Human Rights and the Peace Process

Centre for Policy Alternatives
&
Berghof Foundation for Conflict Studies

13th February 2003

Introduction

The Centre for Policy Alternatives (CPA), and the Berghof Foundation for Conflict Studies organised a seminar on 'Human Rights and the Peace Process' on 13th February 2003 in Colombo, Sri Lanka. The conference not only looked at a durable cease-fire incorporating human rights norms, but informed by a background paper by Dr. Alan Keenan, looked at the broader implication of human rights in the peace process, 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.

Dr. Paikiasothy Saravanamuttu, Executive Director of the Centre for Policy Alternatives (CPA), in his welcome address, underscored the importance of recognizing various perspectives on how human rights should be treated and the modalities of addressing them within the peace process. He also emphasized the importance of a holistic approach to human rights and said that economic and social rights have to be addressed together with civil and political rights. Dr. Saravanamuttu also spoke about the question of sequencing human rights into the peace process – whether human rights should be mainstreamed into the peace process as an integral part of every document and agreement, or whether there should be a separate human rights agreement, like in El Salvador.

Background Paper

Dr. Alan Keenan, who spoke after Dr. Saravanamuttu, presented his paper, which is reproduced at the end of this report.

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."

Presentation of Prof. G.L. Peiris, Minister of Constitutional Affairs, on 'Bringing Human Rights into the agenda of the peace talks'

Speaking about the present stage in the peace process, Prof. Peiris said that as we approached the first anniversary of the Ceasefire Agreement between the Government and the LTTE was approaching, it was important to recognise the positive changes that had taken place as a result of it.

He said that the peace process needed to be underpinned by public confidence, and that it had to be carried out with the consultation of the people. Questions and doubts about the peace process, he said, needed to be addressed in order for a sustainable and durable peace. He also spoke about the importance of a peace dividend, and the fruits of that peace dividend reaching the masses.

Speaking about the recent incidents in Delft and Manippay, which some commentators said tested the resilience of the CFA, Prof. Peiris said that there was no incompatibility with the protection of national security, the integrity of the State and the peace process. The protection of national sovereignty and the peace process, he said, went together, and was enshrined in the CFA as well.

Speaking on human rights, Prof. Peiris said that along with the process of democratisation, a durable and lasting solution had to incorporate human rights norms. However, he said, human rights needed to be enforced on the ground. With regard to the LTTE and Child Soldiers, he said that what was needed now was the LTTE to move beyond the rhetoric and agree to a monitoring and enforcement mechanism to ensure that children are not recruited as armed combatants.

He said the presence of Mr. Ian Martin, former General Secretary of Amnesty International, as human rights advisor to both parties in the peace process, was important. Ian Martin, he said, was formulating a blueprint for strong, effective and credible enforcement mechanisms for human rights as part of the peace process.

Speaking about the various taxes levied by the LTTE, he said that the matter had been brought up during the negotiations, and that the LTTE was responsive to the concerns of the government. He also said that it is important to realise that the LTTE was in a process of transformation, from a militant organisation to one that is now grappling with the complexities of democratic governance.

He spoke about the necessity of international exposure when it came to the LTTE, and said that to cloister them in the jungles of the Vanni was a short-sighted vision. He said it was important to expose the LTTTE to experiences outside their own. This, he went on to say, was not legitimising the LTTE, but rather helping them grapple with the complexities of the peace process.

Speaking on the realisation of both parties to begin discussion on the core political issues, he said that there was a clear indication by the LTTE to discuss issues related to fiscal federalism in the near future.

Speaking about the critics of the present process, he questioned as to whether they had an alternative to the current process. War, he said, was not an option, and he asked those who were against the

process to come up with alternatives, rather than undermine the legitimacy and effectiveness of the steps initiated by the present government.

Plenary

Dr. Norbert Ropers, Director, Berghof Foundation for Conflict Studies, who facilitated the session, said immediately after the presentation that there was now the need to go beyond the moralistic approach to human rights and instead see human rights as an instrument of transformation.

In the Plenary, participants asked Prof. Peiris about human rights and human security in the North-East. Some asked about the freedom of movement of the possible UNICEF monitoring team, and whether they would be able to go into LTTE held areas. Other said that the money collected by the LTTE was far in excess of what was needed for organisational transformation. Another participant said that the people should be in control of the peace process, not merely the Government and the LTTE. Others spoke about the lack of political will to address the issue, and also spoke about the need to recognise the violations of human rights by the State. Integrated with a holistic approach to human rights, some participants also said that there was also a need for reconciliation within and between communities in Sri Lanka.

In response, Prof. Peiris said that the peace process was not underpinned by the dynamic of power at the top of the political spectrum, but rather, hinged on the support of people who were empowered to make their voice heard. The whole impetus of the peace process, he said, was shaped by the support of grassroots communities in favour of a sustainable peace.

Presentation by Hon. Milinda Moragoda, Minister of Economic Reforms, Science and Technology, and member of the Government negotiating team, on 'Human Rights and the Peace Process'

Minister Moragoda, speaking on the peace process, said that the more difficult issues of the peace process were now being addressed. Speaking of a human rights framework, Mr. Moragoda said that there should be a bottom-up approach to human rights, given that there are some segments of the population who doubt the ability of the Government to enforce the law in the North-East.

