

Critical Issues for the Humanitarian Agenda in the Peace Process

Summary of presentation by Joe William

Berghof Foundation for Conflict Studies and Centre for Policy Alternatives

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It was reported that LTTE's political Wing Leader had told a Swiss delegation that people would lose confidence in the peace process if immediate attention is not paid to the basic humanitarian needs of the people and restoring normal life in the north-east. He had continued that in the one-year period since the signing of the ceasefire agreement, normal life has not been restored to a large number of people.

One prime component of humanitarian action is resettlement of internally displaced persons (IDPs). Professor Shanmugaratnam in a recent paper has defined resettlement in the following manner:

"Resettlement is not a simple exercise where you give some financial and material support to a displaced family to return to its original home. It is a much bigger and complex process of enabling people to develop their livelihood systems. A household is not an isolated entity but a part of a community, though the community itself is a socially differentiated entity. A household's means of livelihood comprises community assets and household assets.

By community assets I mean the local irrigation tanks and canals, communal grazing lands, fishing grounds, roads and other local infrastructure. These are material assets of a community."

He asserts that of equal importance is the social capital of the community, which he defines as:

"Formal and informal associations such as farmers' groups, women's groups, fishermen's co-operatives, credit societies and social networks based on kinship or other common factors. Trust is the most essential element of social capital."

The joint National Peace Council & Marga Institute Study of 2001 states as follows:

"Destruction of complete villages is not only a matter of damaged buildings. Destruction of a village means that much more has vanished: its way of life, its environment, the support system and the networks of relationships it provided, its traditions, structures and institutions."

In the Tamil tradition, a person's identity was defined to a large extent by their village or their origin. Losing one's village is losing one's relationship to the community. (Daniel, 1984)

Speaking about household assets he states that:

"Household assets include land, equipment, the quality and size of a family's labor. The quality of a family's human capital depends on access to quality education and health. Let's not forget there are many households in the northeast with little or no assets worth speaking about. I am talking about families that have lost their breadwinners, widows with small children, those who have been dispossessed of their means of production such as boats, farmlands, grazing and fishing grounds and equipment."

One essential component of humanitarian action is to address vulnerable communities and households:

"These include factors such as human security, property rights and environmental and market uncertainties. The areas from where people were displaced which have suffered major environmental destruction that has rendered them uninhabitable. In such areas, environmental rehabilitation is a necessary first step towards resettlement. The key components of a resettlement program should be identified and integrated on the basis of the above. These components include de-mining, environmental rehabilitation, local infrastructure development, health, education, capacity building, secure land and fishing rights and access to market and information."

The framework highlighted above is helpful in identifying the capacity gaps and needs at various levels in the northeast and addressing them as urgent priorities. In short these are the challenges that need to be dealt with in restoring normalcy to conflict affected communities in a systematic and holistic manner. I believe that this then is the key challenge for the Sub-Committee on Immediate Humanitarian Needs (SIHRN).

Working to restore normalcy in the lives of persons in conflict-affected areas has been the task of all the participants gathered here. For nearly two decades we did this in the context of an ongoing-armed conflict. Many of us have met in the past under different circumstances often grappling with issues around humanitarian access, negotiating with structures that were put in place, precisely to deny this. There were many roadblocks to negotiate, both physical and otherwise. Thankfully, during the past year they have become memories and hopefully we do not have to re-live them again. However bringing 'normalcy' continues to hang over our heads as a sword of Damocles. Failure to achieve this could well turn the clock back on us despite the optimism that has been generated in the peace process.

As we've heard in the initial discussion in this workshop, structures to achieve normalcy in the short term have been put in place and issues around the process to operationalize the structures have been discussed. Nevertheless, it is important at this stage to reiterate that the creation of a sustainable peace, depends on the emergence of an environment, which will allow much, needed emergency humanitarian and development initiatives to take place rapidly. By talking about process issues we focus on how such a transformation is brought about. Process issues are what ultimately determine the legitimacy of systems, institutions and mechanisms of governance administration established in the course of the (immediate, transitional, interim) phase as well as the levels of popularity and ownership in the process. In the light of the scale of physical destruction and societal fragmentation, displacement, trauma from years of prolonged conflict and human rights abuses, there is a need for objectivity and honesty both in assessing what needs to be done and setting time frames for doing so. In the haste to be doing something, it would indeed be a pity if we were to miss the wood for the trees.

