

OLD WINE IN NEW BOTTLES :

RETURNING OF OLD AUTHORITARIANISM IN THE NEO-LIBERAL ERA

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LAW & SOCIETY TRUST

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OLD WINE IN NEW BOTTLES : RETURNING OF OLD AUTHORITARIANISM IN THE NEO-LIBERAL ERA¹

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Introduction

Delivering a lecture titled 'Populist Challenge to Human Rights' at the London School of Economics, UN Special Rapporteur on extreme poverty and human rights Philip Alston made the following remarks :

“...the challenges the human rights movement now faces are fundamentally different from much of what has gone before. This does not mean, as scholars have told us, that these are ‘the end times of human rights’, that human rights are so compromised by their liberal elite association that they are of little use in the fight against populism, or that we have entered ‘the post-human rights era’. Nor does it mean that we should all despair and move on, or that there is a ‘desperate

1. The views expressed in the article are those of the authors and do not necessarily represent those of the Trust or its Board.

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*need' to find tools other than human rights with which to combat the many challenges brought by the new populism combined with an old authoritarianism with which we are all too familiar."*⁴

According to Alston the new populist challenge is based on the old authoritarian arguments of national security, sovereignty and economic nationalism⁵. These arguments are being propagated by present day populist world leaders such as President Donald Trump of the United States, Prime Minister Narendra Modi of India, President Duterte of the Philippines, President Jair Messias Bolsonaro of Brazil, President Andrzej Duda of Poland and President Janos Ader of Hungary. It is the same argument that was used in the pro-Brexit debates.⁶ According to Alston an increasingly diverse array of governments expressing the desire to push back against key pillars of the international human rights regime are emerging as a powerful and energetic 'coalition of the willing'⁷. Throughout history there have been coalitions that challenged human rights, but in the past the United States and other leading Western and Latin American governments

4. Phillip Alston. "The Populist Challenge to Human Rights." in *Journal of Human Rights Practice*, Volume 9, Issue 1, (2017): 1–15.

5. Ibid.

6. Timothy B. Lee. "Brexit: the 7 most important arguments for Britain to leave the EU," [www.vox.com](https://www.vox.com/2016/6/22/11992106/brexit-arguments), accessed November 15, 2018, <https://www.vox.com/2016/6/22/11992106/brexit-arguments>.

7. Phillip Alston. "The Populist Challenge to Human Rights." in *Journal of Human Rights Practice*, Volume 9, Issue 1, (2017): 1–15.

have held steadfast against such sentiments. Although we are all aware that they were not apolitical acts with were carried out with the sole objective of promoting human rights, there was a public commitment to protect human rights. On the contrary, the challenge at this time is emanating mainly from the camp that earlier portrayed themselves as human rights protectors.

In Sri Lanka too, there is a conception in the public and private sectors that human rights is an inconvenience that interferes with development.⁸ This paper analyzes three labour struggles that took place in Sri Lanka during the recent past (the Telecom manpower strike, Manpower strike in the Ruhunu Magampura Port and the strike in the Associated Battery Manufactures of Ratmalana) with the objective of identifying the economic phenomena that gave rise to these rights issues and to explore the relationship between these phenomena and the anti-human rights discourse.

We can clearly identify a common thread that binds all three of the aforementioned labour struggles together, i.e. the practice of hiring 'manpower' from the manpower supplying agencies. Therefore it is important to review the historical evolution of the practice of hiring manpower through third party manpower supplying agencies before exploring the each labour struggle further.

8. Radhika Coomaraswamy. "International Human Rights: Dispelling the Myths," <https://groundviews.org>, accessed November 15, 2018. <https://groundviews.org/2014/08/28/international-human-rights-dispelling-the-myths-by-radhika-coomaraswamy/>

Paradigm Shift in Labour?

The first manpower supplying agencies in Sri Lanka came into existence in the early 1980s right after the open economy was introduced to the country.⁹ Today, most of the private sector institutions as well as many public sector institutions have turned to manpower supplying agencies to fulfill their manpower requirements. The clearly identifiable, formal employer-employee relationship model that existed in the classical factories emerging in the modern industrial capitalist societies¹⁰, was made complicated with the introduction of the manpower supply agency. These agencies became the third party in labour relations, and they created new complexities.¹¹ The challenges faced by the Keynesian economic model in the 1960s gave rise to this new employer-employee relationship model.¹² Rigidity in employer-employee relations; social protection responsibility assigned to the state; and organized trade union action by the labour force were identified as barriers to the economy. Accordingly, the idea that government interventions in the market should be

9. Vidura Munasinghe, *Reimagining 'The Worker' and Resistance in the Neo-Liberal Era* (Colombo: Law & Society Trust, 2018), 13.