He spoke about the lack of a bi-partisan approach, which he said, is not conducive to conflict transformation or dispute resolution. Issues that undermine the credibility of the peace process, he said, needed to be addressed urgently.

He also spoke about the Sub-Committee on Immediate Humanitarian and Rehabilitation Needs in the North-East (SIHRN). He said that it was critical that the SIHRN was able to deliver a peace dividend in real terms. In light of the heightened interest in economic issues, he also said that careful management of the economy was needed in the coming months to help support the peace process.

He spoke about Dr. Anton Balasingham' s visit to Sri Lanka before the next round of the peace talks, and said that this was important since he would then familiarise himself with issues and political processes on the ground.

Plenary

Ms. Kumudini Samuel, a member of the Advisory Committee on Women, said that gender concerns needed to be mainstreamed into the entire peace process, and not merely be the prerogative of the Women's Committee. An effective monitoring mechanism was also identified by her as important in engendering human rights in the North-East. The fact that women, and everyone else, had multiple identities, she said, needed to be recognised as part of the peace process. She also said that any new constitution needed to address human rights and gender rights. Speaking of the decision making power and affirmative action needed to empower women, she also said that the voices of the masses needed to be heard as part of the present peace process.

Giving an overview of the discussions that had taken place earlier, Dr. Norbert Ropers said that there was a consensus that more effective mechanisms to implement and monitor human rights was needed in Sri Lanka. He also said that there was not much said about addressing human rights on the Track I level, between the government and the LTTE. However, he also said that a augmented interest in human rights could result out of Ian Martin's input into the peace process.

He also emphasised, as had Dr. Saravanamuttu earlier, that one needs to take a holistic view of human rights in Sri Lanka. He stressed the need for a multi-party, multi-stakeholder approach to human rights and the need to integrate the past to deal with grievances.

Voices from the plenary emphasised that the meaning of human rights is multi-faceted. Tamils in Sri Lanka, it was mentioned, had a long history of disappointments with governments which did not uphold their basic rights. Promises made by successive governments had not been kept, and this has diminished the credibility of those in power. The people, it was re-iterated, were tired of waiting for an elusive peace dividend. It was also stated that the perspective of the victim needed to be brought in to the human rights discourse.

Participants re-iterated the need to go beyond the emphasis placed on human rights in the North-East and treat it as an issue of pivotal importance to the entire country.

With respect to Child Soldiers, one Tamil participant said that one cannot be too belligerent about this issue, and must instead think about addressing it with a view to decreasing child recruitment in the future. It was said that harping on the ills of child recruitment for short-sighted political gain was inimical to the peace process. Furthermore, it was also stated that not all children in the LTTE are soldiers.

Peace it was mentioned, was not going to magically manifest itself in Sri Lanka – the need to engage all communities and religious bodies was emphasised in the plenary.

Another Tamil participant also spoke about the regimentalised society in the North-East – and said that the peace process needed to look at the process of normalisation of life for people in the areas which had seen the brunt of the conflict. This was also important since it was identified that the process of de-militarisation will open up the space for human rights. Here, it was emphasised that the LTTE needed to open up areas under its control in the North-East.

Other participants underscored the public confidence in the peace process, a confidence that had grown in the past one year. That said, they also said that the process design needed to urgently look at spoiler dynamics and also how to deal with issues that could undermine the sustainability of the peace process in the future. The mechanics of a broader consultative process that underpins the peace process was also flagged as important, especially in the Eastern Province. The process design, it was pointed out, needed to proactively engage with the dynamics of conflict transformation.

The principal violator of human rights in Sri Lanka, it was pointed out, was the State. Through language and other discriminatory policies, it was pointed out that the State had for decades thwarted the aspirations of the Tamil community.

Responding to some of these issues, Minister Moragoda agreed that the Army needed to be sensitised with a awareness of human rights to help it engage with a process of conflict transformation.

Speaking about a peace dividend, he said that what was most easily forgotten was the fact that the guns were silent for a year. However, he also said that the peace dividend needed to be felt by all people, without which the public support for peace could diminish in the medium to long term.

Speaking about SIHRN, and the comment made by a participant that it was a body without a soul, he said that SIHRN was an experiment in progress and that there were many obstacles to cross. He was however optimistic about the future of SIHRN, and said that its mandate was not an easy one. One has to, he said, have realistic expectation of the peace process, and not be too optimistic. Agreeing that there was still a great deal of confusion, Minister Moragoda said that the ultimate success of SIHRN lay with the effective delivery of its mandate.

With regard to child soldiers he said that it was necessary to understand why the LTTE recruits children. Understanding, he said, did not mean acceptance, and he emphasised that the process of negotiations would continue to address this issue.

Participants also warned of the danger of being co-opted into a government initiative to engage civil society in the peace process.

Responding to some of queries raised, Minister Moragoda agreed that language was an important issue that needed to be dealt with as a matter of urgency. Alienation on account of not knowing the operational language of the administration, would, he said, have to become a thing of the past.

