

HUMAN RIGHTS ISSUES RELATING TO THE PEACE PROCESS

1. At the fifth session of peace talks in Berlin 7-8 February 2003, the parties agreed to ask their international Human Rights Adviser to draw up a road map for human rights issues relating to the peace process, for discussion in the sixth session of talks in Japan. It would include:

- substantive human rights activities and commitments to be implemented throughout the negotiation process
- effective mechanisms for the monitoring of human rights
- training of LTTE cadres and GOSL officials in human rights and humanitarian law
- training of police and prison officers.

2. The parties have agreed that human rights will constitute an important element of a Final Declaration. Sri Lanka is a party to most international human rights and humanitarian law treaties. The LTTE has declared its acceptance of international humanitarian law. New constitutional arrangements should fully reflect Sri Lanka's international commitments, and should provide firm foundations for institutions to protect human rights effectively in a federal structure within a united Sri Lanka. These commitments include collective rights and individual rights, and embrace economic, social and cultural rights as well as civil and political rights.

3. The parties have recognized that the process will be a long and demanding one, and have stated that throughout the process they will continuously monitor the ground situation, thus enabling necessary action to be taken at all stages to ensure further progress. A human rights road map should remain flexible and operate as a guideline for the parties and those supporting the process from outside to ensure progress on human rights activities and commitments along with other issues. It has been found in other peace processes that human rights measures can play an important confidence-building role and contribute to the overall success of the process, so progress on human rights issues should not be limited by progress in other areas.

I. Stabilization stage

4. The parties have already discussed within the peace talks a number of issues with major human rights dimensions:

4a. Internally displaced persons

The parties have determined that an immediate priority is to accelerate the resettlement and rehabilitation of internally displaced persons. They have stated that the needs of the displaced Muslim population will be duly accommodated in the resettlement process. They have recognized the need to address ways and means to ensure the return of private property, and matters relating to the occupation and cultivation of land. In discussions with UNHCR regarding refugee return they have noted that conditions conducive to return require improvement of physical, legal and material security, and addressing the

specific protection and assistance needs of women, children and other vulnerable groups. The Guiding Principles on Internal Displacement provide a human rights framework for continuing to address the situation of IDPs, and continuing international advice and assistance is available through UNHCR, which can recommend modalities based on experience in other post-conflict countries for resolving land and property issues.

4b. Prisoners

The status of Tamil prisoners held under the Prevention of Terrorism Act has been discussed. In the Ceasefire Agreement the parties agreed that search operations and arrests under the PTA shall not take place and that arrests shall be conducted under due process of law in accordance with the Criminal Procedure Code. Many but not all of those held under the PTA have been released. Past emergency regulations and the PTA have been criticized by the Human Rights Committee established under the International Covenant on Civil and Political Rights, to which Sri Lanka is party. The GOSL might wish to establish a process for reviewing existing legislation with a view to its repeal and replacement by anti-terrorism provisions which conform fully to Sri Lanka's international obligations, and the parties might consider further how the cases of all remaining prisoners could be reviewed in accordance with such standards.

4c. Women

Having acknowledged the need to ensure that the priorities and needs of women are taken into account in all aspects of the peace process, the parties have established the Sub-Committee on Gender Issues. The SGI at its first meeting proposed to formulate Gender Guidelines for the Sub-Committees and other mechanisms associated with the peace process. Sri Lanka is a party to the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, and the rights of women should be fully reflected in the development of human rights commitments and activities, including training.

4d. Children

The parties have stressed the need to improve the situation for children affected by the armed conflict. Sri Lanka is a party to the Convention on the Rights of the Child. Inspired by the international norms protecting the rights of the child, the parties have underlined that children belong with their families or other custodians and not in the workplace, whether civilian or military. The LTTE has issued written instructions to ensure no under age recruitment takes place and has reiterated its commitment to redress the problem of past under age recruitment. It is engaged in a partnership with UNICEF to draw up an action plan for restoring normalcy to the lives of children of the north and east affected by war.

4e. Missing and disappeared persons

The parties have recognized the need for efforts to clarify where possible the fate of persons missing in action and involuntary disappearances. The Human Rights Commission of Sri Lanka has appointed a Committee to inquire into disappearances and removal of persons from their residences in the Jaffna District during the period 1996-1998 and during the year 1990. In accordance with the concerns of relatives, the parties may wish to identify other priority groups for special efforts requiring mutual cooperation, which the ICRC would be willing to assist.

Training

5. The parties have indicated a wish to consider training for LTTE cadres and GOSL officials, and for police and prison officials. The Human Rights Commission of Sri Lanka is mandated to promote awareness of, and provide education in relation to, human rights. Such efforts should be intensified throughout Sri Lanka, in order to contribute to reconciliation and respect for the rights of local minorities. In the context of the peace process special efforts should be made in the north and east, focussing as agreed on LTTE cadres and GOSL officials, and on police and prison officials. These should utilize the expertise of different organizations in particular areas: UNICEF in child rights, UNHCR in rights pertaining to IDPs, ICRC in international humanitarian law, etc. Coordination is necessary in order that training programmes should be prioritized according to the wishes of the parties, and can reflect a degree of harmonization appropriate to an eventual federal structure within a united Sri Lanka. The parties might invite the UN Resident Coordinator to undertake such coordination, and necessary resource mobilization, through the Human Rights Adviser to the UN Country Team, who has access to the experience and resources of the Office of the High Commissioner for Human Rights. An immediate training needs assessment should be carried out in conjunction with both the GOSL and the LTTE. If it is agreed to establish a human rights mission on the ground its functions should include training as well as monitoring.

