

LST REVIEW

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ASIAN ISSUES AND HUMAN RIGHTS

SRI LANKA: STATE OF HUMAN RIGHTS 1999 - OVERVIEW

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LAW & SOCIETY TRUST

LST REVIEW

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Editor's note

In this issue we publish the overview of *Sri Lanka: State of Human Rights 1999*, the 6th report in the series. This report contains chapters on the Integrity of the Person, Emergency Rule, Judicial Protection of Human Rights, Children's Rights and Women's Rights. For the first time it contains chapters on the Right to Information, Protecting the Independence of the Judiciary, Mental Health, and Crime, Human Rights and State Responsibility. In addition, updates are provided in relation to environmental rights, freedom of association, freedom of expression, internally displaced persons, right to health, and workers' rights. It is hoped that this report contributes to the amelioration of human rights in Sri Lanka.

A consultation was held in Geneva between the UN High Commissioner for Human Rights and Asian Human Rights Activists and Scholars. It was coordinated by the Law & Society Trust. The main objective of the consultation was to prioritise concerns for the region and to formulate an agenda of action for the region. Three main areas were discussed: the role of civil society in the protection and promotion of human rights within the region; practical and effective ways of promoting social, economic and cultural rights, more specifically, the right to development; and regional arrangements for the promotion and protection of human rights. The recommendations made to the High Commissioner are reproduced in this issue. The report of the consultation is available for sale at the Trust.

We also publish Francis Deng's guiding principles on internal displacement and an article on the Chittagong Hill Tracts Peace Accord prepared for Odhikar by Md. Asaduzzaman and Ahmed Ziauddin.

SRI LANKA: STATE OF HUMAN RIGHTS 1999

Overview

*Elizabeth Nissan**

1. Introduction

Sri Lanka celebrated its fiftieth year of independence from Great Britain in February 1998 against the backdrop of continuing conflict in the North and East. While the conflict clearly affects the lives of those living within the North and East most intensely, it also has serious repercussions on the lives of people living in all other parts of the island. Perhaps the most devastating reminder of this fact was the bombing of the Temple of the Tooth in Kandy, attributed to the Liberation Tigers of Tamil Eelam (LTTE), a few days before the national independence day celebrations were due to be held there. The LTTE was subsequently banned under emergency regulations.

The continuing conflict has a most serious impact on the protection of human rights throughout Sri Lanka. With the war effort intensifying yet again in 1998, it continued to provide the context for massive displacement of the civilian population of the North and East, for grave violations of the right to integrity of the person, and for massive loss of life among combatants. In September 1998 alone it was estimated that over 2,000 combatants from both sides had been killed. Reports of torture, extrajudicial killings and disappearances continued, as discussed in the chapter on the Integrity of the Person.

Given the grave impact of the war on the whole range of human rights protection in Sri Lanka, it is imperative that a means be found to create peace. Yet in 1998 the prospects for peace remained as remote as ever. There was no movement towards implementing or further developing the devolution package which the People's Alliance (PA) Government had presented in

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October 1997. The opposition United National Party remained opposed to the package and presented its own alternative. The LTTE also did not appear to support it. However, during “Heroes Week” in November, the leader of the LTTE reportedly declared his readiness to start peace negotiations, and several foreign governments offered their assistance should it be desired.

There were some new initiatives from within civil society, including from a consortium of major Sri Lankan business groups which came forward in October with a ten-point programme for peace. The group held intensive discussions with both the PA and the UNP, and the PA nominated four eminent persons to pursue this peace initiative. The UNP, however, did not co-operate.

This report contains chapters on a range of important human rights issues in Sri Lanka: the Integrity of the Person, Judicial Protection of Human Rights, the Children’s Rights, the Rights of Women, Mental Health, Crime, Freedom of Information and the Independence of the Judiciary. It also contains updates on environmental protection, the freedom of association, the rights of the internally displaced, health, workers and the freedom of expression. Some of the salient themes are drawn out in this overview, particularly those relating to the conflict and human rights and to topics which have been included in this *State of Human Rights* volume for the first time. The Overview also provides a summary of international developments relating to Sri Lanka’s human rights obligations.

2. The Conflict and Human Rights

The situation of people displaced by the conflict remained dire, and was highlighted in the report on Sri Lanka of the UN Committee on Economic, Social and Cultural Rights. People living in large parts of the North and East remain particularly vulnerable to abuse, and are unable to access a wide range of rights to the extent that they are enjoyed in many other parts of the country. Not only is access to food, shelter, education and health services limited for many displaced people, but reports of forced labour in the conflict zones are becoming more widespread. In addressing these issues, the Government needs to find approaches to protect the rights of the displaced that are consistent with the recommendations of the Special Representative of the

UN Secretary General on Internally Displaced Persons, Francis Deng.¹ He stresses the importance of addressing the root causes of displacement by promoting the peaceful resolution of internal conflicts, and of creating development-oriented strategies to situations of internal displacement. In addition, the Representative presented a set of "Guiding Principles on Internal Displacement" to the UN Commission on Human Rights in February 1998.² These stress that internally displaced persons "shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country" and, *inter alia*, set out both the specific obligations of national authorities towards the internally displaced and the particular rights which are most vulnerable and in need of protection in situations of displacement. It is to be hoped that the Sri Lankan authorities will integrate these guiding principles into all aspects of policy concerning the internally displaced.

The issue of impunity has been high on the human rights agenda in Sri Lanka for many years. In the few cases of extrajudicial execution or disappearance where charges had been brought, trials dragged on for years and then failed to reach a satisfactory verdict. In July 1998, however, a verdict was reached in the Krishanthi Kumaraswamy case which had received such widespread publicity: six soldiers and a reserve policeman were convicted of the murder of Krishanthi and of her mother, brother and neighbour. Hailed as a landmark judgment, it is to be hoped that this case will represent the beginning of the end of Sri Lanka's culture of impunity. As discussed in the chapter on the Integrity of the Person, several more such cases remained under trial at the end of 1998.

Closely related to issues of impunity, of course, are forensic excavations of the sites of suspected mass graves in which victims of disappearance are believed to be buried. The revelations about a mass grave at Chemmani on the Jaffna peninsula, where the remains of hundreds of people who

¹ Francis Deng, Report of the Special Representative of the UN Secretary General on Internally Displaced Persons, submitted to the 52nd Session of the Commission on Human Rights, E/CN.4/1996/52 (22 February 1996). See also *Sri Lanka: State of Human Rights 1995* (Law & Society Trust, Colombo 1996), chapter X.

² "Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission on Human Rights, Mass Exoduses and Displaced Persons," E/CN.4/1998/53/Add.2, 11 February 1998.

disappeared in 1996 are believed to be buried, have again brought these issues to the fore. The Government must do all it can to ensure that such excavations are carried out in a professional manner, using methods consistent with UN Guidelines on the Disinterment and Analysis of Skeletal Remains,³ and ensuring proper co-ordination between the different agencies of the Government that may be involved. The evidence and any witnesses must be adequately protected. Depending on the findings, the Government must ensure the accountability of those persons responsible, and compensation and rehabilitation of the families of the victims.