He also underscored the importance of civil society. He admitted that the first year was one in which issues were dealt with as they came, with no clear road map or process design. To bring out a clear process design, he said that the involvement of civil society was of pivotal importance.

Some participants said that one of the spoilers of the peace process could be the mothers whom children were forcibly taken by the LTTE. Speaking about the importance of a grassroots level confidence in the peace process, Minister Moragoda said that the involvement of the public in the peace process was vital. This would also, he said, negate the efforts of spoilers who are against the peace process.

Responding to a question whether there was trust between the LTTE and the government, Minister Moragoda said that while both sides still have their guards up, suspicion had fallen in the past year. Trust building he said, will necessarily take a long time, since the process of demonisation had gone on for decades.

However, another participant said that even after one year, the emphasis was on trust building between the government and the LTTE, not the government and the people, or the LTTE and the people.

Another participant said that the government should perhaps educate the people on the elusive nature of a short term peace dividend. This would, the participant said, allay fears of the masses that the peace process is not resulting in any improvement to their livelihoods.

Answering a query from a participant about problems facing the law & order in the North-East, Minister Moragoda re-iterated that soldiers were not trained for peace, and that sensitising them for a process of conflict transformation might take time. However, he also said that maintaining law and order did not endanger the peace process, rather, it strengthened it.

Minister Moragoda also agreed that the people had become very cynical about the peace process simply because expectations had not been met, and promises not kept. People, he said, were burdened with economic issues and the rising cost of living, and these needed to be addressed if one were to look at the long term durability of the peace process.

Many participants spoke about the Manippay incident, where a female LTTE cadre's military belt was forcefully removed by the Army when she tried to enter government controlled area. Participants questioned the course of action by the army, and felt that it was perhaps a matter best handled by the SLMM. On account of the Army's action, many said that there was a feeling of insecurity and scepticism on how peace process had developed. Some other however were of the opinion that the military belts were 'oppressive' and 'provocative' and symbols on intimidation, and that it was right of the Army to insist on removing them.

Others said that we had yet to figure out a strategy to deal with human rights violations in the peace process. In the absence of an SLMM mandate to look at human rights issues, participants felt that a

monitoring mechanism needed to be setup urgently. Continued human rights violations, they said, could severely cripple the peace process.

Some participants also expressed concern that money collected by the LTTE was actually going into buying arms.

Dr. Keenan, responding to some of the comments from the plenary, said that there was a pragmatic argument to incorporate human rights into the peace process. He said that it was important to avoid the mistakes of the previous attempts at peace – for instance, trying to alienate the LTTE from the people in the North-East.

Closing the discussions, Mr. Kethesh Loganathan, Director, Centre for Policy Alternatives, observed that though there was much discussion on the peace process in general, there should have been more discussion on the integration of human rights into the peace process. More discussion and debate on the issue of human rights was necessary, he said.

- ENDS -

Centre for Policy Alternatives and Berghof Foundation for Conflict Studies

Seminar on 'Human Rights and the Peace Process'

AGENDA

9.00 am	-	Welcome by Dr. Paikiasothy Saravanamuttu, Executive Director, CPA
9.10 am	-	Background paper on Democratising Human Rights, Strengthening the Peace: Sri Lanka's Historic Challenge, by Dr. Alan Keenan
9.45 am	-	Prof. G.L. Peiris, Minister of Constitutional Affairs, on 'Bringing Human Rights into the agenda of the peace talks'.
10.15 am	-	Plenary discussions facilitated by Dr. Norbert Ropers. Director, Berghof Foundation for Conflict Studies
11.00 am	-	Tea Break
11.15 am	-	Hon. Milinda Moragoda, Minister of Economic Reforms, Science and Technology, on 'Human Rights and the Peace Process'.
11:45 am	-	Responses from the panelists
12:15 am	-	Plenary discussions facilitated by Dr. Norbert Ropers, Berghof Foundation for Conflict Studies
1.15 pm	-	Concluding Remarks by Kethesh Loganathan, Director, Conflict and Peace Analysis Unit, CPA

LUNCH

CPA / Berghof Road Map Workshop – Background Paper
13 February 2003
Dr. Alan Keenan

"Democratizing Human Rights, Strengthening Peace: Sri Lanka's Historic Challenge"

1

Throughout the last quarter of 2002 and into the first months of 2003, the frequency and volume of complaints of human rights violations, together with worries about their possible impact on the peace process between the LTTE and the Sri Lankan government, have been increasing. Specific allegations by various parties, as well official findings by the Sri Lankan Monitoring Mission, have been made against the LTTE. In addition to various technical violations of the ceasefire agreement, there have been complaints, and much evidence, of forced recruitment of child soldiers, forced "contributions" to LTTE finances, economic pressure and violent attacks on Muslims on the east coast, and the harassment, assassination, abduction, and involuntary "disappearance" of members of Tamil political parties opposed to the LTTE. The Government, in turn, has been found guilty of ceasefire violations, and accused of rights violations of its own, ranging from the continued occupation by the security forces of temples, schools, and private homes, the deadly shootings of Tamil protestors by police, the failure of police to stop Sinhala attacks on Tamil demonstrators in Trincomalee, the failure to adequately investigate such police actions and inactions, and the continued detention of scores of Tamils under the draconian Prevention of Terrorism Act. Allegations have also been made that various Muslim, Sinhala, and Tamil groups, some perhaps with links to government security forces, have been fomenting ethnic violence and carrying out abductions and extortion to be blamed on the LTTE.

