Human Rights for all: The Rights of
Minorities in the Peace Process

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PEACE PROCESS

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Preamble

The population of the little island of Sri Lanka is amazingly diverse. We could regard diversity as holding the potential for conflict, or as a precious asset with great positive potential. We have been blessed for over 2 millennia with two great world religions and two ancient languages, further enriched many centuries ago with two other world religions and, two centuries ago, with one world language. All these and several other religions and languages have contributed to our cultural wealth; in turn, several of them have gained much over the centuries from very significant endogenous literary contributions.

Historical background

Sri Lanka has been peopled from pre-historic times. The Veddahs claim descent from the original inhabitants. However, the proximity of many communities in India with long sea faring traditions has resulted in many streams of Indian migrants, permanent and temporary, augmenting the original population from at least the early centuries of the first millennium B.C. Before the advent of Buddhism, the population of the island was animist or Hindu. Buddhism flourished among the Tamils of India and of North East Sri Lanka in the early centuries of the first millennium A.D., before it yielded to Hinduism, but it remained as the dominant religion of the people of the West, South and Center of the island. There was continuous and substantial external and internal migration. New arrivals, from India and other parts of Sri Lanka, mostly took on as their own the dominant language and religion of the locality they settled into:

Ceylon has a recorded history reaching back to at least the famous sixth century before Christ. But the two main streams of tradition that have irrigated her historical development go further back and derive their source from India, and are in fact drawn from the same great cultural reservoir from which the Eastern half of the world yet draws its inspiration. Of these two streams of tradition the one owes its birth to Siddharta Gautama Buddha, India's great spiritual genius and one of the world's greatest sons. The other tradition is older still and represents Hindu Culture as developed in the schools of Southern India. Each of these traditions developed a distinctive individuality in Ceylon, and in fact the Buddhist tradition attained to such perfection here, both in its philosophy and its practice, that when Buddhism disappeared as a separate faith from the land of its birth, Ceylon came to be regarded by all Buddhist lands as the spiritual home of the religion of the Middle Way. (K.Nesiah, The Mother Tongue in Education, page 1, Ola Books, Colombo, 1945).

Even before the arrival of the Europeans, a new element in the demographic pattern was introduced with the arrival of diverse trails of Muslims in the medieval period. Nearly all the trails were or became Tamil speaking, but have remained socially distinct from both the Sinhalese and the Tamils; the defining feature of their ethnicity was Islam:

There were among them Arabs, Persians, Egyptians, Abyssinians, and Indians; and they were sailors and traders, *sufis* and *fakirs*, and travelers and physicians. None of them came to conquer territory or proselytize pagans but all of them were attracted to the shores of Serendib by the

abundance and value of its spices, pearls, ivory and gems. The sacred footprints of Adam's Peak were an added attraction. Although the early visitors were a heterogeneous group in terms of ethnic origins and purpose of arrival, in terms of religious belief and spiritual practices the vast majority of them belonged to the *sunni* sect of Islam. In generic terms therefore, they were all Muslims and that was their collective identity (Ameer Ali, Plural Identities and Political Choices of the Muslim Community, pages 1 & 2, Marga Monograph Series, Colombo, 2001).

Till well into the British period, and even in the early post-independence years, the identities of the Sinhalese and Tamils remained fluid and the boundaries porous. The prevailing European concepts of ethnicity and nationality contributed to defining and reinforcing Sinhala, Tamil & Muslim identities and effectively hindering inter-ethnic mobility within the island; so too the institutional requirements of "modernization" such as the declaration of the "mother tongue" and religion for schooling, and of "race" and religion for census enumeration, birth registration, etc.

With the advent of the European colonizers, there were, in turn, large numbers of Portuguese, significant numbers of Dutch, and smaller numbers of British settlers. Most of them have since blended into the Sinhalese and other ethnic categories, or emigrated, leaving a very small residue of (Eurasian) Burgher population. The numbers of Sinhala and Tamil converts into various Christian denominations (the majority into Roman Catholicism) were much larger but, unlike in the case of converts into Islam, they retained their earlier ethnic identity. A significant proportion of these reverted to Buddhism or Hinduism in course of time, but large numbers remain Christian.