10. In the early industrial capitalist societies where the modern factories were first emerged the form of employment available was regular, fulltime, wage employment with strict hierarchical control of the factory management. Edgell, Stephen. *Sociology of Work: Continuity and Change in Paid and Unpaid Work* (London: Sage Publications, 2006), 1-27.

11. *Ibid.*

12. David Harvey. *Spaces of Neo-Liberalism: Towards a Theory of Uneven Geographical Development*. Hettner Lecture 2004, Franz Steiner Verlag, 2005. <https://d-nb.info/974905585/04>

minimized was formulated on the premise that the government is not in a position to receive sufficient information that would enable it to infer market signals (prices). Hence labour processes, labour markets, goods and consumption patterns were changed dramatically in order to make them more flexible¹³ and thereby favorable to the employer and less favorable to the employee. These changes were based on the belief that the interests of mankind are best furthered by liberalizing individual entrepreneurial rights under an institutional framework shaped by stronger private land rights, open markets and free trade. These beliefs constituted a form of market fundamentalism. Today this politico-economic ideology is known as neoliberalism. Deregulation of the labour market is an essential aspect of market fundamentalism based on flexible accumulation¹⁴.

This process of deregulation commenced in Sri Lanka with the introduction of the open economy in 1977. During the past four decades, deregulation has been implemented via three main approaches in Sri Lanka :

1. Introducing anti-labour, pro-capitalist legislative and policy interventions;
2. Introducing new and diverse forms of working arrangements, which make worker identity complicated and exclude them from the fixed-term labour force

13. David Harvey, *A Brief History of Neo-Liberalism*, (Oxford: Oxford University Press, 2006), 76.

14. *Ibid.*

(thereby getting rid of employer responsibility towards workers);

3. Disempowering the trade union movement.¹⁵

Now we can examine the three aforementioned labour struggles (which had resulted due to the practice of hiring manpower through third party manpower supplying agencies) in the light of deregulation of labour markets under neo-liberalism.

Three Labour Struggles

Sri Lanka Telecom (SLT) started using outsourced manpower as far back as 1988.¹⁶ During the early stages, Sri Lanka Telecom hired workers from private manpower supplying agencies. But in 2008 a subsidiary company to SLT by the name of Sri Lanka Telecom Manpower Solutions was formed exclusively for the purpose of procuring manpower required for SLT¹⁷. Later on Sri Lanka Telecom Manpower Solutions was renamed as SLT Human Capital Solutions, but 100% of the ownership of the company remained with SLT¹⁸. Accordingly there were two types

15. Vidura Munasinghe, *Reimagining 'The Worker' and Resistance in the Neo-Liberal Era* (Colombo: Law & Society Trust, 2018), 12.

16. 100% of the work at SLT was not outsourced. Only part of the workforce was hired through outside manpower supplying private companies. This created two types of workers within SLT (SLT workers and manpower workers). Most of the times these workers carried out same duties at SLT although they were hired by different employers.

17. Gurusinghe, Interview, August 15, 2018.

18. Sri Lanka Telecom, <http://slt.lk>, accessed November 11, 2018, <http://www.slt.lk/en/about-us/profile/subsidiaries>.

of workers within SLT, i.e. permanent SLT workers (workers directly recruited to SLT) and workers hired through SLT Human Capital Solutions. But both types of workers carried out same duties.¹⁹ Permanent employees of SLT enjoyed higher pay, better bonuses, job security and all the other perks attributed to the semi-government workers while manpower workers (workers from SLT Human Capital Solutions) who performed the same duties did not receive any of these additional perks and received only 1/3 of the monthly salary earned by SLT permanent workers.²⁰

In the case of the Ruhunu Magampura Port, the employees of the Port at the very outset were recruited not by the Ports Authority²¹ but by a manpower company called Magampura Management Limited that was created by the Ports Authority.

19. The Permanent workers and the workers hired through a manpower supplying agency employed by SLT work in the same work station and under the same supervisors. They receive the same training. They use the same fingerprint scanners to clock in and out of work. The only difference is that one group enjoys lesser rights than the other.

20. Comparing the salaries and benefits of the two categories of workers: A SLT worker is entitled to an annual bonus of Rs. 180,000 while they are paid Rs. 320 per hour of over-time work but a manpower worker receives an annual bonus of Rs. 80,000 and is paid Rs. 170 per hour of over-time work. A permanent worker receives Rs. 14000 monthly as a food and transport allowance, a Rs. 1000 medical allowance and Rs. 7000 annually for medical testing. They also are entitled to a concessionary housing loan of Rs. 1,000,000 and a motorbike loan of Rs. 40,000 but the manpower workers are not entitled to any of these perks.