Human rights commitments and monitoring

6. The human rights commitments which have already been made and are in the process of implementation are significant ones. A degree of human rights monitoring is already in effect through the general mandate of the Human Rights Commission of Sri Lanka and the work of its regional offices, and through the SLMM. While the SLMM is primarily a ceasefire monitoring mission, its responsibility in the districts it covers includes human rights issues, primarily through Article 2.1 of the Ceasefire Agreement, which provides that: "The Parties shall in accordance with international law abstain from hostile acts against the civilian population, including such acts as torture, intimidation, abduction, extortion and harassment." However it is expected that the process of negotiations will be a long one, before ultimate human rights commitments and their implementation will form part of agreed constitutional arrangements. The parties have therefore been willing to consider the proposal that commitments in the stabilization stage might be consolidated and extended in a preliminary human rights agreement. Such an agreement,

which could form the basis for effective monitoring, has precedent in other peace processes where it has been judged to contribute to positive outcomes.

7. Such a preliminary agreement could not be comprehensive with regard to all the international obligations which could be reflected in an eventual constitution. As regards collective rights, the parties have committed themselves to explore a solution "founded on the principle of internal self-determination in areas of historical habitation of the Tamil-speaking peoples, based on a federal structure within a united Sri Lanka." The parties should also express their commitment to promote economic, social and cultural rights, including the right to work, the right to an adequate standard of living including adequate food, clothing and housing, the right to health, the right to education, and the right to take part in cultural life. As a party to the International Covenant on Economic, Social and Cultural Rights, Sri Lanka is committed to take steps, to the maximum of its available resources, and with international assistance and cooperation, to achieve progressively these rights. These rights should be reflected in all relevant sectors of the needs assessment to be presented to the June donors' conference.

8. A preliminary agreement might address core rights which would enable basic human rights and humanitarian law standards to be monitored in practice, together with rights of particular relevance to the peace process. Core rights might include:

- Freedom from discrimination
- The right to life
- Freedom from torture, forced disappearance and abductions
- The right to liberty
- The right to a fair trial
- The right to effective remedy
- Freedom of movement, freedom to choose a residence, and the right of return
- Freedom of thought, conscience and religion
- Freedom of expression, association and peaceful assembly

Rights of particular relevance might include:

- Children's rights
- Women's rights
- Rights of IDPs and refugees
- Minority rights
- Landmines
- Rights of disabled persons

9. The parties have recognized the need for effective monitoring. This is desirable throughout Sri Lanka. In the post-transitional stage, monitoring should be undertaken by effective domestic institutions. Amendments to the mandate of the Human Rights Commission of Sri Lanka are being considered to enhance its effectiveness, and technical cooperation can assist in the development of its capacity, initially in the south. However in the context of the peace process, effectiveness requires special arrangements in both government-dominated and LTTE-dominated areas in the north and east, with international involvement. It is for the parties to consider the nature of international involvement they may wish to invite.

10. To be regarded as effective, the mandate of any human rights monitoring mission should reflect criteria which have been relevant to the effectiveness of monitoring arrangements elsewhere. These should include authority to:

- Receive communications from any individual, group of individuals or body, containing reports of human rights violations
- Visit any place or establishment freely and without prior notice
- Interview freely and privately any individual, group of individuals or members of bodies or institutions
- Collect by any means it deems appropriate such information as it considers relevant
- Make recommendations to the parties on the basis of any conclusions it has reached with respect to cases or situations.

In giving their support to effective monitoring, the parties should agree:

- To ensure the security of members of the mission and of such persons as may have provided it with information, testimony or evidence of any kind
- To give their earliest consideration to any recommendations made to them.

11. A human rights field mission should have the dual functions of training and monitoring. Its awareness of human rights problems on the ground and its contacts with local representatives of the parties and officials would enable it to define further training needs, and to work with others to deliver such training. Together with the parties, it should also plan and carry out an educational and informational campaign on human rights to which the parties are committed by the agreement.

II. Transitional stage

12. The following matters regarding human rights will need to be addressed as part of the new arrangements for a federal structure within a united Sri Lanka:

- Entrenchment of human rights standards in the constitution and federal and local law
- Legislative reform to ensure consistency with these standards
- Ensuring effective protection for those who are in a minority situation
- Ensuring that institutions which will promote and protect human rights have a clear place in the new arrangements and that their operation covers all levels of government
- Arrangements for policing which is accountable, representative, responsive to local needs and trained in human rights standards
- A judiciary which is representative, trained in human rights, and with guarantees of independence.

13. To build towards such arrangements, the following preparatory steps could be taken:

- The parties could encourage wider civil society, including diaspora, discussion of these issues, and study of best-practice examples from other countries
- The parties could consider whether any additional ratifications or lifting of reservations to international human rights treaties may be appropriate (Sri Lanka is not yet party to the major treaties regarding refugees, landmines and the International Criminal Court)

- Existing legislation which is not fully in conformity with Sri Lanka's international human rights commitments should be reviewed and amended
- Efforts for the full implementation of language parity should be intensified
- Training programmes for officials, courts, police and prisons could be further designed and developed as the negotiations on new arrangements proceed
- Human rights education could be incorporated in the curricula of schools
- Human rights awareness should be an important element of public information campaigns by the parties and by civil society to support the peace process, and to ensure the level of public participation necessary to ensuring that the human rights abuses of the past are prevented in future.

14. Measures responsive to the concerns and needs of the relatives of those missing or involuntary disappeared, and of victims of torture and other past human rights violations, should continue to be developed. The question of how issues of acknowledgement and accountability are going to be addressed will need to be considered before entering the post-transitional stage.

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