In planning of emergency assistance, rehabilitation and development initiatives, it is important at the very outset that support is given for recovery and rebuilding communities in psychological and physical terms. In doing so, a more stable foundation for sustainable reconciliation, peace building, reconstruction and development would be laid.

Internally Displaced Persons (IDPs)

Sri Lanka's ethnic conflict has displaced hundreds of thousands since it escalated in the early 1980s. Throughout the years since 1983 in which military conflict between the Sri Lankan security forces and the Tamil militant groups has been the order of the day, we have witnessed a never-ending saga of people forced into nomadic existence fleeing the areas of active conflict in search of a more secure and settled existence. As in all internal conflicts, civilians have been the biggest casualties and the case of Sri Lanka is no exception.

Initial displacement of persons happened as a result of anti-Tamil conflicts in the southern parts of Sri Lanka in 1958, 1977, 1978, which pressured many Tamil people to leave their homes in the Sinhala dominated parts of the country and move to the north and east. In the aftermath of waves of attacks against Tamil people in the plantation areas in the late 1970s, many of those from the central highlands settled in the Northern Province. Muslim and Sinhala people living in Tamil majority areas have also been forced to leave due to threats against them.

Loss of lives, including that of breadwinners; severe and permanent disability; destruction of personal and productive assets; loss of income; psychological trauma; accompanied by alienation and isolation along

with an enduring sense of uncertainty - the scars of war go deep to produce a sociological reality and complexity that is staggering in its social, economic, and psychological dimensions.

Dialogue on IDPs and interventions on their behalf need to be focused on the Guiding Principles on Internally Displaced Persons, which was adopted as official policy by GoSL at the Donor Forum Meeting of May 2002 under the 3R Framework. Under this, the concerned Ministries need to bring their policies and programmes into alignment with these principles. Application of these guidelines on immediate needs of IDPs now rests with SIHRN among others. A great deal of work has been done in popularizing this document by UNHCR, CHA and other NGOs, which needs to be used as an empowerment tool by the IDPs themselves in demanding their rights and security.

Following the CFA, and an improvement in the living conditions in the North and East, and the prospects of a permanent settlement to the conflict, return of IDPs to their former places of residence has begun. Many have returned spontaneously and more are contemplating doing so. Assisting them has become an issue of critical importance, particularly with regard to land and property issues. Besides landmines and UXOs that pose a serious physical danger, secondary occupation and restitution of property, occupation of land and property by the military, lost documents providing ownership, damage to housing, financial and other assistance to rebuild and restart livelihood, the situation of landless IDPs, land and property rights of women, legal redress and problems relating to the laws and institutional framework and capacity, all pose challenges to the safe and dignified return of all IDPs who voluntarily choose to do so. Independent studies on property issues are under way including a workshop on the subject hosted by UNHCR scheduled for 10 and 11 February. CPA conducted a workshop on the subject in Kilinochchi in late January. Berghof Foundation and CPA plan a further dialogue on the subject under the Road Map programme. Initiatives at grassroots level are taking place in parallel.

Another matter of concern with regard to the return of IDPs is that of HSZs. This is a serious problem, which has humanitarian, security and political implications and could well become a litmus test for the success of the peace process itself. I would encourage participants to discuss this matter in the working groups.

Women

I would also like to flag issues around women for discussions in the working groups. Besides a multitude of problems faced by them as widows and female heads of households, there are other issues that participants can bring into focus. Despite their critical role in the economy, women continue to remain highly unrepresented actors in the country's policy making and other bodies, including SIHRN, and the high-powered negotiating teams of the ongoing peace dialogue. The ten-member all-women committee that has been constituted to highlight gender issues does not represent Tamils of Indian origin or views from other Tamil political spectrum besides the LTTE.