21. This has been a trend even in the Colombo harbor. As in the Sri Lanka Telecom, Colombo harbor has two types of workers i.e. government workers (workers recruited to Ports Authority) and private workers (workers hired through private manpower supplying companies). In Ruhunu Magampura Port 100% of the workers were hired through a subsidiary company created under the Ports Authority.

Their appointment letters stated that they would be made permanent employees of Magampura Management Limited after the completion of a three-year probation period. However after the new government came into power in 2015²², workers came into know that government is planning to hand over the Ruhunu Magampura port to China for 99 year lease²³. This news came to light in mid 2016 and the workers became agitated as they feared for their job security given that they were not directly by the Ports Authority but by the Magampura Management Ltd. Manpower agency.²⁴

While Sri Lanka Telecom is a semi-government institution and Ruhunu Magampura Port was a government institution, the Associated Battery Manufactures is a private company under Indian ownership. For the past 6 - 7 years, this company too has continued the practice of hiring manpower through third party manpower supplying agencies in addition to regular permanent workers. Hazardous and difficult work was assigned to manpower workers who were also burdened with longer day shifts as well as

22. Ruhunu Magampura port was constructed by the former government headed by President Mahinda Rajapakse from a \$307Millon loan granted by the Chinese government' Export-Import Bank. Rajapakse's government lost power in the 2015 elections.

23. The rumors of handing over the Ruhunu Magampura port to China first appeared in mid 2016. On 09th December 2017 Sri Lankan government formally handed over the port to a joint venture set up by China Merchant Port Holdings Company and Sri Lanka Ports Authority for 99 year lease. According to the agreement China Merchant Port Holdings Company owns 85% of the joint venture and the Sri Lanka Ports Authority owns 15%.

24. Sagara, Interview, July 22, 2018.

most of the night shifts despite and they were paid comparatively lower salaries.²⁵

Precarious Labour and Labour Struggles

Over 2000 SLT Solutions workers have continuously demanded to be recruited directly to Sri Lanka Telecom and in December 2016 these workers launched a strike action that lasted for over three months. Over 1200 workers were actively engaged in this strike action.²⁶ In December 2016, the Ruhunu Magampura Management Ltd. workers launched a *Satyagraha* movement²⁷ demanding to be recruited directly to the Ports Authority. This movement later turned into a strike action. During the course of their trade union action workers forcibly held two ships from leaving the port and this resulted in the Sri Lanka Navy using force to control the situation, framing it as an act of piracy.²⁸ Similarly, the workers of the Associated Battery Manufactures initiated their strike demanding to be recruited directly to the factory.²⁹

25. Ibid.

26. Gurusinghe, Interview, August 15, 2018.

27. Satyagraha is a particular form of non-violent resistance developed by Mahatma Gandhi which became popular in many freedom and civil rights movements.

28. "Hambanthota Port employees continue strike action," Newsfirst.lk, accessed October 6, 2018, <https://www.newsfirst.lk/2016/12/09/hambantota-port-employees-continue-strike-action/>

29. Lenus Jayatilake, Interview, July 15, 2018.

The challenges faced by these workers throughout the entire period of these trade union actions clearly demonstrated the precarious nature of 'manpower labour'. When workers are hired through manpower agencies, they have to canvas their rights with the manpower agency that recruited them while the company to which they actually supply their labour has no responsibility towards them. Accordingly, manpower workers who were employed at these three companies - Sri Lanka Telecom, Magampura Port and Associated Battery Manufactures - had to deal with the management of manpower supply agencies (SLT Solutions, Magampura Management Ltd., the manpower agency from which Associated Battery Manufactures obtained workers) which recruited them rather than the management of the place in which they were employed, which were quasi-governmental authorities. Whenever there is an agitation over the issues of worker's rights, the management of their places of work could claim that 'we have no liability towards you' and transfer the matter to the manpower agency. This could result in the dismissal of the employees. When an employer seeks to fulfill their labour requirement through a manpower agency such as SLT Solutions or Magampura Management Ltd., which are subsidiary companies of their own institution, the mother company can terminate the service of all its employees by winding up the subsidiary company (which is a separate legal entity) without facing any adverse impact to the existence of the mother company. It is a well-known fact that precarious labour conditions produces 'tame workers' who continue to work tolerating even the harshest and most unfair working conditions.

Furthermore, lack of job security under these precarious labour arrangements become a decisive factor when fighting for worker rights. When Telecom manpower workers started their struggle they had to face all these challenges.