The announcement at the conclusion of the Berlin session of peace talks that the Government and the LTTE have asked Ian Martin to draft a set of human rights standards, designed to help direct further progress towards a negotiated settlement, must surely be considered a positive sign. One can hope that such a decision expresses a new commitment by the negotiating parties and their Norwegian facilitators to make human rights protections an integral part of the official peace process. Constituting a public promise of commitment to certain guiding principles for their political conduct, the announcement of the willingness of both the LTTE and the government to be bound to an independently formulated set of human rights standard offers Sri Lankan civil society a rare window of opportunity for further democratization of Sri Lankan political life. However, given that respect for human rights standards doesn't come naturally to either the Sri Lankan government or the LTTE, it will be up to local civil society organizations, hopefully with international support, to make the most of this new opportunity. Only serious engagement and sustained pressure by citizens and civil society groups can insure that any rights framework that is agreed upon actually begins to make a tangible difference in the ways that ordinary Sri Lankans experience the power of the State and of the LTTE. What progress has been made on this front so far, one can plausibly argue, has come largely as a

reaction to the growing publicity and pressure about human rights and ceasefire violations by both parties.

As we look ahead to what civil society can and should be doing to give human rights issues a greater role in the peace process, there is much to be learned from reflecting on recent experience in Sri Lanka, especially over the past year of ceasefire. While there have been numerous and consistent pronouncements from almost all corners of civil society to the effect that the respect of basic human rights is essential to lasting peace, and while planning has been done for various forms of civil society peace and human rights monitoring, very few concrete or coordinated actions have been taken – or even forceful statements made – in response to specific violations of those rights or to the underlying structures that make them possible. There continues to be great reluctance throughout Sri Lankan civil society to translate the general commitment to human rights norms into effective action in defense of rights.

In what follows, I will briefly examine what might explain such resistance and what it might tell us about the basic relationship between "human rights" and "conflict resolution" or "peace building." I will be arguing the perhaps obvious point that the difficulties that Sri Lankan civil society has had in making forceful and effective interventions in defense of basic human rights over the past year has much to do with the nature and history of the conflicts that have produced human rights violations in the first place. The dynamic of reciprocal polarization and lack of trust within "civil society" must itself be reversed if effective interventions are to be possible. For this to become more possible, I will argue, a more explicitly <u>democratic</u> conception of human rights would be useful. By emphasizing the ways in which Sri Lankans of all communities have a shared experience of being subject to unaccountable power, discourses of human rights could simultaneously act as tools of conflict resolution, thus helping to lay the ground work for cross-ethnic solidarity and mobilization around their shared interest in democratization.

2

Speaking out about human rights violations and unaccountable power is, of course, never an easy or pleasant task in any society. In a country that has experienced three decades of violent conflict, in which independent political voices and civil society organizations have been deliberately targeted for elimination, speaking up in defense of rights can often be a dangerous act. The murders over the last few years of Kumar Ponnambalam, Neelan Thiruchelvam, and the journalist Milvaganam Nimalrajan – all of them human rights activists in their different ways – testify to this fact. More specific to our topic today, there has been the general anxiety expressed by many supporters of the peace process – across all ethnicities and of all political persuasions – that pressing too hard on human rights violations, especially those attributed to the LTTE, risks weakening the peace process, given that the promotion of human rights standards have not been high on the priority list of any of the parties involved in the negotiations. In addition, many people clearly fear being branded a "spoiler," or unprincipled opponent of the peace process, if they were to point out a failure to respect human rights by either of the parties to the negotiations. Allegations of human rights violations, especially when they are lodged

against the LTTE, and regardless of whether those making the claims are Sinhalese, Muslim, or Tamil, are frequently dismissed as merely weapons of partisan political warfare, rather than genuine expressions of concern or ethical commitment. For some Sinhalese political activists and civil society leaders, in addition, worries about their possible lack of credibility as Sinhalese who claim to be concerned about the rights of Tamils have kept them from speaking up forcefully about violations by the LTTE directed against fellow Tamils. Many have chosen to let elements of Tamil civil society – e.g., leaders of the Catholic Church – take the lead on such issues. Unfortunately, such reluctance has ceded a large portion of the discourse of "human rights" to precisely those elements opposed to the compromises and accommodations necessary to a lasting and just peace: i.e., the so-called "spoilers."