Impunity has also been seen as a significant factor in the continuing and widespread practice of torture in Sri Lanka, whether in the context of the conflict or during the investigation of criminal or civil matters. The Supreme Court of Sri Lanka, the UN Committee against Torture, as well as local and international human rights organisations, have all called for the climate of impunity in relation to torture to be brought to an end. Yet to date there have still been no convictions for torture, although indictments have been filed by the Attorney-General against seven police officers against whom awards of compensation had been made by the Supreme Court. The government needs to address this issue speedily and comprehensively, taking into account the range of measures recommended by both the UN Committee against Torture and Amnesty International.⁴ These include reviewing legislation on detention, ensuring that legal safeguards against abuse are fully enforced; ensuring that complaints of torture are investigated by a body which is fully independent of the police; strengthening the remedies available to victims; and bringing to justice those who have been involved in acts of torture.

The conflict also had an impact on democratic practice in the country. In Jaffna, the first elections since the early 1980s were held in January 1998 to 17 local councils in an attempt by the government to re-establish the seeds of a democratically elected civil administration. This effort was thwarted, however, when the Mayor of Jaffna, Mrs Sarojini Yogeswaran, was

³ These guidelines are contained in the Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, published by the UN. See Chapter VI, "The Investigation of Past Violations," *Sri Lanka: State of Human Rights 1994* (Law & Society Trust, Colombo, 1995).

⁴ Amnesty International, Sri Lanka: Torture in Custody, AI Index: ASA 37/10/99, June 1999.

assassinated by the LTTE in May. Her successor, Mr. Ponnadurai Sivapalan, was killed just four months later when a bomb exploded at Nallur Municipal Office, Jaffna, in another attack widely attributed to the LTTE. Since then, in the face of threats emanating from the LTTE, the operation of the councils has been severely handicapped and the post of Mayor remains vacant.

In the South, too, the conflict has provided the pretext for an erosion of democratic standards. In June 1998, censorship on the reporting of various security matters was imposed under emergency powers for the third time under the PA administration, but this time with a military officer appointed as the Competent Authority to administer the censorship. In December 1998, a new civilian Competent Authority was appointed. Again, the scope of the censorship regulations far exceeds the legitimate limits envisaged under international human rights law within which censorship can be imposed for reasons of national security.

In a move that the Supreme Court subsequently ruled to have been unconstitutional, emergency powers were invoked in August 1998 to postpone the elections that were due to five Provincial Councils. The Government had claimed that it could not provide adequate security for the elections to be held, at a time when the army was deployed in a critical offensive in the North. In August, emergency rule was re-imposed throughout the whole country.

The uncertain legal status of aspects of emergency rule in Sri Lanka is discussed in chapter III. A particular concern relates to the implications of changes to the areas of the island in which a state of emergency is in force. For example, regulations relating to arrest and detention, which were introduced when the emergency applied only to specified areas of the country, could be enforced only within those areas. When the area is extended, however, what is the status of such regulations if they are not re-promulgated? As explained in the chapter on Emergency Rule, "There has hitherto been an unspoken assumption that existing emergency regulations overflow their geographical boundaries along with the extension of Part II to other parts of the country. This remains to be tested in the courts." Another enduring problem with the regulations is that they continue to be inaccessible to the general public and to practitioners of law, despite complaints having been made on this matter over many years. It thus remained very difficult to know the content of the law in force at any given time.

3. The Judiciary and Human Rights

This volume contains chapters and 'updates' on a number of issues which have been covered in previous editions, and on a number of new topics. The chapters which examine the performance of the Supreme Court in protecting human rights, and the independence of the judiciary as a whole, provide a heartening picture of judicial activism and *de facto* independence at the highest levels. Previous volumes have already stressed the important role played by the Supreme Court in its vigorous defence of fundamental rights, but this is the first time that the issue of judicial independence has been scrutinised in a *State of Human Rights* report. Certainly there is scope and need for institutional reforms to enhance judicial independence in Sri Lanka. But as expressed by the Author of Chapter VIII, Sri Lanka's judiciary is increasingly assertive in the defence of its own independence: "to preserve one's independence in judicial office in spite of very grave institutional imperfections is to reach the very heights of judicial integrity."

This is not to say that remedies available for victims of human rights violations are adequate. They are not. However, forthright the Supreme Court may be in its judgments on fundamental rights, they continue to fail to have the desired impact. Cases of torture continue to be brought before the Court; illegal detentions and other violations continue. The Human Rights Commission of Sri Lanka, which was established in 1997, has failed to have much impact and has yet to fulfil its mandate. As pointed out in the chapter on Emergency Rule with reference to an abuse of powers of arrest and detention, "Providing for individual remedies is important but is manifestly not enough... [A]n effective mechanism is needed which does not depend on individual complaints to set it in motion."

In other respects, also, the judicial system does not always appear to operate in the defence of human rights. Reference has already been made to the very long delays experienced in the trials of suspected perpetrators of grave human rights violations, for example; in other cases, too, delay appears the norm. Indeed, in the chapter on Crime, the judicial system at lower levels is seen as failing in several respects.

4. Freedom of Information

While freedoms of expression and of the media have been addressed in each successive *State of Human Rights* report, this volume includes, for the first

time, a chapter devoted exclusively to the important topic of freedom of information. Along with almost all the other promised reforms relating to freedom of expression, the legislative agenda on freedom of information has stalled. It is most important for the Government to move forward on this issue swiftly, to create the conditions for an open, plural democracy in Sri Lanka. Instead, these crucial issues appear to have been allowed to languish for too long in a Parliamentary Select Committee process that has no clear end in sight.

5. Crime and Mental Health

Two further subjects which have not previously been discussed in *State of Human Rights* reports are crime and mental health. Crime is increasingly perceived as a major social problem in Sri Lanka, but is not often examined in a human rights framework. The chapter on crime in this volume attempts to do this, concluding that for the issue to be addressed properly, a thorough overhaul of all aspects of the criminal justice system is needed.

Finally, issues relating to Sri Lanka's woeful provision of mental health services are examined in chapter IX. This chapter reviews existing provision in various areas of mental health, as well as examining the legislative framework for mental health provision. While various mental health plans have been developed over the years, they have not been implemented. Mental health appears to remain a low priority for the Government, despite the very evident need for the provision of specialised services which are based on respect for patients' rights, rather than a preoccupation with their custody.

6. International Developments

Sri Lanka did not ratify any international human rights instruments during 1998. Although it was due to report to the Committee on the Rights of the Child in 1998, it failed to do so. However, the Government's reports to both the UN Committee on Economic, Social and Cultural Rights and the UN Committee against Torture were scrutinised during 1998, and the Special Representative of the UN Secretary-General for Children and Armed Conflict visited Sri Lanka in May.

6.1 UN Committee on Economic, Social and Cultural Rights

Sri Lanka's adherence to the International Covenant on Economic, Social and

Cultural Rights was scrutinised by the relevant UN Committee in April 1998. In its concluding observations,⁵ the Committee on Economic, Social and Cultural Rights noted its appreciation of Sri Lanka's co-operation with international humanitarian agencies, and the country's relatively high human development index rating as compared to other countries in the same income group. As its principal subjects of concern, the Committee highlighted the continuing conflict between the government and the LTTE, and regretted that statistical data relating to the north and east had not been incorporated into the government's report.⁶ It expressed grave concern about the plight of the hundreds of thousands of people displaced from their homes by the conflict, at reports of that displaced women and children living in shelters are undernourished, and that the government may be withholding food assistance as a kind of weapon.