In 2011, both the permanent workers and the manpower workers at SLT had carried out a strike action for 10 days making several demands that included a pay rise and making their jobs permanent. However, only the permanent workers were able to successfully realize most of these demands while the manpower workers were offered only a meagre pay rise. Although 2015 interim budget and Prime Minister's parliamentary speech on the SLT issue in 2016 expressed the willingness to absorb the manpower workers who had completed a service period of 07 years to the SLT carder, it was never implemented.³⁰ This inaction from the part of the government occurred in a context in which the majority of the manpower workers had fulfilled the qualification needed to make an employee permanent (NVQ Level 4³¹) at Sri Lanka Telecom. Permanent workers did not join in the trade union action launched by manpower workers who feared that absorbing manpower workers into the permanent cadre would result in a reduction of the privileges and perks they were already enjoying.³² This was a fear that is constantly being

30. Gurusinghe, Interview, August 15, 2018.

31. NVQ (National Vocational Qualifications) is a nationally recognized vocational educational framework introduced by the Tertiary and Vocational Education Act No 20 of 1990. NVQ Level 4 is considered as the level of full national level craftsmanship. (http://www.tvec.gov.lk/?page_id=140)

32. Gurusinghe, Interview, August 15, 2018.

spread among the permanent workers by the management in order to divide the labour force.³³

Those who were recruited by the Magampura Management Ltd. to be employed in the Ruhunu Magampura Port were recruited with the condition that they will be made permanent only after the completion of a three-year probation period. Hence, they did not join the Satyagraha before the completion of the three-year period. Instead, it was their parents who joined the Satyagraha in their place.³⁴ They completed three years of service while the Satyagraha was going on and then they too joined the protest. On the fourth day of the strike, the management responded by issuing an ultimatum ordering that any employee who do not return to work by 2.00 p.m. on the next day would be considered a deserter. The first action taken by the management of Associated Battery Manufactures was to terminate the services of both the convener and the treasurer of the union.³⁵

Organized power of the workers or the political affiliations?

It is interesting to note how the politicians tried to exploit the precariousness of the manpower workers (especially in the cases of SLT and Magampura Port) to gain political mileage.

33. S. Rajapakse, Interview, May 22, 2018.

34. Sagara, Interview, July 22, 2018.

35. Amarasinghe, Interview, July 12, 2018.

The Magampura Management Ltd. had given these employment opportunities to people as a strategic move to ensure continuous support to the then government. The employees who accepted these employment opportunities were aware that their jobs are not secure unless the government remained in power. Since they were employees of a manpower company, the Ports Authority could, at anytime, wind up the manpower company. To prevent that from happening, it was obvious that they will continuously support the ruling party to secure their jobs.³⁶ It is believed by many that most of the people recruited to Telecom Solutions have connections to a particular political party and as a result there is a close connection between the politicians of that party and manpower workers³⁷. As a result workers tend to turn towards politicians more often to express their grievances instead of becoming a part of the workers movement and fighting collectively for their rights.

Trade union action of the Magampura Port workers had to be halted when the Labour Minister referred the matter to compulsory arbitration³⁸. Before the compulsory arbitration process makes any progress the authorities had been successful in getting the workers to consent to a solution convenient to them with the involvement of Bhikkus who were active in politics and

36. Sagara, Interview, July 22, 2018.

37. Gurusinghe, Interview, August 15, 2018.

38. Under the section 4 of the Industrial Disputes Act (Act No. 53 of 1950) Minister of Labour can order to settle a dispute by compulsory arbitration or industrial court.

have connections to various Ministers. Ultimately the workers had agreed to allow those with NVQ Level 4 qualification to be recruited to permanent service and accept a compensation amount of Rs.1 million each for the others. After the workers and authorities agreed to this settlement, compulsory arbitration process was no longer needed. This marked the end of the Ruhunu Magampura port manpower workers' struggle.

Nominations were called for the local government elections in the country during the same period³⁹ and the secretary of the trade union contested representing the Sri Lanka Podu Jana Peramuna (SLPP). This distracted him from his trade union activism. Few others who were actively engaged in organizing workers had become strong supporters of a Minister from the United Peoples' Freedom Alliance (UPFA). Although the NVQ4 was the agreed criterion to be given permanent positions, it was not applied uniformly in all the cases. Almost all the persons who were offered permanent jobs were from two Districts (Kaluthara and Hambantota). Kaluthara District got 40 permanent job opportunities while the workers from Hambantota were given 95 jobs. If a worker wanted to secure a job in one of these areas, they were compelled to become a supporter of either the then Minister in-charge of the Labour Department who represented the Kaluthara District or the Minister who was the most powerful

39. From 15th November 2017 to 18th December nominations were accepted for the Local Government Elections in Sri Lanka and the election was held on 10th February 2018.