During over 4 centuries of the colonial period, they was continuing immigration from India and, on a smaller scale, from Indonesia. The Indonesian immigrants were Muslim and referred to as Malays. Of the Indian immigrants, by far the largest category was "Indian Tamil", now known in Tamil as *Malaiyaha* Tamils. As has been noted:

> The lack of an agreed-upon appellation in English thus reflects the provisional nature of *Malaiyaha* Tamils' integration into the mainstream of Sri Lankan politics, culture and society. Though they have been an integral part of the Sri Lankan economy, if not its backbone, for over 160 years, *Malaiyaha* Tamils have gradually become part of the Sri Lankan polity only in the past twenty to thirty years.(Daniel Bass, Landscapes of Malaiyaha Tamil Identity, pages 6 & 7, Marga Monograph Series, Colombo, 2001).

Unlike the Sinhalese, Sri Lankan Tamils and Muslims, the Indian Tamils have a long history of acute marginalization. They were denied citizenship and voting rights through the Citizenship Act of 1948 followed by the Indian and Pakistani Residents (Citizenship) Act of 1949 and, ultimately, the right to permanent residence. Over a succession of legislative measures and Indo-Sri Lankan agreements, arrangements were made to "repatriate" (deport) to India a little over one half of this category and to extend the citizenship rights in stages to those remaining. *De jure*, this process of eliminating the stateless category is now virtually over, but *de facto* the integration of those conferred Sri Lankan citizenship into Sri Lankan society is yet incomplete. At the time of independence the Indian Tamil population was slightly larger than the Sri Lankan Tamil. The proportion of Indian Tamils is now less than a half what it was then, and less than a third of the total Tamil population of the Island.

Over 90% of this category have either emigrated to India or gained Sri Lankan citizenship, but there remain two residual categories of this community; the first is classified as Indian Tamil citizens but appear to be unwilling to emigrate, and the second is a small number whose citizenship status is yet undetermined, i.e. they remains stateless. However, the biggest problem, requiring priority attention, is to absorb into the main steam, in the economic, social, cultural and political spheres, the entire community (numbering about 900,000), including even those who have gained Sri Lankan citizenship.

Population and geographical distribution

The last completed census was in 1981. In terms of that census, the Sinhalese constituted over 74% of the population in every district except Nuwara Eliya in the Central province, Badulla in the Uva province, and the districts of the North and East.
In the Central province as a whole, they constituted over 64%, and in the Uva province as a whole over 73%. By 2001 the Sinhalese population has increased further in these two provinces to 65.3% and 79.6% respectively.

In 1981 the Sri Lankan Tamils were 10.0% of the population of Colombo district, 12.7% in Nuwara Eliya, and less than 7% in every other district outside the North East. They were a clear majority in every district in the North, and in Batticaloa. In the Northern province, Tamils were 86%, the Muslims 5% and the Sinhalese 3%. They were the largest ethnic group in Trincomalee, which also had very substantial numbers of Muslim and Sinhalese, and the second largest in Ampara, in which the Muslims were the most numerous, and the Sinhalese were also present in large numbers. In the Eastern province as a whole the Tamils formed 41%, the Muslims 32%, and the Sinhalese 25%.

The largest proportion of Muslims was in Ampara district (41.6%). Of the combined population of the temporarily merged North Eastern province, the Tamils formed 65%, the Muslims 18%, and the Sinhalese 13%.

Though, prior to Independence, there had been a longstanding distinction between Kandyan and Low Country Sinhalese, reflected in several political, social and economic associations, this distinction has been steadily eroding since then. In contrast, though there was an attempt to forge a political alliance of all minority ethnic groups immediately prior to Independence, and of the three Tamil speaking communities, viz. the Sri Lankan Tamil, Indian Tamil and Moor in the early post Independence years, these attempts failed. The failure was partly due to fear of domination by the Sri Lankan Tamils, concentrated in Colombo and Jaffna. The three major Tamil speaking categories remain politically distinct, but a new category of Muslim has emerged, including the Moor and Malay communities.

Most of the Sri Lankan Tamil and Muslim Members of Parliament had voted for the legislation reducing Indian Tamils to statelessness and, in doing so, served to significantly tilt the political balance towards majority domination and to bring about the ethnic crises of the 1950s. The trauma of the Indian Tamils in being reduced to statelessness in the immediate wake of Independence was followed few years later by the Sinhala only policies (which severely affected the status and opportunities of all Tamil speaking persons) and the riots of 1956 and 1958 (which created much loss of life and property, and physical insecurity among the Tamils). These events have led to profound political and social changes, and to an escalation of the ethnic conflict.