The second of the Committee's principal subjects of concern was discrimination, relating especially to the uncertain status of some 85,000 Tamils of recent Indian origin living in Sri Lanka, as well as to disparities in statutory law and customary law relating to marriage and inheritance. The Committee also noted the lack of anti-discrimination mechanisms in the area of employment relating to women and minority groups.

Women and children provided the focus for the Committee's third principal subject of concern. In relation to children, the Committee deplored the fact that Sri Lanka's child labour laws are not effectively implemented, and expressed deep concern about the sexual exploitation of Sri Lankan children by foreign tourists. It regretted that the Government had provided neither detailed information on the extent of this problem, nor a satisfactory account of how serious its efforts were to combat it. The Committee further expressed concern that the Government had not made a serious effort to assess the negative impact of labour migration on children whose mothers have travelled abroad to work, and to take appropriate remedial action. With regard to the high rate of youth suicide in Sri Lanka, the Committee regretted that the Government had failed to comply with its obligations under Article 19 to

⁵ "Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights - Sri Lanka," E/C.12/1/Add.24, 13 May 1998.

⁶ For further discussion of this point, see "Overview," in *Sri Lanka: State of Human Rights 1998* (Law & Society Trust, Colombo, 1998), pp.3-6.

protect the family, and under Article 12, which requires States Parties to take steps to achieve the highest attainable standards of physical and mental health.

6.2 Report of the UN Committee against Torture

In May 1998, the Committee against Torture completed its scrutiny of Sri Lanka's compliance with the UN Torture Convention.⁷ It called for the independent and effective investigation of all allegations of torture, past, present and future, and for prompt criminal prosecutions and disciplinary proceedings against culprits. Impunity should not be tolerated, and delays in justice should be reduced. The Committee expressed concern that there had been few, if any, prosecutions or disciplinary proceedings so far, despite continuous warnings by the Supreme Court and awards of damages to victims. It also expressed concern about the question of the admissibility under emergency regulations of confessions extracted by torture. While it recognised that the continuing conflict was a factor which impeded the implementation of the Convention against Torture in the country, it stressed that terrorism could not be cited as an excuse for acts of torture.

6.3 Visit to Sri Lanka by Special Representative of the UN Secretary-General

The Special Representative of the UN Secretary-General for Children and Armed Conflict, Olara Otunnu, visited Sri Lanka in May 1998 to investigate matters relating to the use of children in armed conflict. He met with representatives from the Government, humanitarian agencies, local government officials in affected areas and also with two senior representatives appointed by the LTTE. His visit, and the commitments made by the parties to the conflict, are discussed in the chapter on Children's Rights. Of particular significance was the undertaking made to him by the LTTE that they would not use children under 18 years of age in combat, and that they would not recruit children aged under 17 years at all.⁸ The LTTE further

⁷ "Committee Against Torture Gives Conclusions and Recommendations on Report of Sri Lanka," HR/CAT/98/24, 19 May 1998.

⁸ Extracts from the report reproduced in *LST Review*, Vol 9, Issue 133 (Law & Society Trust, Colombo, November 1998) p 37.

undertook, among other things, to review its strategies and tactics with regard to the targeting of civilian populations and sites throughout the country.⁹

7. Conclusion

As ever, the intention of this report is to provide a summary of the state of a wide range of human rights in the year under review, and by doing so, to stimulate debate and promote action towards positive reforms. Human rights need to be given far greater priority by the Government in all areas of policy making, and care needs to be taken by all involved in human rights protection to ensure that these issues do not get enmeshed in inter-party politicking. In areas where reforms have been enacted, we must not make the mistake of assuming that effective reform has, therefore, been effected. Legislative change and the creation of new institutions are important parts of a longer process of genuine reform. If they are to provide the impetus for real change which will improve the quality of people's lives, however, a determined and consistent effort must be made to ensure that laws are properly implemented and that institutions are properly resourced and empowered. Laws to protect children, for example, still need to be rigorously enforced or they have no impact; and a new institution like the Human Rights Commission needs to be properly resourced, empowered and committed to tackle effectively the full range of its responsibilities.

It is to be hoped that this report will stimulate debate and help raise the profile of human rights issues within Sri Lanka for the benefit of all who live on the island. Civil society organisations have a crucial role to play in providing documentation and analysis of human rights issues, in promoting public awareness and reform and in maintaining a vigilant stance on matters of government policy and its implementation. Yet ultimately it must be the Government which should take the steps necessary to ensure that a rights perspective is incorporated into all aspects of policy making and practice. We have witnessed an increasing awareness of rights issues in certain policy areas - including in debates and reforms relating to women and children. But as this volume shows, there remains very much more to be done.

⁹ Office of the Special Representative of the Secretary-General for Children and Armed Conflict, Press Release, SRSG-CAC/PR/4, 8 May 1998.

Consultation between the UN High Commissioner for Human Rights and Asian Human Rights Activists and Scholars*

Recommendations made to the Office of the High Commissioner for Human Rights by Asian Human Rights Activists and Scholars at the consultation in Geneva

Geneva, 23 April 1999

The following recommendations were made at a Consultation between human rights scholars and activists from South and South-East Asia for the purposes of assessing the challenges and problems faced by the region in relation to the promotion and protection of human rights. The UN High Commissioner for Human Rights, Ms. Mary Robinson, participated in the inauguration of the Consultation and representatives of her office were present during the other sessions. The Law & Society Trust, Colombo, Sri Lanka, co-ordinated the Consultation and consulted with human rights organisations in the region on the issues to be discussed.

The Role of Civil Society in the Protection and Promotion of Human Rights within the Region

It is necessary that governments in Asia recognise the importance of the work of civil society organisations and fully contribute towards the creation of an environment that enables them to carry out their activities. Governments must respect the autonomy of civil society institutions and accept the legitimacy of their work for the promotion and implementation of human rights. The OHCHR could assist in this endeavour by impressing upon governments the importance of upholding the freedoms of speech, expression, assembly and association and also of promoting the right and access to information.

* A consultation was held in Geneva between the Office of the High Commissioner for Human Rights and Asian Human Rights Activists and Scholars in April 1999. This consultation was co-ordinated by the Law & Society Trust.

The Declaration on Human Rights Defenders adopted by the United Nations General Assembly in 1998 is an endorsement by the UN member states of the active participation of members of civil society in achieving human rights goals and an invitation to civil society networks to become actively engaged in assisting the OHCHR in its task of promoting and protecting human rights. It is however necessary to ensure that a mechanism is established to implement the Declaration, perhaps through the appointment of a Special Rapporteur on the theme.

Civil society organisations in the region have a fundamental obligation to ensure that constant pressure is maintained on their respective governments to become signatories to international human rights instruments, consistent with the undertaking taken by states at the Vienna Conference. The OHCHR could liaise with civil society organisations to encourage governments concerned to ratify relevant international instruments on human rights and to remove reservations where these have been entered thereto and also to accept individual complaint mechanisms under the various treaties.

The OHCHR can establish and operate networks with civil society organisations regionally, nationally, not only for sourcing information on the prevailing human rights situation in a specific geographical area but also for co-ordinated action, wherever appropriate. The recent escalation of incidents of human rights violations due to religious and sectarian intolerance and violence against minorities in the Asian region calls for a more direct response from the OHCHR.