Among many politically active Tamils, in turn, there has in the past been an often expressed public position that the primary – perhaps sole – job of human rights defenders is to challenge state power, rather than that of non-state entities like the LTTE. Whatever legitimacy this argument might have had, it becomes less persuasive the more the LTTE's state-like character grows. Behind such positions, though, there exist more substantial ideological and psychological issues at work. To the extent that they see the political struggle of the LTTE as just, many Tamils – and even some Sinhalese – are reluctant to criticize the LTTE for fear of giving their opponents rhetorical ammunition and thus reducing their bargaining power vis-a-vis the Sinhala dominated government. Others, while expressing regret about LTTE rights violations, nonetheless see them as necessary tactics, without which the Tamil people's rights could not be secured. Following what is perhaps a universal psychological pattern, this defense of the LTTE is reinforced by the absence of any widespread acknowledgment among Sinhalese of the terrible violations of human rights and humanitarian law by government security forces, and by the lack of effective efforts by the Sinhala dominated state to hold those who have committed and ordered such actions accountable under the law. The most egregious recent example of this failure was the acquittal this past November by an all-Sinhala jury of the soldiers accused in the Maylanthennai massacre case – a case that took ten years to complete!

3

But what exactly are human rights? Debates that seem to be between those in favor of giving a central role to "human rights issues" in the peace process and those opposed to such a role, can sometimes also be understood as debates over the best or most appropriate definition of human rights, or over which kind or set of rights are most in need of protection. To make sense of today's debates over rights violations and the proper role of human rights issues in the peace process, then, one must be aware of the different philosophical conceptions of human rights – and of how they should best be protected – that are at work in political discourse. "Human rights" are notoriously difficult to define and often effectively refer to whatever one feels is necessary to human dignity or to treatment as an equal human being. Nonetheless, it is possible to draw out of the contemporary debates over human rights and the peace process three major lines of argument, which, depending on one's dominant

political principles, and at times one's partisan allegiances, give emphasis to different strands of the larger (if rather fractious) family of human rights.[1]

The first of these approaches emphasizes the collection of civil and political rights that emerged out of the western political tradition of liberalism. Attaching to the individual, such rights include the right to life, the right against arbitrary arrest and imprisonment, the right against intrusion into one's private space or property, the right to due process of the law, freedom of religious belief or conscience, freedom of speech, and freedom of assembly. Such "negative" rights either protect against encroachment by the state or other groups into a "space" considered as belonging entirely to the individual, or else guarantee the tools for individuals to be active citizens and political participants. It has generally been the violation of these sorts of rights that have been cited by critics of the LTTE (and, prior to the ceasefire, by critics of the government).

The second major strand of human rights evoked in contemporary debates concerns those rights to basic dignity that often come under international humanitarian law: i.e., the right of refugees to shelter, food, and protection against attack, and today, their right to return to their properties and to be provided with the basic social infrastructure necessary to a decent existence – land free of mines, roads that can be driven, schools with roofs, hospitals with medicines and doctors. These rights, while endorsed by all parties to the conflict, are emphasized most strongly today by the LTTE in their demands for a speedy "return to normalcy" for the millions of people's who lives have been disrupted by decades of war.

Finally, there is the most fundamental right that the LTTE says it has been struggling for from its beginning: the right of "self-determination" for the Tamil people. This right, unlike the previous sets of rights, whether humanitarian or civil and political, attaches not to individual Tamils, but to the Tamil "people" as a whole. It is the right of the Tamil people, or "nation," to rule themselves as they see fit, free from interference or oppression from other communities. One can argue that it was in part the long history of gross violations of Tamils' <u>individual</u> rights – to life, property, equal opportunity – by successive Sri Lankan governments' that reinforced the long-standing belief among many Tamils that neither individual nor "minority" rights are sufficient to guarantee their freedom and equal dignity. From this perspective, Tamils are a nation, not just a minority, and deserve recognition as such. This is in part so as to guarantee the fundamental democratic right to have an equal and active role in one's own governance (which has been denied in practice due to the majoritarian characteristics of the Sri Lankan political system), as well as for pragmatic reasons of collective self-protection. (For others, of course, it is also for reasons of respect, out of a particular belief in Tamil "nationness" and attachment to what is taken to be an essential collective identity.)

It might seem to some that the existence of these different uses and conceptions of "human rights" render it a hopelessly ambiguous and contestable term, without much use or purchase in situations like Sri Lanka's present one. In what follows, I want briefly to suggest otherwise. Indeed, one can

[1] It is worth noting here that for the sake of simplification and time I am leaving out of consideration an entire other category, that of socio-economic rights. While such rights do not play a direct role in contemporary debates over the role human rights in Sri Lanka's peace process, they are nonetheless bound up in Sri Lanka's conflicts in essential, but complicated, ways.

make a strong case that at least in Sri Lanka's case today, conflict resolution and human rights – of all varieties – are two sides of the same coin. More specifically, I want to suggest that a more fully democratic conception of rights can help show us the way out of our present impasse over rights and peace.