The Indian Tamils were 42.7% of the population in Nuwara Eliya district, 20.2% in Badulla district, and less than 20% in every other district. But in the 2001 census (which did not cover Jaffna, Mannar, Vavunia, Mullaitivu, Batticalloa and Trincomalee districts), these percentages had dropped to 21.3% and 18.2% respectively. This drop could be due to immigration to India, internal migration to the North East and, possibly, reclassification as Sri Lankan Tamil. Perhaps the integration of Indian Tamils into Sri Lankan society may need to begin with the integration of the Sri Lankan Tamil and Indian Tamil ethnic categories; but this may be a slow and difficult process.

In terms of religion, there are four major categories. Buddhists, almost entirely Sinhalese, were 69.3% of the population in 1981. Hindus, overwhelmingly drawn from the Sri Lankan Tamil and Indian Tamil populations, formed 15.5% of the population, the Muslims (Moor and Malay) 7.5%, and the Christians 7.6%. The Christians constituted 6.2% of the Sinhalese and a little over 13% of the combined Tamil population. The Christians are disproportionately concentrated in the Western districts and the coastal areas of the North. They constitute 42.1% of Mannar, 37.9% of Puttlam, 23.4% of Gampaha, 15.8% of Mullaitivu, 12.6% of Jaffna and 11.6% of Colombo districts. Overall, nearly 90% of the Christian population are Roman Catholic.

Attached Table 1 gives the Percentage Distribution of Religion by Districts, 1981 and 2001, and Table 2 the Percentage Distribution of Ethnicity by Districts, 1981 and 2001

Political developments

Jaffna, widely identified as a centre of Sri Lankan Tamil consciousness all through the twentieth century, also produced the earliest and most militant all-island oriented nationalist movement. The Jaffna Youth

Congress (JYC), which peaked in the early thirties, campaigned against the caste system, opposed federalism (for unstated reasons - perhaps this option was not seriously explored), demanded quick independence for a united Sri Lanka, and rejected the Donoughmore reforms as too little too late. The membership comprised largely of young men, mostly school teachers, in their early twenties and students in their late teens.

The JYC sought to overcome the limitations of its peninsular base by incorporating or establishing links with those outside. National leaders associated with the JYC included S.W.R.D. Bandaranayake, C.E.Corea, W. Dahanayake, S.W. Dassanaike, Colvin R.de Silva, George E. de Silva, Francis de Zoysa, , D.B. Dhanapala (involved in the founding), A.E. Goonasinghe, Leslie Gunawardena, Philip Gunawardena, T.B. Jayah, D.B. Jayatilleke, J.R. Jayawardena, P. de S. Kularatne (elected President at the 1925 Annual Sessions), E.W. Perera (elected President at the 1929 Annual Sessions), G.K.W. Perera, N.M. Perera, Selina Perera (who was charged for sedition on account of a speech that she delivered at the 1941 Annual Sessions), D.S. Senanayake, Peri Sundaram, Swamy Vipulananda (elected President at the 1928 Annual Sessions) and S.A. Wickremasinghe.

Long before independence, the JYC led the campaign for the use of the national languages in education and in governance. The JYC succeeded in getting virtually all the leading schools in Jaffna to teach Sinhala as a compulsory subject at the secondary level. As J.E. Jayasuriya has noted, "At a time when the Sinhalese were prepared to do without Sinhala, the battle for Sinhala and Tamil was fought by Tamil leaders" (Nesiah, 1981:152). Ironically, the teaching of Sinhala in schools in Jaffna was abruptly terminated in 1956 as a reaction to the introduction of Sinhala as the only official language.

The Tamil Congress, which displaced and took over the political leadership of the Sri Lankan Tamils from the JYC, did not pick up and carry forward the national languages policy of the latter. Like the leadership of the Ceylon National Congress/United National Party, the Tamil Congress was comfortable with the continuation of English as the medium of instruction in major schools and as the language of governance. When radical Sinhala leadership emerged to challenge the national leadership, it was on a Sinhala only platform. Perhaps if the Tamil leadership had retained its former national languages orientation, the challenge could have been thrown by a radical multi-ethnic coalition on a Sinhala-Tamil bilingual platform. The social, cultural and political transformation that began in the mid-fifties might then have been unifying and not divisive, and could have benefited both language groups and not just the Sinhalese speakers at the cost of marginalising and alienating the Tamil speakers.