The OHCHR could identify and assist civil society organisations to compile annual state of human rights reports in states where such reports are not compiled, benefiting from the experience of those organisations which are already engaged in compiling such reports. Additionally, there is a need to encourage compilation and submission of shadow reports to treaty bodies. Emphasis needs to be placed on the dissemination (within the country concerned, in particular, to civil society organisations) of information on human rights that the UN system itself generates, including the reports submitted by states to the treaty bodies and those prepared by special rapporteurs. There is also the need to encourage and facilitate NGO follow-up on the concluding observations, recommendations and decisions of the treaty bodies to ensure that states comply with these observations and recommendations. The OHCHR could also explore the possibility of

circulating country reports among NGOs early so that NGOs can make informed interventions.

The OHCHR could facilitate cross-border coalitions of civil society groups to promote increased and effective participation of NGOs in the meetings of treaty bodies. It needs to identify and provide a focal point for NGOs at the national level which could provide and disseminate UN documents on human rights including the concluding observations of the treaty bodies to civil society organisations within the country concerned.

Development programmes on human rights education with a view to exposing judges and lawyers to new and emerging concepts and jurisprudence relating to international human rights law. These programmes can be undertaken by professional associations linked to existing sub-regional arrangements such as SAARCLAW and ASEAN Inter-Parliamentary Organisation. During the annual meeting of SAARC Law, there is also a conference of the Chief Justices of the region. Similar exchanges need to be encouraged between appellate judges and national human rights institutions on the domestic incorporation of international human rights standards and domestic fundamental rights jurisprudence.

Practical and Effective Ways of Promoting Economic, Social and Cultural rights, more specifically, the Right to Development

There is a critical need to implement economic, social and cultural rights. The OHCHR can play an active role in this process by encouraging the codification and re-statement of the existing jurisprudence and methodologies through which such rights might be secured and implemented. The OHCHR can also assist in refining the existing jurisprudence and strategies for enforcement, to bridge the gap between the existing standards and their implementation. The compilation of national, regional and international jurisprudence on economic, social and cultural rights can form the basis for national capacity building in both the governmental and non-governmental sectors.

The OHCHR should highlight the importance of the right to non-discrimination as integral to the enforcement of economic, social and cultural rights, as well as the right to development, especially as it applies to women, indigenous peoples, Dalits and other disadvantaged communities. Particular attention should be paid to the obligation to ensure that customary and

traditional practices do not violate the rights of women, Dalits and other disadvantaged communities in this area.

In many parts of Asia, massive developmental disasters such as displacements caused by large dam projects, etc., have been a significant source of violations of human rights. The OHCHR can play an active role in developing mechanisms for redress (both preventive and remedial at the national and international levels) to victims of development activities. This is an area in which the OHCHR needs to be both proactive and responsive. The OHCHR can develop international standards to provide checks on the indiscriminate and inhumane consequences of such developmental projects. It could, for instance, emphasize the need for human rights impact assessments for large developmental projects, similar to environmental impact assessments. The issue of massive destruction of means of subsistence and natural resources needs to be addressed.

The OHCHR should reiterate in all efforts at elaboration of international and national strategies for the realisation of the right to development that full, active and effective participation is an integral aspect of the right. In particular, the right to sustainable, gender sensitive and people-oriented development must be promoted at all levels. This includes the right to participate in all stages of the development process. The existing mechanisms in countries (for example, public participation in the environmental impact assessment process) must be strengthened, and where no such mechanisms exist, the OHCHR can impress upon governments to establish such mechanisms. Access to information is a vital component of the right to development as many decisions with detrimental human rights impacts are taken behind closed doors.

The OHCHR should assist the study of the Independent Expert on the Right to Development to assess the impact of the global financial crisis upon the human rights of the people of East and South-East Asia. This crisis has not only eroded the economic, social and cultural rights of the people but also their civil and political rights. The protection of these rights would require some form of regulation and control of volatile short term equity capital whose dramatic exit from East and South East Asia precipitated the financial crisis. The OHCHR should actively pursue efforts to create mechanisms at the global level which will ensure a more stable and equitable international financial environment that will help to protect the human rights of people in the South.

The gap between implementation and enforcement of civil and political rights and economic, social and cultural rights must be closed, ensuring the indivisibility and the inter-relationship of all human rights. There is a need to emphasise basic notions of human dignity into human development indicators, especially since most countries in the region are struggling to reconcile private sector development and distributive imperatives.

There is a need to strengthen the relationship between development and democracy. Democratic forms and structures are needed to ensure that the benefits of development are equitably distributed. In particular, there is a need for democratic access for the articulation of the rights and aspirations of minorities and other marginalised groups to ensure their inclusion in the process of development.

The OHCHR needs to address human rights issues of particular concern within Asia, including the rights of migrant workers, bonded labour, trafficking in women, Dalits and other issues identified in the Bangkok NGO Declaration. The OHCHR also needs to encourage states to ratify, adhere to and implement the Migrant Workers Convention.

Since corruption has an adverse impact on the right to development and other human rights, the OHCHR should lend support to efforts to curb corruption at national and international levels. The right to honest government at the national level and honest global governance should be recognised as a fundamental human right.

Regional Arrangements for the Promotion and Protection of Human Rights or Alternative Institutional Mechanisms at the Sub-Regional level:

The Consultation noted the different initiatives that have taken place at the regional and sub-regional levels in relation to protection of human rights, including the recent Tehran and New Delhi meetings on regional arrangements

for the Asia-Pacific region, and the establishment of a Forum on human rights within ASEAN and the adoption of a Convention on the trafficking in women by SAARC.

The Consultation also noted that human rights organisations have over time developed regional and sub-regional networks and linkages on issues relating

to women's rights, children's rights, environmental issues, freedom of expression and the protection of democratic rights and values.

The Consultation welcomed the appointment of a regional advisor on technical co-operation and urged that his terms of reference to be so defined in such a way as to be a focal point and catalyst between regional inter-governmental mechanisms and civil society groups.

The Consultation makes the following recommendations:

An attempt must be made to make the existing regional and sub-regional inter-governmental mechanisms more participatory and facilitate the interface between civil society initiatives and the inter-governmental arrangements.

In the regional inter-governmental process, governments have shied away from discussing issues affecting the region (for instance, migrant workers, trafficking in women and children) except right to development and socio-economic rights, while civil society groups have addressed these regional issues. The Consultation urges the OHCHR to allow the office to be used as a meeting ground for regional governmental and non-governmental organisations.

Both civil society groups and national governments should use the regional and sub-regional arrangements to discuss issues relating to diversity and to facilitate inter-cultural and inter-civilisational dialogues on the human rights discourse.

While welcoming the importance accorded to national level institutions in the regional consultations, concern was expressed that these institutions had varying effectiveness and independence from the state, and the Consultation emphasised the importance of adhering to the Paris principles in establishing national institutions and the continuing need to empower and strengthen existing institutions.

COMMISSION ON HUMAN RIGHTS*

Fifty-fourth session

Item 9(d) of the provisional agenda

FURTHER PROMOTION AND ENCOURAGEMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING THE QUESTION OF THE PROGRAMME AND METHODS OF WORK OF THE COMMISSION HUMAN RIGHTS, MASS EXODUSES AND DISPLACED PERSONS

Report of the Representative of the Secretary-General, Mr. Francis M. Deng, submitted pursuant to Commission resolution 1997/39

Addendum

Guiding Principles on Internal Displacement

Introductory note to the Guiding Principles

1. Internal displacement, affecting some 25 million people worldwide, has become increasingly recognized as one of the most tragic phenomena of the contemporary world. Often the consequence of traumatic experiences with violent conflicts, gross violations of human rights and related causes in which discrimination features significantly, displacement nearly always generates conditions of severe hardship and suffering for the affected populations. It breaks up families, cuts social and cultural ties, terminates dependable employment relationships, disrupts educational opportunities, denies access to such vital necessities as food, shelter and medicine, and exposes innocent persons to such acts of violence as attacks on camps, disappearances and rape. Whether they cluster in camps, escape into the countryside to hide from potential sources of persecution and violence or submerge into the community of the equally poor and dispossessed, the internally displaced are among the most vulnerable populations, desperately in need of protection and assistance.