Children

After nearly two decades of continuous strife, a generation of young people across the conflict-affected areas has been robbed of childhood. According to UNICEF, both boys and girls have been recruited in about equal numbers to serve in non-state armed groups. There are also under-aged recruits in the state forces and border guards. Despite the assurances given by the LTTE to the Special Rapporteur of the UN Secretary General for Children in Armed Conflict in 1998, that they would not recruit children, children are still being recruited. While the issue of child soldiers has received considerable attention, issues such as humanitarian access, the increase in infant mortality rate, the decline in the quality of education and malnutrition, particularly in the North and East have not. The current peace process provides the opportunity to start to alleviate the dire situation children in the conflict-affected areas and presents an urgent and daunting challenge. The future welfare of war torn areas lies in the hands of the children of today. Our commitment to their welfare is an investment for a better tomorrow.

Abandoning land-mine use in Sri Lanka

Landmines are one of the most widely used weapons in contemporary conflicts. Landmines are cheap and profitable to sell. They are easy to use and hard to detect. They kill, maim, and terrorize indiscriminately. They remain vigilant long after the guns fall silent. Ironically, it is when peace appears imminent or there is a lull in the fighting that mines are most dangerous; population movements tend to increase as the displaced return to their homes and the pressure to make a living in known or suspected mined areas can be overwhelming. Of all of the forms of debris left in the aftermath of conflict, landmines are the most widespread and pernicious. They may be one of the most widespread, lethal and long-lasting forms of pollution we have yet encountered and it is a major battle to protect civilians from their effects.

The Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) have used anti-personal mines (APMs) which are largely confined to the conflict affected northern and eastern regions of Sri Lanka. According to UN sources, there is a high level of contamination both in urban and rural areas of the Jaffna peninsula. Many areas in the Wannu suffer similar constraints and some areas in the East. The problem of landmines are more acute in areas which have been fought over by opposing forces, where each side has established strong defensive positions and especially where those positions and the ground separating them have changed hands. APMs cost between US\$3 and US\$30 to purchase. It costs between \$300 and \$1000 to remove a single mine.

Landmines and poverty make a devastating combination. People returning home and the probability of landmine related incidents occurring become higher. In rural areas, where health facilities are weak, the poorest of the poor are the most severely affected. Landmine survivors are often totally dependent

on immediate family members for continued survival. Landmines are particularly catastrophic for children whose small bodies cannot withstand the horrific injuries they inflict. In almost all cases, victims of landmines suffer the loss of one or more limbs. In most agrarian societies, the loss of a limb makes it impossible for a person to carry out normal economic activities.

Mines destroy livelihoods and deny access to land, water resources, schools, and pathways. Those who depend on animal husbandry move about with their herds to find pasture. Sometimes they become landmine victims and often their livestock are also killed making what is often a precarious existence even more difficult. Mines hinder sustainable development, particularly agricultural production, and cause environmental blight. The social and economic costs are enormous. The United Nations Environment Programme (UNEP) found that landmines, as one of the most prevalent remnants of war, can affect the ecological balance by disturbing the soil, destroying vegetation, killing animal life and introducing poisonous substances into the environment. Until this legacy of wartime is cleared, it will be difficult for development in affected areas and certain sectors of the Sri Lankan economy to achieve their full potential.

Human rights activists believe that the use of APMs is a violation of existing international humanitarian law. The weapon is inherently indiscriminate, and its military benefits are far outweighed by the long-term human and socio-economic costs.

In recognition of the immense humanitarian suffering caused by anti-personnel landmines at the present time, including the loss of lives, limbs and livelihoods of men, women and children, there is a need to highlight the a need to make use of the ceasefire and opportunities afforded by the peace initiatives currently underway:

- to stop forthwith the further laying of anti-personnel landmines as part of the peace process,
- request that anti-personnel landmines already laid, and whose locations are known to the parties concerned, be cleared expeditiously to enable a return to normal civilian life.
- make a public declaration of renunciation of the use of landmines in the future

In this connection we need to draw the attention of the parties to the conflict, as well as the public to the Ottawa Convention, which calls for the ban on the use of anti-personnel landmines. The Ottawa Convention is the first treaty in history to ban a weapon that has been widely used by military forces throughout the world. This convention also bans the production, stockpiling, use and trade of all anti-personnel mines. We need to call for an abandonment of landmine use by GoSL and LTTE that will be effective even in the unlikely event of a breakdown of the current peace process and a return to conflict.