Up to the time of Independence, the Tamil leadership was virtually unanimously and uncompromisingly in favour of a unitary Sri Lankan state. The concept of federalism was introduced to the community only after independence and was resoundingly rejected, even in Jaffna, in the 1952 general elections. It was only with the Sinhala only movement of 1956 that the Sri Lankan Tamil population opted for federalism. Eventually this nationalism acquired a separatist component but this component remained peripheral up to the mid-70s; every candidate advocating secession suffered demoralising defeat at every election to every parliamentary seat. The statement of S.J.V Chelvanayakam on winning the Kankesanthurai bye election in February 1975, marks a fateful turning point:

> We have for the last 25 years made every effort to secure our political rights on the basis of equality with the Sinhalese in a united Ceylon... It is a regrettable fact that successive Sinhalese governments have used the power that flows from independence to deny us our fundamental rights and reduce us to the position of a subject people... I wish to announce to my people and to the country that I consider the verdict at this election as a mandate that the Tamil Eelam nation should exercise the sovereignty already vested in the Tamil people and become free.

That statement and the Vaddukoddai resolution of 1976 in favour of separation must be seen in the context of many painful and humiliating reverses including the adoption of the scheme of "Standardisation" of University admissions and the 1972 Constitution. In the context in which it was adopted in 1971, many Sinhalese leaders may have seen "Standardization" of university admissions as a politically compelling measure. They failed to understand (or were indifferent to) the traumatic impact it would have on the Sri Lankan Tamil community. In turn, the Sri Lankan Tamil leaders failed to understand (or were indifferent to) the political pressures on the Sinhalese leaders on account of the growing ethnic imbalance in university admissions. Negotiations between the political leaders of the different ethnic groups on this issue may have lead to an acceptable solution – but such dialogue has not been part of Sri Lanka's political tradition. Similarly, the drafting of the 1972 Constitution was widely seen by the minorities, especially the Sri Lankan Tamils, as an exercise undertaken by the Sinhalese leaders with little heed to the concerns of the minorities.

The alienation of the Tamil leaders (and, in consequence, the Tamil people) arising from the lack of any attempt to accommodate or even

consider their views in the framing of the constitution was a major contributory factor to the emergence of the Vaddukoddai resolution of 1976. Even at that stage it appears that many who voted for that resolution or refrained from publicly opposing it saw it as a token of protest against oppression or a strategic bargaining position rather than an expression of their aspiration. But they miscalculated the impact of that resolution. On the one hand the youth at that assembly took it seriously and embarked on a separatist struggle that, within a decade, developed into a civil war. On the other, it provided valuable ammunition to those of the Sinhalese leaders who organised the anti-Tamil violence of 1977, 1979 and 1981, and the island-wide pogrom of 1983.

The pogrom of 1983, in which sections of the ruling party were clearly involved, was followed by the effective disenfranchisement of the Tamil people with the expulsion of their leaders from Parliament for failing to make a humiliating declaration renouncing secession in the immediate wake of the pogrom. This led to an extended break in the democratic process among the Sri Lankan Tamils. Inevitably, militant groups filled the vacuum created by the absence of Tamil Members of Parliament.

A feature of the 90s was the emergence of the Sri Lanka Muslim Congress with a strong base in the East, and the decline of both Tamil and Muslim backing for the UNP and SLFP in the North East. While the earlier political initiative based on forging Tamil linguistic nationalism failed to integrate the Tamil speaking ethnic groups, it may have helped to stimulate political consciousness throughout the North East by highlighting the political concerns of the Tamil and Muslim populations of the region. A logical development was the emergence of a Muslim political party (Sri Lanka Muslim Congress) with a strong base in the Eastern province. From the Muslim perspective the emergence of a

political party with an Eastern base poses a dilemma - how can the hitherto neglected concerns of the Muslims of the North East (some of which concerns are similar to those of the Tamils of that region) be effectively articulated without adverse impact on the Muslims of the other regions? Another dilemma relates to the reconciliation of the aspirations of the Tamil and Muslim populations of the North East. The peace process and related tensions have brought these two dilemmas into focus.

Sri Lankan Tamils have never had an effective political voice at the centre nor, except for a brief period, even at the provincial level. Outside the North East, they are conspicuously marginalised at all political levels; the few who have contested political elections, even in areas of high Sri Lankan Tamil concentrations such as Colombo, were seldom elected. They have hitherto reacted (mostly negatively) to political developments (mostly adverse) led by the two major parties dominated by the Sinhalese. Even when on rare occasions their concerns appeared to be heeded, the agreements entered into were either repudiated by the governments that negotiated them or were not seriously implemented. Sri Lankan Tamils need to develop their capacity to effectively share power and participate in government at all levels.