* E/CN.4/1998/53/Add.2, 11 February 1998.

2. In recent years, the international community has become increasingly aware of the plight of the internally displaced and is taking steps to address their needs. In 1992, at the request of the Commission on Human Rights, the Secretary-General of the United Nations appointed a Representative on internally displaced persons to study the causes and consequences of internal displacement, the status of the internally displaced in international law, the extent of the coverage accorded them within existing international institutional arrangements and ways in which their protection and assistance could be improved, including through dialogue with Governments and other pertinent actors.

3. Accordingly, the Representative of the Secretary-General has focused the activities of his mandate on developing appropriate normative and institutional frameworks for the protection and assistance of the internally displaced, undertaking country missions in an ongoing dialogue with Governments and others concerned, and promoting a systemic international response to the plight of internally displaced populations.

4. Since the United Nations initially drew international attention to the crisis of internal displacement, many organizations, intergovernmental and non-governmental, have broadened their mandates or scope of activities to address more effectively the needs of the internally displaced. Governments have become more responsive by acknowledging their primary responsibility of protecting and assisting affected populations under their control, and when they cannot discharge that responsibility for lack of capacity, they are becoming less reticent to seek assistance from the international community. On the other hand, it is fair to say that the international community is more inclined than it is prepared, both normatively and institutionally, to respond effectively to the phenomenon of internal displacement.

5. One area in which the mandate of the Secretary-General's Representative has made significant progress has been in the development of a normative framework relating to all aspects of internal displacement. Working in close collaboration with a team of international legal experts, the Representative prepared a "Compilation and Analysis of Legal Norms" relevant to the needs and rights of the internally displaced and to the corresponding duties and obligations of States and the international community for their protection and assistance. The Compilation and Analysis was submitted to the Commission on Human Rights by the Representative of the Secretary-General in 1996 (E/CN.4/1996/52/Add.2).

6. It is important to note that the Office of the United Nations High Commissioner for Refugees (UNHCR) has developed a manual, based on the *Compilation and Analysis*, for the practical use of its staff, especially in field operations. There are also indications that other organizations and agencies will follow the example of UNHCR in making use of the document.

7. The *Compilation and Analysis* examines international human rights law, humanitarian law, and refugee law by analogy, and concludes that while existing law provides substantial coverage for the internally displaced, there are significant areas in which it fails to provide an adequate basis for their protection and assistance. Besides, the provisions of existing law are dispersed in a wide variety of international instruments which make them too diffused and unfocussed to be effective in providing adequate protection and assistance for the internally displaced.

8. In response to the *Compilation and Analysis* and to remedy the deficiencies in existing law, the Commission on Human Rights and the General Assembly requested the Representative of the Secretary-General to prepare an appropriate framework for the protection and assistance of the internally displaced (see resolutions 50/195 of 22 December 1995 and 1996/52 of 19 April 1996, respectively). Accordingly, and in continued collaboration with the team of experts that had prepared the *Compilation and Analysis*, the drafting of guiding principles was undertaken. The Commission on Human Rights, at its fifty-third session in April 1997, adopted resolution 1997/39 in which it took note of the preparations for guiding principles and requested the Representative to report thereon to the Commission at its fifty-fourth session. The *Guiding Principles on Internal Displacement*, completed in 1998, are annexed to the present document.

9. The purpose of the *Guiding Principles* is to address the specific needs of internally displaced persons worldwide by identifying rights and guarantees relevant to their protection. The Principles reflect and are consistent with international human rights law and international humanitarian law. They restate the relevant principles applicable to the internally displaced, which are now widely spread out in existing instruments, clarify any grey areas that might exist, and address the gaps identified in the *Compilation and Analysis*. They apply to the different phases of displacement, providing protection against arbitrary displacement, access to protection and assistance during displacement and guarantees during return or alternative settlement and reintegration.

10. The Principles are intended to provide guidance to the Representative in carrying out his mandate; to States when faced with the phenomenon of displacement; to all other authorities, groups and persons in their relations with internally displaced persons; and to intergovernmental and non-governmental organizations when addressing internal displacement.

11. The Guiding Principles will enable the Representative to monitor more effectively situations of displacement and to dialogue with Governments and all pertinent actors on behalf of the internally displaced; to invite States to apply the Principles in providing protection, assistance, reintegration and development support for them; and to mobilize response by international agencies, regional intergovernmental and non-governmental organizations on the basis of the Principles. The Guiding Principles are therefore intended to be a persuasive statement that should provide not only practical guidance, but also an instrument for public policy education and consciousness-raising. By the same token, they have the potential to perform a preventive function in the urgently needed response to the global crisis of internal displacement.

12. The preparation of the Guiding Principles has benefited from the work, experience and support of many institutions and individuals. In addition to the legal team cited above, many experts from international humanitarian and development organizations, the Office of the United Nations High Commissioner for Human Rights, regional bodies, scholarly institutions, non-governmental organizations and the legal community have made valuable contributions. Appreciation in particular is owed to the Centre for Human Rights and Humanitarian Law of the Washington College of Law of American University, and also to the American Society of International Law, the Faculty of Law of the University of Bern, the Ludwig Boltzmann Institute of Human Rights of the University of Vienna and the International Human Rights Law Group.

13. Support for the development of the Principles was gratefully received from The Ford Foundation, the Jacob Blaustein Institute for the Advancement of Human Rights, the European Human Rights Foundation, the Hauser Foundation, and the John D. and Catherine T. MacArthur Foundation.

14. The development of the Principles also benefited from the Brookings Institution-Refugee Policy Group Project on Internal Displacement, which received generous support from many sources, including the Governments of the Netherlands, Norway and Sweden, and the McKnight Foundation.

15. The Government of Austria hosted an expert consultation in Vienna in January 1998, for the purpose of finalising the Guiding Principles, which is most gratefully acknowledged.

Annex

GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.

2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.

3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:

- (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
- (b) States when faced with the phenomenon of internal displacement;
- (c) All other authorities, groups and persons in their relations with internally displaced persons; and
- (d) Intergovernmental and non-governmental organisations when addressing internal displacement.

4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I - GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.

2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.

2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.

2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion,

national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.

2. The prohibition of arbitrary displacement includes displacement:

- (a) When it is based on policies of apartheid, "ethnic cleansing" or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
- (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
- (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
- (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
- (e) When it is used as a collective punishment.

3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimize displacement and its adverse effects.

2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.

3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:

- (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
- (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
- (c) The free and informed consent of those to be displaced shall be sought;
- (d) The authorities concerned shall endeavour to involve those affected, particularly women, in the planning and management of their relocation;
- (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
- (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;

- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favour or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.
2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:
 - (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
 - (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labour of children; and
 - (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.
2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.

4. In no case shall internally displaced persons be taken hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.

2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.

2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavour to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavour to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect of his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.
2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counselling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.

2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.