United Peoples' Freedom Alliance politician from Hambantota District.⁴⁰ Also in the case of Telecom Manpower workers, politicians made many interventions based on the various connections they had with the workers. At one point a politician publicly stated that he is in a position to resolve this matter as he is the third most powerful figure in the government.⁴¹ Nevertheless, Telecom strike which was mobilized in a more urban political setting, took the shape of a more independent struggle and was stronger as a result of multiple interventions⁴². The 87 day strike which was later extended into a fast-unto-death had to stop when the Minister of Labour referred the matter for compulsory arbitration. With this move, the intensity of the struggle declined and later approximately 400 workers were absorbed into the permanent cadre. Sri Lanka Telecom organized a ceremony to hand over the appointment letters to the workers with the participation of politicians who sought to portray it as an act of benevolence.⁴³ Strike action carried out by workers of Associated Battery Manufactures (ABM) continued for 9 days and concluded with the suspension of all manpower workers employed at ABM. Unlike in the case of SLT, permanent employees also joined this strike displaying solidarity with the manpower workers. After

40. Ibid.

41. Gurusinghe, Interview, August 15, 2018.

42. Prominent trade union leaders, various civil society organizations actively supported the Telecom struggle.

43. L. Hemachandra, Interview, July 3, 2018.

the end of the strike, manpower workers were absorbed into the permanent service in small groups recruited from time to time. However, the days in which they carried out the strike had been considered as no-pay leave and their annual salary increment for the respective year has been withheld.⁴⁴ In all three labour struggles discussed in this chapter, the precarious nature of labour created by the use of manpower agencies is well evident. As a result, workers under the manpower labour arrangements have become apolitical ‘tamed’ workers who always depend on political patronage. Three activists who were engaged in these three struggles expressed their frustration as follows :

“What we organized was a worker’s struggle. But finally we had to go behind the politicians”

– **Trade union leader of the Magampura Port**

“We supported a trade union struggle. But now, some think this is not a victory gained by us but a gift from politicians”

– **Female activist who engaged in the Telecom manpower struggle**

“Although some manpower workers lost their jobs, some people were made permanent in their jobs. Workers believe that relieving the stress on workers even to some extent is an achievement.”

– **Leader of the mother union which was involved in the Associated Battery Manufactures strike**

44. Amarasinghe, Interview, July 12, 2018.

Neoliberalism and old authoritarianism

It is very clear that a new form of capital-labour relationship (hiring manpower through third party manpower supplying agencies) was created by the Neoliberalism and promoting flexible labour and deregulation has made the labourer more vulnerable. Also it has made it easier for labour to be manipulated by the ruling parties to suit their agenda, as the trade unions have been crippled and are now powerless. In sum, the vestiges of worker rights and democratic rights of the citizenry that remained in the country have been undermined defeated by the neoliberal economy. According to Alston, by the way it operates Neoliberalism is an anti-democratic phenomena.

“In the neoliberal view mass democracy is equated with mob rule. And this typically produces all of the barriers to capital accumulation that so threaten power of the upper classes in the 1970’s. The preferred form of governance is that of the ‘Public-Private Partnership’ in which state and key business interests collaborate closely together to coordinate their activities around the aim of enhancing capital accumulation the result is that the regulated get to write the rules of regulation while ‘public’ division making become ever more opaque.”⁴⁵

45. David Harvey, Neoliberalism and Restoration of class power, accessed September 22, 2018, <https://gsnas.files.wordpress.com/2007/10/harvey080604.pdf>

Thus, under the Neoliberal order, powerful semi-governmental bodies that control the central bank and fiscal power are created while the World Bank, International Monetary Fund and international trade associations are used at the international level to leverage control over these bodies. All of these powerful bodies exist outside the sphere of democratic controls and oversight by the people.⁴⁶ It is in this light we need to understand the present day anti-human rights populist ideas that have begun to dominate the discourse. Thus the arguments that are raised against the human rights in terms of national security, sovereignty and economic nationalism is an ideological front to legitimate the operationalization of an economic system which has no democracy, accountability and The close examination of the arguments raised against the labour struggles, the subject to discussion in this paper, it is very clear that the rhetoric of national security, sovereignty and economic nationalism has been used to crack down the struggles. When the unions of Sri Lanka Telecom and the Telecom Manpower Workers took union action, enjoining orders against them were obtained from courts claiming that their actions that they obstruct the public and thereby damage the economic activities of the country⁴⁷. In another, yet similar case, the claim was that the objective behind union action was to disrupt the functioning of SLT in order to sabotage its operations⁴⁸. In another instance, Sri Lanka Telecom

46. Phillip Alston. "The Populist Challenge to Human Rights." *Journal of Human Rights Practice*, Volume 9, Issue 1, (2017): 1–15.