Identity, self-determination and related human rights issues

As Godfrey Gunatilleke has pointed in an unpublished note, while Sinhala nationalism is born out of the past, Tamil nationalism is born of the present. But this does not imply that because it has emerged recently, Sri Lankan Tamil nationalism may be ephemeral. History cannot be reversed, the sequence of traumatic events since independence cannot be undone, and the nationalism that has emerged

from such a cauldron cannot be put back. This nationalism has been defined in terms of the "Thimpu Principles" jointly put forward by the Tamil groups at the Thimpu negotiations in July and August 1995. This position may superficially appear to be separatist, but the concepts of homeland and self-determination are compatible with a united (though not unitary) Sri Lanka. The different proponents of the Thimpu Principles have different interpretations of them, but its value is that it is a collective Sri Lankan Tamil formulation that is not based on secession, and could therefore serve as an entry point into the negotiation process.

In the context of developments over the last five decades, the right to self-determination has emerged as an essential component of Tamil nationalism. A widespread misconception shared alike by many supporters and many opponents of secession is the identification of the right to self-determination with the right to unilateral secession. On the contrary, as Kirgis Jr. (1994) points out, the many faces of self-determination include:

.....

(6)   The right of limited autonomy, short of secession, for groups defined territorially or by common ethnic, religious and linguistic bonds - as in autonomous areas within confederations.

(7)   Rights of minority groups within a larger political entity, as recognized in Article 27 of the Covenant on Civil and Political Rights and in the General Assembly's 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

.....

In international law, the right to secede is only one of the options and even that option cannot be exercised unilaterally. In fact this question was posed by the Governor in Council of Canada to the Supreme Court (1998) as follows:

> ...[Is] there a right to self-determination under international law that would give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?...

In response, the Supreme Court of Canada (1998) set out its opinion very clearly:

.....

126. The recognised sources of international law established that the right to self-determination of a people is normally fulfilled through internal self-determination - a people's pursuit of its political, economic, social and cultural development within the framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances...

127. The international law principle of self-determination has evolved within a framework of respect for the territorial integrity of existing states...

.....

130. ...There is no necessary incompatibility between the maintenance of the territorial integrity of existing states, including Canada, and the right of a 'people' to achieve a full measure of self-determination. A state whose government represents the whole of the people or peoples resident within its territory, on a basis

of equality and without discrimination, and respects the principles of self-determination in its internal arrangements, is entitled to the protection under international law of its territorial integrity.
.....

134. A number of commentators have further asserted that the right of self-determination may ground a right to unilateral secession... when a people is blocked from the meaningful exercise of its right to self-determination internally... The Vienna Declaration... adds credence to the assertion that such a complete blockage may potentially give rights to a right of secession.

We note that the Canadian Supreme Court and much of the literature on the subject (e.g., Steiner and Alston, 2000) draw a clear distinction between internal and external self- determination. Effective provision for internal self-determination (e.g., federalism combined with non-discrimination), far from paving the way for unilateral secession, delegitimises any recourse to it. On the other hand, the denial of due internal self-determination could legitimize a right of secession.

Despite the increasing intrusion of ethnicity in political mobilization, an autonomous East, with its unique history, culture and tri-ethnic mix, could have been a model of co-existence for Sri Lanka. Each of the ethnic groups would have been motivated to seek coalitions with one or both of the other ethnic groups so as to form the regional government, and equally motivated to avoid falling out with either of the other groups so as not to damage future prospects. In turn, national political parties, mindful of both their current and future interests in the East, would have been motivated to avoid resorting to racist politics anywhere in the island. Sadly, much brutal violence and ethnic cleansing appear to have closed the option of an autonomous East and increased the likelihood of its break-up.

In the case of Hill Country Tamils, they have legitimate claims to equal language rights in areas in which they live in large numbers. Perhaps, with the prospective gradual fusion of the Sri Lankan Tamil and Indian Tamil communities (a process that may have already begun in the case of Hill Country Tamils settled in the North East or in Colombo), they may eventually come to see the North East as the region to which they can go if they wish to live in a Tamil majority area, and the regional government of which could be expected to promote their language, religion, culture and other concerns. The Sri Lankan Tamils resident outside the North East already view that region and the regional government sought to be established in these terms.

Fundamental to the federal concept is that none of the federating units is exclusive, i.e., all citizens of the country have free access to every federating unit. While there could be legitimate ground to oppose state aided settlement schemes designed to alter the ethnic balance of any region, a federation of ethnically exclusive regions cannot be viable. This reality needs to be accepted by Sri Lankan Tamils as well as those of all other communities in respect of all the regions of Sri Lanka. There has been much ethnic cleansing of Sinhalese, Tamils and Muslims; effective counter-action is necessary. The entire island belongs equally to all her citizens, irrespective of whether the administration is unitary or federal.