3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.

2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:

- (a) Pillage;
- (b) Direct or indiscriminate attacks or other acts of violence;
- (c) Being used to shield military operations or objectives;
- (d) Being made the object of reprisal; and
- (e) Being destroyed or appropriated as a form of collective punishment.

3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular displaced children, receive education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.

2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities.

2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.

3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.

2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavour to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organisations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

The Chittagong Hill Tracts Peace Accord: A Follow-up

by Md. Asaduzzaman and Ahmed Ziauddin*

1. Introduction

An accord was signed, in the presence of the Prime Minister of Bangladesh, on 2 December 1997 at Ganabhaban, the official residence of the Prime Minister, between Abdul Hasnat Abdullah, the Convenor of the National Committee on Chittagong Hill Tracts (NCCHT) and Jotirindro Bodhipriyo Larma, popularly known as Shantu Larma, the leader of Parbatya Chattagram Jana Sanghati Samity (PCJSS), the military wing of which had been engaged in an armed conflict for about two decades to realise the demand of autonomy for the people of the Chittagong Hill Tracts (CHT).

To reach this accord, the PCJSS stepped aside from its demand for full regional autonomy, and the withdrawal of the army and Bengali settlers (who had been rehabilitated on political grounds during the tenure of different governments). On the other hand, the Government of Bangladesh agreed to form a Regional Council, with a large degree of administrative autonomy.

Referred to as the Chittagong Hill Tracts Peace Accord, it has the following features:

- * To consider the CHT as a tribes-dominated region and agreed on a definition of "tribal" and "non-tribal" permanent residents to largely denote Bangali settlers;
- * To review, amend, add and modify the existing three statutes: the Rangamati Hill District Local Government Council Act of 1989; the Bandarban Hill District Local Government Act of 1989; and Khagrachari Hill District Local Government Act of 1989. Specific changes to be made to these statutes were agreed upon;

* Odhikar: A Coalition for Human Rights.

- * To establish a CHT Regional Council by incorporating the existing three Hill District Local Government Councils. The Chairman of the Regional Council was given the status of a state minister and according to the Accord, he must be a tribal. The Regional Council is to consist of twenty-two members, including its chairman, and two thirds of the members are to be tribal;
- * To hand over the charge of the Ministry on CHT affairs;
- * Only those non-tribal inhabitants of the CHT who own land and are living in a certain place would be considered as voters of the CHT. No one will be considered as a voter without a certificate from the Circle Chief;
- * To give priority to the tribal in relation to the appointment to all government, semi-government and autonomous organisations in the CHT;
- * Surrender of arms by the PCJSS activists and rehabilitation of the tribals (by the government) who surrendered arms;
- * Withdrawal of all temporary camps of the Army, Ansar, VDP, except BDR camps in the border areas and permanent army barracks after the return of the militants;
- * To form a Land Commission headed by a retired judge; and
- * To rehabilitate the refugees.

2. Background

The Accord was adopted after intensive negotiation between NCCHT and BCJSS, led by the signatories. The government of Awami League set up the National Committee of the Chittagong Hill Tracts after it came to power in mid 1996. While in opposition, Awami League repeatedly promised to work towards solving the tribal problem. In September 1996, NCCHT began working on the unsuccessful attempts of the previous government.

The government led by Bangladesh Nationalist Party carried out negotiations with the PCJSS through the National Committee over the whole period. The National Committee was created in July 1992 headed by a Cabinet Minister, Mr. Oli Alimed. The Committee also included opposition MPs but excluded local MPs.

Earlier, during the regime of Hussain Mohammed Ershad, the government's policy was altered and direct negotiations began. In 1985, the first meeting between the government and the PCJSS took place. However, it has to be pointed out that both during Ershad's and Khaleeda Zia's stewardship, the country-insurgency military operations continued, so also the Shanti Bahini attacks.

Since the signing of the Peace Accord, Odhikar had been monitoring the developments at the Chittagong Hill Tracts. Odhikar deputed its own researcher at site, established institutional link-ups with local organisations, documented incidents from national newspapers and collected data from other sources. This report has been prepared on information collected by Odhikar.

3. Implementation of the CHT Peace Accord:

The PCJSS and the Government have already undertaken a number of important measures to implement the Accord. The Government has established a Ministry for CHT Affairs, and appointed a tribal MP to head it. It has also enacted four laws in order to implement the obligations in the Peace Accord.

PCJSS activists, on the other hand, have surrendered their arms and the Government has taken steps to rehabilitate them to lead a normal life according to the Accord. The rehabilitation programme of the repatriated refugees from India under a special task force continues.

Following the Peace Accord, a total of 1847 members of the Shanti Bahani (the militant wing of the PCJSS) ceremoniously surrendered arms in four stages on 10th February, 16th February, 22nd February, and 5th March of 1998.

The refugees, who went over to India, because of low intensity war, started returning. As a result of peace talks and initiatives before signing the CHT Peace Accord by February 1997, 55,266 refugees returned home in five stages

of repatriation. Following the Accord, by February 1998, the number reached a total of 630,443 refugees repatriated to the country.

On the basis of the Accord, the National Assembly passed four Bills on 3rd, 4th, 5th and 6th May of 1998. These were; The Rangamati Hill District Local Government (Amendment) Act of 1998, The Khagrachori Hill District Local Government (Amendment) Act of 1998, The Bandarban Hill District Local Government (Amendment) Act of 1998 and the Hill District Regional Council Act of 1998.

The President of Bangladesh, Justice Sahabuddin Ahmed, gave his consent to the aforesaid Bills on 24 May 1998, converting the four Bills into laws.

The main features of these laws are as follows:

- * Direct voting by the people will form the Three Hill Districts Local Government Councils;
- * The Rangamati Hill District Local Government Council will consist of a Chairman, who must be a tribal, 20 tribal members and 10 non-tribal members;
- * The Khagrachori Hill District Local Government Council will consist of a Chairman, who must be a tribal, 21 tribal members and 9 non-tribal members;
- * The Bandarban Hill District Local Government Council will consist of a chairman, who must be a tribal, 19 others tribal members and 11 non-tribal members;
- * The duration of the three-elected Hill district local government will be 5 years.

The Realities of the Situation in the CHT:

The CHT Returnee Jumma Refugee Welfare Association recorded a total of 64,544 of 12,204 families returned to their homeland on or before 27th February 1998. The Association also reported about the inability of the Government to rehabilitate the returnee refugees, which can be characterised as a non-fulfilment or the failure to adhere to the CHT Peace Accord.

A report published by the CHT Returnee Jumma Refugee Welfare Association recorded the following incidents, indicating grave failures with regard to the obligations in the Accord:

- (a) **Safety and security:** The Accord provided safety and security of life and property of the returnees, which the Government has failed to respect on a number of occasions. According to the records of the Association, returnee Shasi Ranjon Chakma was killed on 27/2/98; returnee Mrs. Jayanti Prova was raped on 20/3/98; Kantimoy Chakma of Gobchari was abducted and killed on 29/3/98 and Ranupurna Dewan of Kalachan Mahajanpara at Dighinala was arrested on a false murder case.
- (b) **Non-receipt of funds:** Some repatriated families have not received allocated funds for housing and cultivation, as provided by the Accord. According to the Refugee Welfare Association, 14 families have been deprived of this fund amounting to Tk. 5,000. Tk. 10,000 for funeral purposes has not been given to any family. Also, each of the returnee families were supposed to have been given an amount of Tk. 3,000 instead of Permit of Wood; but refugees returned during the first and second phases and on their own initiative were not given this money.
- (c) **Non-receipt of rations:** Refugees returning during the third phase were not provided with allocated rationing for 16 weeks as stipulated in the Accord. The refugees returning in the fourth and sixth phases were not regularly provided with daily commodities (dhal/pulse, oil and salt) by the Bangladesh Red Crescent Society; and hundreds of families at Panchori have not been provided with rice.
- (d) **No money for cattle:** Many returnee refugee families who have cultivable land have not yet received the money for the purchase of cattle to enable them to cultivate. Except the returnees at Panchori, refugees who returned during the first and second phases and others who returned on their own have not yet received Tk. 3,000 to purchase cattle.