47. Colombo Magistrate Court Case No. B 4132/16.

48. Colombo District Court Case No. Case No. 3/2017/DSP.

filed a writ application against the Sri Lanka Police stating that they did not take enough action against the protesters after obtaining an enjoining order from the Magistrate Court under section 106(3) of the Criminal Procedure Code⁴⁹. During the Telecom manpower struggle the repeatedly expressed refrain in the court cases and media briefings by the government was that workers are engaged in sabotage activities and are damaging the Sri Lanka Telecom properties.⁵⁰ In many instances government authorities accused the workers of behaving like ‘mob gangs’. When workers of the Magampura Port occupied the two ships preventing them from leaving the port, the Navy intervened claiming that the situation is an act of piracy and that the Navy has jurisdiction to intervene in such instances⁵¹. Expressing his views in this regard at Parliament, the Prime Minister Ranil Wickramasinghe stated that the situation is imposing a great burden on the national economy as a result of the consequent economic loss.⁵² Deputy Minister of Defense Ruwan Wijewardena justified the involvement of the Navy stating that port workers

49. “Sri Lanka Telecom files a writ petition against Police inaction over manpower employees”, accessed October 20, 2018, <http://www.dailynews.lk/2017/03/24/law-order/111439/sri-lanka-telecom-files-writ-petition-against-police-inaction-over>.

50. “Enjoining order against SLT trade union protests”, accessed October 18, 2018, <http://www.sundayobserver.lk/2017/01/15/business/enjoining-order-against-slt-trade-union-protests?page=1>

51. “Sri Lanka Navy breaks up protests at Hambantota Port,” <https://worldmeritimenews.com>, accessed November 16, 2018, <https://worldmaritimenews.com/archives/208445/sri-lanka-navy-breaks-up-protests-at-hambantota-port/>

52. “What happened in Hambantota,” Roar.media, accessed October 7, 2018, <https://roar.media/english/life/reports/what-happened-in-magampura/>

can no longer be considered as workers but as pirates.⁵³ Through all these arguments the idea reinforced is that the rights struggles have a detrimental effect on national security and national economy. In other words, human rights can be violated if ‘economic development’ is at stake. The Counter Terrorism Bill that is tabled at the Parliament at the time this paper is written, also challenges human rights based on the same arguments⁵⁴.

In this bill, the ‘Offence of Terrorism’ is broadly defined as ‘an act committed by any person with the intention of intimidating a population, wrongfully or unlawfully compelling the government of Sri Lanka, or any other government, or an international organization, to do or to abstain from doing any act, preventing any such government from functioning; or causing harm to the territorial integrity or sovereignty of Sri Lanka or any other sovereign country by:

Causing serious damage to property including public or private property, any place of public use, a State or governmental facility, any public or private transportation system or any infrastructure facility or environment;

53. “Attack on Hambantota port workers: state minister rejects allegations,” Sundayobserver.lk, accessed October 6, 2018, <http://www.sundayobserver.lk/2016/12/11/news/attack-hambantota-port-workers-state-minister-rejects-allegations>

54. Several petitions have been filed by different parties challenging the Counter Terrorism Bill which was tabled in the Parliament on 9th October 2018. “Counter Terrorism Bill Challenged in SC”, <https://pressreader.com>, accessed November 11, 2018, <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20181021/281569471706302>

Causing serious obstruction or damage to essential services or supplies;

Causing obstruction or damage to, or interference with any critical infrastructure or logistic facility associated with any essential service or supply;⁵⁵

It is important to note that this new Counter Terrorism Bill is being drafted not to address the security threats that could be justified during a wartime, but in a post war period in which the development rhetoric has become the popular slogan.

Which is central : National Security or Human Security?

If authoritarianism is fast becoming the preferred political ideology in this era what is the hope we can have for the protection of human rights? Is this the end times of human rights?

"We need to maintain perspective, despite the magnitude of the challenges. Defending human rights has never been a consensus project. It has almost always been the product of struggle. The modern human rights regime emerged out of the ashes of the deepest authoritarian dysfunction and the greatest conflagration the world had ever seen"⁵⁶.

55. Counter Terrorism Bill, The Gazette of Democratic Socialist Republic of Sri Lanka, Part II of September 14, 2018, Sec. 15.3 (2). (d), (g), (h). accessed October 18, 2018. http://www.documents.gov.lk/files/bill/2018/9/528-2018_E.pdf

56. Phillip Alston. "The Populist Challenge to Human Rights." in *Journal of Human Rights Practice*, Volume 9, Issue 1, (2017): 1–15.