Human Security

Human security is central to the post conflict peace settlement process. Human security has also been presented as a means of reducing the human costs of violent conflict. In his recent Road Map paper Kumar Rupesinghe defines human security as ' the freedom from pervasive threats of people's rights and ensuring the safety of lives. The Canadian human security agenda identifies a number of priority areas, which are crucial to the protection of civilians. They are protection for war-affected children, the resettlement of IDPs, human rights capacity building, including the deployment of civilian human rights monitors, early warning and conflict prevention, and the elimination of landmines. Kumar Rupesinghe continues that the Sri Lankan state has not been able to protect the security of any of its peoples. The protracted conflict between GOSL, the LTTE and other militant groups resulted in a situation where the entire population of the North and East were at risk. The peoples in the South also suffered gross human rights abuses. I would add that the Prevention of Terrorism Act of 1979 was one of the root causes of the deterioration of human security in Sri Lanka and led to the sacrifice of thousands of its youth in the interests of state security.

Human Rights

The Sri Lankan Government and the LTTE have a long history of repressing human rights. Despite its rhetoric, the Government did not do enough to protect civilians caught up in the war and covered up their suffering. The humanitarian crisis was hidden not only from Sri Lankans but also from the international community. IDPs long remained pawns of the military dynamics of the Sri Lankan conflict. These included restrictions on their movement, transport of essential supplies to areas under militant control, an economic embargo, location of IDP camps close to military installations and the use of civilians as human shields. The Guiding Principles on IDPs was often followed in Sri Lanka more in its breach than in its application. The ban on access for the media to the war zones benefited both sides of the conflict to the prevent outside world from learning the truth, which could have contributed to accelerating an end to the conflict.

Another positive development coming out of the peace talks of is the decision by the Government and the LTTE to avail of the services of Mr Ian Martin, former Secretary General of Amnesty International and presently Vice President of the International Centre for Transnational Justice. This decision vindicates the consistent position taken by many peace and human rights activists to bring human rights into the agenda of talks at the very outset. As the fifth round of talks are held this week in Berlin, rights groups are pushing for a separate memorandum of understanding on human rights between the government and Tamil rebels, to be monitored by a committee of foreign and local experts. The current memorandum between the two sides, in force since early last year, covers the ceasefire and is monitored by a Norway-led committee. Human rights activists believe that unless human rights issues are discussed, the credibility of peace talks would be at stake. Further to this it would be useful to

negotiate a human rights agreement that would act as a kind of charter covering issues like freedom of speech, expression, women and children's rights, and right to dissent. Similar agreements have been implemented in other war-torn countries like Guatemala and El Salvador.

The February talks will take up the issue of human rights and allegations of large-scale conscription of children by the LTTE - who at the last round of talks said they were "not recruiting" youngsters and would not do so in the future. Public acknowledgement since then by the LTTE at the Press Conference that it had recruited and deployed child soldiers in the past and that it would cease to do so is a welcome sign. During a three-day visit to Sri Lanka last week, U.N. Children's Fund (UNICEF) executive director Carol Bellamy won the latest assurances from the rebels that they would not recruit children to their ranks. But she conceded that similar assurances have been given in the past - and that the Tigers have not always followed up their words with deeds. "I have been involved in these things long enough not to be naive about assurances, whether from the government or from non-state parties," she said. She also said the LTTE could prove it is serious about stopping recruitment - and about returning child combatants to their families - by developing a concrete action plan. "We are however hopeful the LTTE will keep to its word," she added. It is however imperative that this pledge be translated into practice. Some 350 children have been returned by the rebels to their families since November 2001, while 730 reported cases of child recruitment yet to be resolved, says UNICEF. The Ceasefire Monitoring Mission has said there is evidence of the Tigers conscripting more than 300 children up to November. Save the Children Norway, a child rights group, estimates that the LTTE could have anywhere between 2,000 to 4,000 child combatants.