- (e) No loan exemption: The Accord exonerated the returnee refugees who could not properly utilise loans obtained; necessary steps have not, however, yet been taken to grant an exemption to the returnees in respect of all previous loans.
- (f) Return of land: the Association has recorded 1105 returnee families who did not get back their housing and gardening land and 562 families who did not get back the cultivable land upto the 30th April 1998, as promised by the Accord. Besides, adjacent lands of four Buddhist Bihars are still under the occupation of settlers.

In addition, 59 returnee families are still staying at six camps (primary schools) under Dighinala thana. Their homesteads are still under illegal occupation, and as a result of staying in Camps their living conditions are poor. Three hundred returnee families who worked as Planters in co-operative farms and rubber gardens have not been given back their homesteads and gardens. The CHT Development Board has not yet taken any steps towards solving these problems.

- (g) No jobs back: Thirty-nine returnee employees could not rejoin their previous jobs. Those who rejoined did not get their seniority, other allowances and benefits as promised in the Accord.
- (h) No examination: The special examination for the S.S.C. students studied in Refugee Schools in Tripura promised by the Accord has not yet been held, thus contravening the Accord.
- (i) No jobs: None of the educated and unemployed returnee youths were provided with any jobs as stipulated in the Accord.

The Welfare Association reported that some influential traders and businessmen of Bowalkahli Bazaar have established bazaars at the residences of eight returnee families. Consequently, five of the eight families have taken shelter in the Dighinala Government Primary School and other three families have taken shelter with their relatives.

- (j) Cases not withdrawn: It has also been reported that cases against 23 returnees have not been withdrawn and they were arrested on different dates under the Special Powers Act of 1974, which amounts to a serious breach of the Accord.

The Government has, however, taken steps to rehabilitate the PCJSS and the armed cadres of Shanti Bahini who have surrendered arms to the Government. It has been reported by the researchers of Odhikar that the Government has recruited 302 Shanti Bahini cadres in the Police Department on 23 May 1998. It was also reported that the Government has, in the meantime, withdrawn the military check-points from CHT, although the regular BDR and Army camps are still remaining there.

The Government and several non-government organisations have undertaken economic and other development programmes in the CHT area.

Odhikar has received information of the death of 23 internal refugees due to lack of foodstuffs and medicine in some remote areas of the CHT. No support was forthcoming for these people in time.

Case studies:

1. Pulin Behari Chakma of Dighinala: His 8.46 acres of land (located at Merung Mouza, plot No. 105) has been under the occupation of Bengali settlers and has not yet returned to him. When researchers of Odhikar met the Thana Nirbahi Officer of Dighinala and asked about the land problem of refugees, they were informed that some land disputes have to be solved. He informed that the Government was doing its best but a quick solution to this problem was unlikely.
2. Tapon Chakma: "During my stay in India as a refugee, my cousin brother Shasank, a Chakma, sold my homestead (0.28 Dc. ml) to Bengali settlers. This land was allotted to me and I am still paying tax

for that land."¹ He is now residing in the North Kabakhali Primary School (transit camp) along with nine members of his family in inhumane conditions. As this homestead is still under the occupation of Bengali settlers, he cannot return to his paternal land.

Tapon Chakma left his homestead in June 1986 due to communal clashes in his village and crossed the border to India. He returned to Khagrachari on 7th February 1998. He added that he is sustaining the family on rations and has no other source of income. If his land is given back to him, he will be able to cultivate and earn a living. He said "Only Bhagban (God) knows what will happen if rations come to an end." He regretted that except the eldest child, his other children have already stopped their education due to economic hardships. He also informed us that instead of sitting idle, he has cultivated a shared land on lease. He plans to make a temporary house at the premises of Ingrej Chakma living in Milonpur.

3. Neetipurna Chakma received back his own land: On his return from India, Neetipurna Chakma has taken back the possession of his homestead and cultivable land that he previously leased out. He paid Tk. 11,000 to get back his leased land. Other Bengali settlers who had taken a lease from him assured him that the plot will be given back to him after the expiration of the lease-period.

Neetipurna Chakma, now aged seventy-five years, talked to our researchers at his home as the Milonpur village in Dighinala thana, Khagrachari district on the 30th June 1998. He told "In 1986 as communal violence erupted and many houses in our village were set on fire, I left my village, crossed the border to save our lives and took shelter in refugee camps in Tripura. When I returned home in November 1997, I found that Bengali settlers who occupied my land had already vacated my land." He said that he had purchased two calves at the cost of Tk. 7,000 allocated to him by the Government and made a house on his own land with one bundle of C.I. Sheets given to him. He expressed his anxiety regarding his future and told that the family will have to face difficulties if the government rations ended.

¹ This information was given to us by Mr. Tapon Chakma (S/o, Rajmohan Chakma of Kabakhali Muk, at Dighinala thana under Khagrachari district) on 30th June 1998.

He added that Tk. 21,000 has already been spent to get back the lease-land and he has no more money in hand. He said that he could not yet find any business or alternative source of income.

Odhikar researchers found that he has already cultivated vegetable around his house and has planted various types of fruit-plants, despite his advanced age.

Comments on Rehabilitation activities:

The results of Odhikar's monitoring of the rehabilitation of refugees and the peace process indicate that the Government machinery had been slow in rehabilitating the refugees as promised. The Government has failed to resolve land disputes. The authorities contend that if the Bengali settlers are ousted by force, it could lead to a communal clash. The Government is also facing difficulties in successfully implementing the provisions of the Accord.

Impediments to implementing the Accord:

One of the built-in deficiencies of the Accord was a clear determination of the future of the Bengali settlers in the Chittagong Hill Tracts. The Bengalis were largely settled there on political grounds by successive governments. The Accord was specific about returning the land to the tribals but did not clarify the land rights, if any, of the settlers.

The issues, thus, are volatile because the settlers will be dispossessed from their present land, especially, without adequate compensatory measures. This, many observers believe, would emerge as the main obstacle to the implementation of the Accord.

There are about 300,000 ration cardholders in the whole of Chittagong Hill Tracts. Of them, 130,000 holders of ration cards are 26,000 Bengali families living in 108 cluster villages mainly in the Khagrachori district. There are more than 15,000 Bengalees without ration cards living in those cluster villages. Without taking into account the interests of this large number of Bengalees, the successful implementation of the Accord will be impossible.

The failure to bring all the parties into the negotiation process will also hinder the implementation process.

The objections by other smaller tribal groups are also hindering the successful implementation of the Accord. Although the Bengali population constitutes almost one half of the total population of CHT, according to the Accord, they are restricted to one-third representation, which stands out to be a major problem.

