations, a Canadian-based international organization, to participate as consultants at the seventh session of talks.

The LTTE reported on the formation of a Political Affairs Committee consisting of twenty-one leading members of the organization. This committee will undertake an intensive study of federalism over the course of the next three months to build the LTTE's capacity for political transformation. The committee will study federal systems in other parts of the world, arrange seminars for LTTE cadres, consult Tamil parliamentarians and academics and seek advice from lawyers and constitutional experts, to prepare the ground for the process of establishing internal self-determination within a united, federal Sri Lanka.

Following a proposal by the GOSL to prepare for local government elections in the North and East, the LTTE will favourably consider supporting the holding of such elections.

It was agreed that the rescheduled meeting between the LTTE and the Muslim representatives in Batticaloa be convened on 27 April 2003. Furthermore, the LTTE and Mr. Rauf Hakeem agreed to arrange a separate meeting between Muslim leaders and the leadership of the LTTE in Kilinochchi to discuss political matters and the participation of a Muslim delegation in negotiations at plenary sessions.

The parties approved the proposal submitted by the Sub-Committee on Gender Issues to establish secretariats in Kilinochchi and Colombo.

Following up on the discussions in Berlin in February on human rights, the parties asked their international human rights adviser, Mr. Ian Martin, to develop three aspects of the proposed roadmap for adoption at the seventh session of talks:

- 1) The drafting of a Declaration of Human Rights and Humanitarian Principles. This would reflect aspects of fundamental international human rights and humanitarian standards, which both parties would undertake to ensure are respected in practice by their personnel, pending the full entrenchment of human rights standards in the eventual constitutional arrangements and in federal and local law.
- 2) The planning of a programme of human rights training for LTTE cadres and government officials, police and prison officials, which would contribute to the respect of these principles in practice, and of human rights education and awareness for other sections of the population. This programme would include specialised training offered by UNICEF in relation to the rights of the child, UNHCR in relation to rights of internally displaced persons and refugees, and ICRC in relation to international humanitarian law. The Office of the UN High Commissioner for Human Rights would be invited to coordinate this programme.
- 3) Proposals for the strengthening of the Human Rights Commission of Sri Lanka to enable it to develop the capacity for increasingly effective monitoring throughout the country. These proposals would involve international advice and assistance to the HRC from the Office of the UN High Commissioner for Human Rights and other sources, and close coordination with the roles of UNICEF in relation to child protection, UNHCR in relation to the protection of returning internally displaced persons and refugees, and SLMM in relation to acts against the civilian population.

The parties agreed to hold the seventh session of talks from 29 April to 2 May in Thailand, the eighth session from 12 to 15 June in Japan and the ninth session from 15 to 18 July in Europe (venue to be determined).