The first step in the way out, I would suggest, is for human rights advocates frustrated with the lack of action on violations by the LTTE to recognize that from the perspective of the LTTE and their supporters, their struggle is a human rights struggle. Thus, while it is indisputable that the LTTE has violated the first set of civil and political rights, LTTE officials and supporters can plausibly – if incompletely – argue that they are in fact committed to human rights and are fighting for nothing else but their achievement, whether through a state of Tamil Eelam or through some form of federalism. However, the issue can't simply be left there. For central to the appeal of the Tamil nationalist struggle and to the goal of "self-determination, is a democratic ideal: the ideal of the Tamil people ruling themselves, governing their own affairs, freed from Sinhala domination. For that struggle to be a truly democratic struggle that leads to a democratic outcome, however not all means are permissible. The collective rights of the Tamil people don't trump or do away with individual rights; in fact, they actually need those rights in order to make (democratic) sense. Certain basic civil and political rights have to be respected even for the collective right of self-determination to be internally consistent.[2]

Central to the democratic ideal is the idea that the powers given to political representatives and state office holders 1) are given only on trust, or as a loan, and 2) are never given completely. Instead, they must be supplemented by the people's active involvement in their own governance, monitoring, challenging, advising, and ultimately, when necessary, replacing those who temporarily make use of the people's power. A democratic, or democratized, conception of human rights, then, would include: 1) the right of individuals to organize themselves and to act politically, independent of and even in opposition to the government or to quasi-governmental powers; 2) the right to hold those in power and the institutions of the state accountable, both in the sense of making sure that the wishes and interests of the majority and of the common good are respected, and in the sense of preventing and/or punishing abuses of rights and excesses of power; and 3) all the specific liberal rights necessary to achieving these general democratic rights: i.e., rights of speech and publication, of political association, of bodily integrity, etc... In short, the establishment and preservation of independent spaces for citizen power are definitive of democratic politics.

4

By violating the basic principles of democracy, the LTTE's monopoly on power and intimidation of their opponents – while perhaps theoretically defensible in a time of war – renders their liberation struggle internally contradictory. Yet while the LTTE and their opponents will tend to make reference to different conceptions of human rights, it is important that the violence and denial of rights that brought the LTTE and other militant groups into existence not be forgotten. Anyone who uses the language of

[2] I am bracketing for now the exceedingly complex issue of how to integrate the democratic rights to "self-determination" of other groups within any area to be ruled by "the Tamil nation." This question, especially with respect to the rights of Muslims in the Eastern Province, is of crucial practical and theoretical importance, but is beyond the scope this paper.

human rights merely to undermine the LTTE without acknowledging this history is also being inconsistent.

Thus, when considering the relationship between human rights and the peace process, it is important to emphasize the perhaps obvious point that human rights violations have always been at the heart of Sri Lanka's violent conflicts, giving them energy and propelling them forward. As a direct legacy of British colonial rule (in itself perhaps the most fundamental crime against human rights of all), there was a slow accumulation of violations of Tamils' collective and individual rights from almost the beginning of Sri Lanka's political "independence." This built from the disenfranchisement of hundreds of thousand of so-called "Indian" Tamils, to the denial of equal opportunity resulting from "Sinhala Only" and "standardization" of university admissions policies, through various incidents of state-permitted and ultimately state-sponsored violence against Tamils, culminating in the events of July 1983. (It is important to remember, though, that severe human rights violations in Sri Lanka have never been limited to violence and oppression of Tamils – the rights of individual Sinhalese, and of whole classes of poor and "lower" caste Sinhalese, have also been violated by the State and non-state agents in brutal and systematic ways.) After "1983" there came the massive violations of basic human and humanitarian rights during the war, as well as in the name of 'security.' Virtually unrestricted powers given to the "security" forces by the PTA and by Emergency Regulations not only led to great suffering and uncounted violations of rights, they also helped produce the very "terrorism" and violent militancy they were officially designed to curb. (And once again, the years of uprising and counter-insurgency from 1987-1990 showed that such violations weren't directed only at Tamils.)

Indeed, the decades of war, LTTE violence, and the State's counter-terrorism, produced an explosion of rights violations from all sides, which have further divided Sri Lankan society and politics in multiple ways. What the basics of conflict resolution theory – or simple common sense – tell us is that the choice of violence as a form of resistance – particularly in the brutal and no-holds barred form it has taken among Tamil militant groups – produces its own rights violations that often help fuel and maintain the conflict in multiple ways. In the case of Sri Lanka, such violence has generated specific grievances – for example, the Central Bank bombing, the bombing of the Temple of the Tooth, the 1990 LTTE killings of Muslim worshippers in mosques in Kattankudy and Eravur and murders of possibly hundreds of Sinhala policemen – around which the anger and intransigence of many Sinhalese (and, it seems, increasing numbers of Muslims) can coalesce. This then makes it easier for Sinhalese and Muslims to avoid confronting the violence and injustice done in their name by their often self-appointed "representatives." Such violence has also silenced, often through killing, the more accommodating voices among Tamils interested in trying to create bridges with those Sinhalese and Muslims committed to a democratic settlement for all.