Without assessing the public opinion through a referendum or other legitimate method, the Accord will face obstacles and real peace in CHT will remain distant.

Political Reactions to Peace Dialogue and the Accord:

From the very beginning of peace talks, the main opposition party, BNP, the Jammat-e-Islami and other opposition parties were demanding that the Government should not sign any Accord thereby violating the Constitution. After signing the Accord, the opposition parties claimed that the Accord has indeed violated the Constitution. They also claimed that the accord has heightened the possibility of a secessionist movement in that area and this has threatened the integrity and sovereignty of the country. It was also stated that the rights of Bengali people in the CHT have been taken away.

The opposition parties organised a series of political meetings to oppose the Accord and have threatened that they would oppose the implementation of the Accord. These political parties also opposed the four Bills in the Parliament.

The BNP and other parties opposed to the Accord have since engaged in a political campaign against the Accord. They also observed a "hartal" (strike) and other action programmes protesting the Accord. This included the "Long March" towards the CHT. These programmes and their stand against the Accord have raised questions in the minds of the people regarding the Accord across the country.

On the other hand, the Government claimed that the Accord was drafted within the bounds of the Constitution. The CHT Local Government Council Act of 1989 has been reinstated as the basis of the Accord. The Regional Council was established only to co-ordinate activities of the three district councils and was not meant as a legislative body.

The Government maintained that the Bengali settlers and military will not be withdrawn. The Bengali people of the CHT claim that the Accord will cause

uncertainty for them as there remains a possibility of them being ousted. The settlers point out that their vital rights have not been protected by the Accord and, therefore, they will be deprived of those rights.

Although the opposition political parties have challenged the constitutionality of the Accord, none has done so in a court of law. The High Court Division rejected a premature writ petition which was filed by one Advocate Samsuddin Ahmed.

Jurists are, however, divided on aspects of the Accord. Main areas of concern had been whether the Accord fits within the parameters of the Constitution, whether the Accord brings basic structural changes to the Constitution, and whether it is incompatible with the unitary character of the Constitution. Other unanswered questions include the supremacy of Parliament and a possible abdication of the authority by the Government. A number of equality provisions, like the equal opportunity provisions, freedom of movement, freedom to engage in a trade and business, right to property and Republic's property rights have come under scrutiny.

On the other end, some tribal organisations, namely, Pahari Charta Parisad (PCP), Pahari Gano Parisad (PGP) and Hill Women's Federation (HWF) protested against the Accord, on different grounds. They claimed that the PCJSS has betrayed the hill people by not advocating the demand for total autonomy and complete withdrawal of military and Bengali settlers from the region. They have indicated their intention of carrying on their movement for full autonomy.

As a result, a certain amount of tension prevails among the pro- and anti-Accord inhabitants. Nevertheless, no significant communal clash has yet been recorded. However, the pro- and anti-Accord members of the PCP have been involved in internecine clashes.

The Impact On Law and Order:

After signing the Accord, the law and order situation in CHT has deteriorated in many respects. Many of the youth in the CHT are beyond the control of the law. Toll collection, kidnapping and demand of ransom have become a regular phenomenon. Many illegal arms and weapons are still in circulation.

Especially the pro- and anti-Accord groups of the PCP are increasingly involved in attacks and counter attacks against each other. The illegal activities of these youth have even hampered the activities of the UMC (United Meridian Company - a natural resource extracting company) in the CHT. Kidnapping of officials of the company for ransom is not unknown. Now the company is working under army protection.

Plundering and trafficking of forest resources has increased noticeably. The price of food items has increased substantially as a result of the greed for profits by those engaged in the business.

Conclusion:

Considering the overall situation in the CHT area, the Accord has been appreciated by many people in the country. However, the main opposition party, BNP, and other opposition parties still oppose the Accord. The desired national consensus on the Accord has not yet been achieved.

Although there are many limitations and irregularities in respect of the implementation of the Accord, the government is reportedly endeavouring to rehabilitate the refugees who have returned from India.

Many refugees cannot yet return to their own homes due to the occupation of their land by settlers and by the government and other institutions. Many are not provided with rehabilitation assistance, relief commodities or ration cards. Thousands of returnees still live in transit camps in unhealthy conditions. Most of the refugees are still dependant on the relief/ration commodities/cards and cannot yet find out any alternative source of income.

Most of the returnee youth are still unemployed. Previous loans to many returnee refugees have not been written off. Cases against a number of PCJSS and Shanti Bahini cadres have not yet been withdrawn. There are several instances of new cases and the detention of tribal youth opposed to the Accord.

It is also understood that most of the Bengali settlers have to face eviction due to land disputes with the returnee people.

Subsequently, the Peace Accord has created internal groupings, suspicions and enmity among the youth of several hill organisations, i.e. Pahari Chatra

Porishod (PCP), Pahari Gono Porishod (PGP), Hill Women's federation (HWF) etc. They are engaged in internal conflict as well as facing opposition from the Bengali settlers.

Peace and socio-economic development are inter-related; peace cannot be achieved within a short time, certainly not by depending entirely on the Accord. It can also be said that important steps have been taken to establish peace in the troubled area of CHT by different actors.

At the same time it is also necessary to monitor and observe the on-going and future developments in the CHT for at least next five years, to reach any final conclusion.

Recommendations:

Considering all aspects of the present law and order situation in the CHT, the on-going process of implementation of CHT Peace Accord, socio-political opposition and constraints and problems towards the establishment of peace in the region, Odhikar has formulated the following recommendations for the successful implementation of the Peace Accord that may help improve the overall situation in the CHT:

1. Take initiative for building up a national consensus in the post-Accord situation in the national political field to minimise tension.
2. Take steps for the rehabilitation of Bengali settlers ousted under the implementation process of the Accord and ensure the protection of their fundamental human rights.
3. Conduct a demographic census and prepare voters' lists.
4. Form immediately a Land Commission under the Chairmanship of a retired judge.
5. Conduct a land survey to solve land disputes.
6. Create employment opportunities through setting up various kinds of appropriate industries including cottage industries and other income generating enterprises.

7. Undertake programmes for multi-sectoral modernisation of local land and agriculture.
8. Initiate a legal awareness raising programme for the hill-people as well as for the Bengali people living in the CHT.
9. Undertake a voter education programme that may ensure a meaningful and effective local leadership.
10. Undertake training programmes for the members of local elected bodies (i.e. U.P. Chairpersons, and Members), headmen (traditional tribal community leaders) and the members of other local government bodies.
11. To make the civil administration more powerful and efficient.
12. To initiate an immediate programme for structural development to ensure socio-economic, educational and health services to all CHT people.
13. Initiate reconciliation activities to remove previous communal mistrust/hatred and to ensure communal harmony among all CHT people, including Bengali and tribal.
14. To take strong measures to arrest international arms and drug trafficking through the CHT.
15. To take effective measures to recover all illegal arms and to maintain law and order in that area.
16. Take necessary action against plundering of forest resources and killing of forest animals for the preservation of nature and the environment in the CHT.
17. Ensure supply and distribution of foodstuff and commodities through a rural rationing system.
18. Inspire tribal youth towards more sports and cultural activities;

19. Take necessary initiative for the preservation and development of indigenous culture, religion and language of different tribal people living in the CHT area; and
20. Withdraw all oppressive measures against anti-Accord activists: i.e. PCP, PGP and HWF and to initiate talks with them to build trust and confidence.

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