Given the anti-human rights populist atmosphere it is important to remember and to understand that the realization of human rights is an ongoing struggle. Therefore it is important to analyze how theoretically and practically sound the human rights discourse is to face these new challenges. The main argument behind the present populist challenge to human rights is that human rights can be curtailed for the sake of national security, sovereignty and national economy. We need to explore the counter arguments human rights discourse has produced against this argument?

“It is now time to make a transition from the narrow concept of national security to the all- encompassing concept of human security. People in rich nations seek security from the threat of crime and drug wars in their streets... People in poor nations demand liberation from the continuing threat of hunger, disease and poverty.”⁵⁷

The 1994 Report of the UNDP identified seven main categories of human security: economic, food, health, environmental, personal, community and political security. UN endorsed a common understanding based on the General Assembly resolution 66/290 adopted on 10 September 2012 emphasizing the human centeredness of human security. This centrality of human being had been continuously emphasized in numerous human rights instruments such as UN Declaration on Right to

57. Human Development Report 1994, United Nations Development Programme (UNDP) Oxford: Oxford University Press, 1994, 22

Development (1986)⁵⁸, Rio Declaration on Environment and Development (1992)⁵⁹ and even in the Sustainable Development Goals⁶⁰. The 1994 UNDP Human Development report states that the stability of basic income derived from either a productive and remunerative employment or a public safety net dependent on public finance is essential for economic security.⁶¹ Labour arrangements that create precarious jobs compromise economic security.

“...the global shift towards more ‘precarious’ employment reflects changes in the structure of the industries... Employment is much more likely to be temporary or part time – and less protected by trade unions.”⁶²

Therefore, the arguments raised in this populist challenge are already outdated. However, it is quite common to observe these outdated arguments being presented in the West as well as in societies like Sri Lanka. This has happened largely due to the dominant status attributed to civil and political rights in the human rights discourse. According to Philip Alston, the elite in the society are more interested in civil and political rights

58. Declaration on the Right to Development, www.un.org, accessed on December 16" 2018, <http://www.un.org/documents/ga/res/41/a41r128.htm>.

59. The Rio Declaration on Environment and Development, www.unesco.org, accessed on December 16" 2018, http://www.unesco.org/education/pdf/RIO_E.PDF.

60. General Assembly Resolution dated 25 September 2015, www.un.org, accessed on December 16, 2018, http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

61. Human Development Report 1994, United Nations Development Programme (UNDP) Oxford: Oxford University Press, 1994, 22.

62. Ibid, 25.

because their economic and social rights are hardly challenged due to their privileged status in society⁶³. On the contrary, the vast majority of the communities, who are outside the elite, privileged circles, face increasing challenges to their economic and social rights.⁶⁴ In this context it is important to explore the new approaches and strategies being developed by these non-elite groups during their economic and social rights struggles as radicalizing the conventional approaches to the worker's struggles is equally important as much as broadening the conceptualization of human rights.

Empathy and Solidarity

Although the Telecom manpower struggle initially displayed signs of dependence on politicians (as described above), it later evolved into a movement comprised of multiple actors such as Left-oriented trade union leaders, social activists, public intellectuals and artists. As a result it became an intense and radical site, and it generated collaboration with the other rights struggles which were unfolding in the island at that time. For instance, the Telecom manpower workers participated in the initial discussions organized to mobilize the people who were economically and environmentally affected by the construction of the Colombo International Financial City (commonly known

63. Phillip Alston. "The Populist Challenge to Human Rights." in *Journal of Human Rights Practice*, Volume 9, Issue 1, (2017): 13.

64. Virginia Bras Gomes, "Beyond civil and political rights: Economic, social and cultural rights are human rights too," Interview by Vidura Prabath Munasinghe, LST Review Vol.9 Issue 346. (Colombo: Law & Society Trust, 2018), 27-32.

as Port City)⁶⁵. They also joined the protests organized to demand that the government return private lands occupied by the military in the North.⁶⁶ As a result of these solidarity movements, people who were engaged in the other rights struggles extended their support towards the SLT workers who were facing economic difficulties as a result of their involvement in the strike action. Farmers who were protesting against the destruction caused by the Uma Oya project⁶⁷ brought a portion of their vegetable harvest to the Telecom workers who were suffering economically. Likewise, fishermen who were protesting against Port City due to the negative effects it had on their livelihood supplied a portion of their fish harvest to the Telecom workers. Ajith Kumarasiri (an alternative musician) performed at the protest venue encouraging the workers.⁶⁸ These solidarity actions helped Telecom workers to gain momentum and to continue their struggle for 87 days.