From this perspective, then, one make a strong pragmatic case that sustaining the momentum of the peace process requires strong human rights interventions by civil society and citizens' groups. Such interventions are necessary precisely to <u>weaken</u> the power of so-called "spoilers": by making claims that are more balanced and accurate, one can help remove the discourse of human rights, with all the moral and political legitimacy it brings with it, from their control. Indeed, chief among the tasks of those committed to a political solution based on some kind of a federal model is to figure out a ways of isolating hardliners on all sides. In particular, it is crucial to prevent LTTE violations from empowering

anti-accomodationist positions by Sinhala and Muslim groups. Stronger human rights pressure and monitoring of the LTTE could, in this sense, help reassure others that the LTTE is bargaining in good faith, thus putting greater pressure on less accommodating elements among Sinhalese. That is, strong human rights monitoring would help reduce the likelihood of a scenario that some have worried about, in which human rights violations by the LTTE deepen suspicion among Sinhalese and/or Muslims to such an extent that it becomes impossible to achieve consensus among Sinhala political parties – or agreement from Muslim leaders – in favour of federalism, a failure which would then give greater legitimacy to an LTTE exit from the peace process and a possible return to the demand for Eelam.

For human rights pressures and criticisms to be effective, however, they must not be one-sided. It is thus equally important to control and reform the Sri Lankan security forces and police, so as to prevent the kind of abuses that only strengthen the long-standing belief of many Tamils that the only protection they have is through an armed and unfettered LTTE and ultimately a separate state. In this context, the killings of Tamil protestors by Special Task Force officers outside their camp in Kanchirankuda in October were particularly disturbing, as were the reports – made most forcefully by the University Teachers for Human Rights in their Information Bulletin No. 29 – that the police in Trincomalee aided and abetted Sinhala violence, leading directly and indirectly to the deaths of Tamil citizens. Perhaps equally disturbing has been the lack of transparency of the official investigations into the incidents. The report into the Kanchirankuda shootings by the Committee headed by retired Air Force Vice Marshal Harry Goonetilleke remains secret to this day. Any investigations that might have been made into the role of the police in the violence in Trincomalee have also not been made public. There is, finally, the continued existence of the Prevention of Terrorism Act, which only awaits the failure of the peace process to once again be in force, with all the damage to civil and political rights – especially for Tamils – that it brings with it. Thus just as pressure must be brought to bear on the LTTE to respect democratic principles and the rights of all those in areas over which it wields influence, so too the Sri Lankan state must be challenged to let go of its most draconian and anti-democratic powers.

Human rights violations committed by all sides have thus helped to close down the space for mutual understanding and agreement across ethnic and ideological divisions, even among those whose dedication to human rights and democracy are otherwise unquestionable. The challenge for proponents of human rights and democracy, then, is to produce discourses and practices of human rights that address violations from all sides and help initiate a process of de-escalation and trust-building, independent of the LTTE and the Sri Lankan government, that can expand democratic space for all Sri Lankans.

To build this kind of middle ground, however, will require pressurizing the government not only with respect to specific abuses – past, present, or future – committed by the police or armed forces. It also requires that the government and the entire Sinhala-dominated political establishment begin to do the work of making Sri Lanka a more democratic nation in which all its citizens, regardless of their ethnicity, religion, or language, receive equal treatment and have equal opportunities. This would require, to begin with, renewed efforts around language rights and hiring and educational policies of the sort that the PA government promised to undertake in its early, more multi-cultural, years. Pressing for these sorts of reforms – for example, finally ensuring <u>in practice</u>, not just on paper, that

Tamil-speaking people are able to lodge police complaints and receive government notices in Tamil, and not just in Sinhala – would seem a role tailor-made for President Kumaratunga and the PA, allowing them to redeem their best promises, and with it some of their political honor.

As part of this, the government and Sinhala parties must be strongly encouraged to initiate and support processes that address the legacy of inequality and suffering experienced by Tamils and other historically marginalized groups. Right now the peace process has very little to do with processes of reconciliation or collective reflection on the suffering undergone and wrongs done to the members of the different groups that make up Sri Lanka. Indeed, as I have gone about my research on human rights issues in Sri Lanka over the past three years, I am repeatedly struck by how little knowledge or recognition there is among even well-educated Sinhala people of the historical grievances of Tamil people. This is in part a result of the decades of censorship of the war and of politically sensitive news, of the Sinhala-centric nature of the country's history curricula, and of the lack of direct and obvious costs of war for most Sinhalese, especially those in the opinion-making, politically influential classes. Yet it is clearly also in part a result of the violence and terror sowed by the LTTE. We can witness the same tragic process as it gains momentum in Israel and Palestine, whereby the use of terror as a political weapon de-legitimates the collective grievances of a people and allows their historical experience of injustice and suffering to be forgotten or repressed.

5

My basic point, then, is that 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.

The agreement by the LTTE and the government to sign on to an independently developed human rights framework offers a unique opportunity for getting these processes underway. There is now an opening that must be seized and expanded before it begins to recede and old patterns re-assert themselves. In conclusion, I would like to offer six specific recommendations for how civil society could make the most of this opportunity.

1. While the international community can and should support such work, both politically and materially, the energy, moral legitimacy, and political force of human rights interventions can only come from Sri Lankans themselves. It is important that human rights issues not be so bureaucratized – by committees, and reports, and workshops – that they lose their political

and moral force, and leave untouched the central question of how undemocratic power can be made accountable. Human rights issues mustn't only be left to the formal and institutionalized channels of the government, the LTTE, and international donors: Sri Lankans of all ethnicities know only too well not to place their trust in formal legal channels. And the experience of Bosnia, Rwanda, Palestine and Cambodia should also teach Sri Lankans not to place excessive trust in the expertise and good intentions of "the international community." The democratization of human rights will thus require that Sri Lankan civil society organizations also learn how to hold the international donors accountable for their actions.