LTTE also made a public commitment to allow other political parties to function without hindrance. Recent reports of abductions of cadres of other Tamil political parties, as well as the campaign to oust the EPDP from Jaffna peninsula, do not augur well to the LTTE's efforts at establishing its credentials and legitimacy as an organization undergoing a process of transformation from a military organization to a political formation. A burden lies with the LTTE to recognize the norms of pluralism and human rights as well as the fundamental right to dissent and freedom of expression. This could be done by initiating a dialogue with its adversaries and strive towards healing and reconciliation within Tamil polity and society. Likewise, a burden lies with non-LTTE ex-militant Tamil groups to reciprocate and extend their utmost cooperation to the on-going peace process in the interests of its own people and not allow themselves to be manipulated by forces inimical to their interests. Analysts say the LTTE's change into a non-militant force - which it committed to in earlier peace talks -- will not happen overnight. In this context, they said, civil society and other groups need to enter into dialogue with the LTTE on human rights issues. 'An answer to the human rights issue lies in civil society pressure building up in the north itself - the area most affected by the conflict -- against rights violations, there is no other way,' says Jehan Perera, Media Director of the National Peace Council.

The commitment of the GoSL and the LTTE to the protection and promotion of human rights as a part of the on-going peace process has been defined as one of the key items on the agenda for the February 2003 meeting. This commitment should be articulated through the creation and signing of a separate Memorandum of Understanding on Human Rights between the two parties. There is also a need to incorporate some sort of implementing and monitoring mechanism to include practical strategies for application, including fielding of international human rights monitors.

The affirmation of the commitment of both parties to human rights is critical at this particular juncture because of the inherent threat posed to the peace process in its entirety by a failure to address issues of human rights as an integral part of the on-going negotiations. The continuing neglect of this aspect of peace building will only pave the way for those who oppose the peace process to highlight violations and thereby undermine the process of negotiations.

Among the other elements that need to be considered at this stage of the negotiations are:

- the creation of an independent human rights mechanism within both the government and the LTTE Peace Secretariat offices for receiving and monitoring complaints regarding human rights violations and for ensuring redress;
- the strengthening of existing mechanisms – such as the regional offices of the National Human Rights Commission – within the context of the peace process and in the areas of the north and east where the regional offices are operative, to enhance their capacity to receive complaints of human rights violations and ensure redress;
- the establishment of independent regional human rights monitoring mechanisms in areas under LTTE control;
- the conceptual linking of human rights and humanitarian standards;
- the incorporation of human rights standards and principles in the work of the Sub-Committee on Immediate Humanitarian Needs and in all development aid being disbursed to the north and east;
- to adopt the Guiding Principles on Internal Displacement as official policy for assisting internal displaced persons affected by the conflict and commit SIHRN and other entities to bring their policies and programmes into alignment with these principles;
- a specific focus on issues of equal access and equal opportunity for all communities irrespective of sex, ethnicity language or belief, in the disbursement of benefits and reparation as a part of the process of reconstruction, rehabilitation and resettlement;

- The creation of independent and inclusive dispute-resolving mechanisms at the community level, with the concurrence of both parties to the conflict and other community-based organizations, to deal with issues of inter-ethnic and inter-community tension and violence that fall outside the range of the Sri Lanka Monitoring Mission's mandate;
- The involvement of civil society actors in all mechanisms set up under the peace process to monitor and record allegations of human rights abuse, to provide relief and to resolve disputes at the local and community level;
- The inclusion of women's human rights concerns into the mandate and Terms of Reference of the Women's Committee established to ensure the consideration of gender issues in the peace process;
- The commitment to include consideration of human rights implications in all mechanisms set up as a part of the peace process, including in the Sub-Committees looking at 'political' matters;

In conclusion, it must be stressed that despite the positive climate for peace, serious human rights abuses are reported. To be highlighted in particular are extortion, abduction and forcible recruitment of children by the LTTE, continued detention under the PTA, torture and harassment by the security forces and police even outside of the conflict affected areas, communal violence between Muslims and Tamils and Muslims and Sinhalese and the rights of IDPs. I believe that the commitment of to respect human rights will be one of the most obvious and verifiable indicators of genuine long-term intent and irreversible determination to move towards accountable compliance of internationally recognized human rights norms. Effective mechanisms to monitor human rights will be required to demonstrate this commitment and capacity.