65. Colombo International Financial City (CIFC) is a special financial zone which is planned to be built on a reclaimed land of 262 ha adjacent to the Colombo harbor. This project has been criticized by many parties for different reasons. Environmentalists have argued this will have many adverse environmental impacts. After the project was started in 2014 it affected the livelihoods of the fishermen in the areas North of the Colombo harbor due to land filling activities. With the creation of new land, coastal erosion intensified in an area that stretches about 75kms from the project site. Many fishing communities were adversely affected by the project

66. L. Hemachandra, Interview, July 3, 2018.

67. Uma Oya is a large scale, multi-purpose project carried out in Bandarawela. Under this project drilling of a 3.35 km tunnel for the hydro power plant began in 2014 December. After a few days of drilling ground water started flooding into the tunnel and resulted in damaging over 7,000 houses on the surface of the tunnel. Furthermore, ground water dried out to a large extent and impacted farm lands. Public unrest over this sudden devastation erupted and protests were organized by an umbrella organization named 'People' Front Against Uma Oya Multi Destructive Project'.

An activist who was actively involved in the Magampura Port manpower struggle stated that this struggle had relatively less support from the outside groups for two reasons: i.e. Hambanthota is a remote location, and the political orientation of the affected workers was a known fact. Although most of the workers were supports of the former government and it was obvious that former President's political camp could have a great influence in their stronghold, the workers were careful not to obtain any support from them apart from legal assistance for the court cases. When economic hardships became severe, they opted to visit weekly fairs in the nearby areas such as Sooriyawewa, Hambantota and Walasmulla and made people aware about their struggle and sought their support.⁶⁹

On the other hand, the workers' struggle in Associated Battery Manufacturers was unique as permanent workers also joined the strike in support of the manpower workers. In most of the workplaces, the workforce is split into two categories: permanent workers, and manpower workers. Employers purposely maintain a division between these two categories by portraying one group to be a threat to the other group. This way the management ensures that they can have uninterrupted production even if one set of the workers decides to carry out a trade union action. But in the case of Associated Battery Manufactures both sets of workers were united in their trade union action.

68. K. Kottegoda, Interview, 27 June, 2018.

69. Sagara, Interview, July 22, 2018.

When we consider the various approaches and strategies adopted in these three struggles it is evident that there are positive lessons to be learned apart from the most common narrative of party politics undermining the worker's solidarity and collective struggle. One female activist who actively took part in the Telecom manpower struggle reflected on her experience :

“People are more radical than we think but they act radically only within the site of the struggle. We can witness empathy and solidarity only within that specific site. It does not extend to other spaces of their everyday life.”⁷⁰

This is the sentiment commonly expressed at the end of almost all the rights struggles. People who took strong radical decisions and displayed astonishing militancy during the Uma Oya and Rathupaswala⁷¹ and Panama⁷² struggles did not display the same progressiveness outside the site of the struggle.⁷³

70. L. Hemachandra, Interview, July 3, 2018.

71. After revealing that ground water in 28 Grama Niladhari Divisions in Weliveriya-Rathupawala in Gampaha District have been contaminated from the disposed chemicals of a rubber gloves manufacturing company local people organized as ‘Siyane Environment Protection Movement’ to demand the removal of the factory from the area and for provision of clean water. On August 1, 2013 Army troops attacked one of the protests killing three youth and injuring over 50. Finally factory was removed from the area.

72. In 2010 the government forcibly removed about 350 families who had been cultivating land over 40 years in the Panama area in Ampara District and acquired lands for a military establishment. Later government decided to use these lands to promote tourism. The people who cultivated these lands formed an organization named ‘Movement to Protect Pananpaththuwa’ and launched a prolonged protest campaign demanding their lands back.

73. Vidura Munasinghe. “Waiting for Mahinda mahaththaya: 2018 Local Government Election”. In *LST Review Vol. 29 Issue 345*. (Colombo: Law & Society Trust, 2018), 10-19.

The Way Forward

Arguments that favour the populist challenge to human rights continue to create an environment that is conducive to economic authoritarianism and in disregard of the principles of democracy, accountability and transparency. On the other hand, the strategies of deregulation and flexible labour that are implemented under this economic authoritarianism undermine the economic and social rights of the people. This was the reality depicted in all three rights struggles that are discussed in this paper. However, the populist argument against human rights on the basis of national security is no longer valid. Human security cannot be secured when peoples' economic rights are in danger. In this context, it is imperative that economic and social rights struggles are not assigned a lesser importance by liberal elites in the rights discourse. They need to be prioritized in the political and development agenda. It is important to identify human rights as an ongoing struggle and develop solidarity networks among those who are suffering from a variety of human rights violations. Furthermore, it is necessary to understand that the full realization of human rights cannot be achieved without eradicating all forms of inequalities in a society. It is this understanding that will lead us to extend solidarity and empathy beyond our own sites of human rights struggles. ■

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