2. One of the strange and difficult aspects of the peace process and the extended "interim" process it has brought with it is the fact that large portions of Sri Lankan law and their attendant bureaucracies have effectively been suspended. We see one, less worrisome form of this development in the way in which the various committees and subcommittees of the government, the LTTE, and donors are taking over previously governmental functions. More worrisome is how this effects fundamental civil and political rights: the uncertainty and quiet struggles over jurisdiction between LTTE and governmental police and court systems have placed residents of the north and east in very difficult situations, not knowing to whom to report problems or violations, or what the actual relationships are between the SLMM, the police, the army, LTTE structures, and the two competing court systems. This has disturbing long term implications, especially given the fact that even under less confusing situations neither the government nor the LTTE has been terribly good about respecting people's rights. (Particularly worrisome to many has been the apparent refusal of the Sri Lankan police to pursue complaints and evidence against LTTE cadres for fear of disrupting the peace process or violating the ceasefire.) Any system of human rights monitoring that might emerge from Ian Martin's human rights framework must devise ways of clarifying the relationships between the various systems and agencies involved and establishing clear lines of accountability. Otherwise, the present interim period threatens to ratify Sri Lanka's patterns of impunity and thus confirm Sri Lankans' deepening cynicism about the rule of law.

3. On a related point, any system of human rights monitoring must make it a priority to establish a system for the effective protection of witnesses and complainants. This has long been a central problem for anyone seeking to challenge the impunity with which those in power are able to commit crimes and human rights abuses. People must be made to feel that it is safe – or at least safer than it is now – to make complaints or testify about human rights violations. Without guarantees of protection, even the best designed system of monitoring will be of little use. Addressing the problem is a task for which the international community, with its greater resources and distance from the site of the conflicts, would seem ideally suited. Perhaps arrangements for temporarily removing witnesses and complainants from the country, or a system of internationally monitored safe houses, could be negotiated by international donors. Establishing something along these lines will be a test of the real commitment of foreign donors, and of the Sri Lankan government and the LTTE, to the principles of the rule of law and accountability.

4. As a companion and support to any monitoring system set up under the auspices of the official peace process, I would urge the formation of a committee of concerned Sri Lankans who would commit themselves to speak out regularly and strongly on specific human rights issues and incidents, whenever and wherever they happen. Composed of a cross-section of well-known Sri Lankans, from all ethnic backgrounds and from all political persuasions, together with internationals who know the Sri Lankan situation well, the aim would be to move from the general endorsements of the value of human rights protections to specific appeals and interventions in case of violations by <u>any</u> side. The aim, once again, would be begin to expand the space within which people are able to hold those in power accountable for their actions. If those in positions of intellectual and ethical authority begin to assert this democratic right, it might begin to establish a precedent that other Sri Lankans could begin to follow.

5. It is important, however, that any such interventions be made in an appropriate tone and language. Rather than moralistically denouncing violations and anyone who refuses to speak out against them – as is the unfortunate tendency of much human rights reporting, both in Sri Lanka and elsewhere – the guiding spirit of any civil society interventions should be to hold the government and the LTTE (and any other relevant groups) accountable to their own professed democratic ideals and commitments. Without being naive about the structural nature of Sri Lanka's human rights violations, or hiding the true seriousness of the challenges faced, human rights interventions should nonetheless resist the temptation to address the LTTE or the Sri Lankan police and military as if they are irredeemably anti-democratic and opposed to human rights. With respect to the LTTE in particular, it is important to explore the possibility that the continuing violations of rights attributed to their cadres are due at least in part to the organization's lack of political experience and expertise. While continuing to hold the LTTE accountable for the actions of all its members, and demanding concrete actions – not just promises – that demonstrate its commitment to democratization, it is not implausible that "human rights capacity building" projects and trainings could begin to make a difference in their behavior. A less moralistic approach towards the LTTE could also help in building bridges across ethnic and political divides by increasing the space in which human rights claims can be articulated by Tamils without them seeming quite so direct a challenge to LTTE.

6. Finally, I offer one closing suggestion for making human rights discourse in Sri Lanka less partisan and less moralistic, and thereby opening up greater space for cross-ethnic coalitions in defense of human rights and democracy. I would suggest that the various anti-LTTE Tamil political parties – including the EPDP – should begin a process of internal self-criticism, in which they start to acknowledge, and ultimately apologize for, their own anti-democratic and violent excesses, especially when armed and supported by previous Sri Lankan governments. I would also urge the Sinhala politicians and military who armed them and exploited their existence to accept their responsibility for the crimes committed and anti-democratic legacy left in their wake. Only then will their justified criticisms of LTTE attempts to close down any existing space for political alternatives, or even dissent, be able to heard clearly – and not simply dismissed as hypocrisy, motivated only by the desire to regain lost political power. Whatever human rights framework emerges from the official peace process should include some process for collective reflection within individual parties and organizations, and within

particular ethnic communities. Only then will better relations across communities begin to be possible.