The establishment of a Tamil majority autonomous region would raise, among the Sinhalese, fears of secession and also fears for the security of the Sinhalese settled in that region. As already pointed out, the federal concept and the manner in which it has worked out in other countries in the region suggest that federalism would minimize (though perhaps not eliminate) ethnic conflict. In the case of secession

too, the experience elsewhere suggests that this demand is more potent where there is repression and over centralisation (as in the case of Pakistan in relation to Bangladesh) than in cases where there is a ready acceptance of devolution (as in the case of Switzerland and the U.K.). It could be argued that both Canada and India would have fragmented long ago if they did not have federal constitutions; and that the secession of Bangladesh, Eritrea and Bosnia may not have occurred if they enjoyed equality and internal self-determination. However, historic parallels may not be enough to dispel Sinhalese fears of secession and political links with Tamil Nadu, and these need to be addressed and necessary safeguards worked out. On the other hand, minority fears of unfettered powers of the centre to dissolve regional governments and impose direct central rule also need to be addressed.

Leonard Woolf argued in 1938 in favour of "a constitutional arrangement which ensured a large measure of devolution or the introduction of a federal system ... Despite the foresight of Leonard Woolf Sri Lanka's failure to lay down the constitutional foundations of a multi-ethnic society based on equality, ethnic pluralism and the sharing of power has exacerbated the ethnic conflict" (Tiruchelvam, 1997 : 33). Any state, to be viable, needs to have legitimacy in the eyes of all major segments of its population. This would be possible only if each such segment has a voice in forming the government and in governance at all levels. It may be difficult to ensure that the minority communities will have a major say in forming the government or in governance at the centre. But substantial devolution to the provincial level can provide Sri Lankan Tamil and Muslim populations space for exercise of internal self-determination, which they have not enjoyed hitherto.

The journey towards territorial internal self-determination

Recurring ethnic, religious and caste conflict have plagued many of the regions that now constitute India, Pakistan and Bangladesh for over a century. In contrast, except for one brief period of anti-Muslim riots in 1915, we in Sri Lanka had not, till the fifties, faced such conflict on the scale or intensity experienced in those regions. The anti-Tamil violence of 1956 & 1958 came as a rude shock; those of 1977, 1979 & 1981 prepared the ground for the pogrom of 1983 and the civil war that followed.

At least over the last six decades, the overall trend in inter-ethnic relations in Sri Lanka has, subject to some minor fluctuations, been negative. In particular we note that the Sri Lankan Tamils, who were happy with a unitary Sri Lanka till five decades ago, abruptly demanded internal self-government through an autonomous North East region. For two more decades, they strongly and consistently opposed secession, but, during the seventies, there emerged a strong demand for external self-determination (secession). After nearly two decades of civil war, it appears that there could possibly a national settlement based on internal self-determination, as proposed five decades earlier by the Sri Lankan Tamil leadership and then resoundingly rejected by all sections of the Sinhalese leadership.

The question arises as to whether a settlement on the basis of internal self-determination has become necessary only on account of the conflict over the last six decades, or whether such a development was inevitable. In the light of the significant global increase in the salience of ethnicity in political organization and governance, and as a focus of conflict world wide, it seems clear that, in the Sri Lankan context, any system of governance that did not provide for internal self-determination

would not have remained viable. A further question then arises on the choice as between territorial and non-territorial self-determination, i.e. as between language sensitive regional autonomy (e.g. as in Canada or India), and some form of non-territorial ethnic representation in the political system and in governance (e.g. as in Malaysia).

It is relevant to note that internal self-determination on the basis of territory permits governance to be otherwise secular. Except in respect of the language of administration, the laws and politics of one self-governing region need not be different to those of another; nor is there a need for rights and opportunities to be defined as terms of ethnicity. In such a situation a gradual reduction in ethnic consciousness is possible, though not inevitable.

On the other hand, if self-determination is not based on territory, ethnicity needs to be reflected explicitly in the laws and regulations, in the institutions and in the political system, ensuring the perpetuation of ethnic consciousness. Such is the situation in Malaysia, where political organization is on the basis of ethnicity, both the ruling party and the opposition are inter-ethnic coalitions, and Bumiputra policies dictate that rights and opportunities are defined in ethnic terms. In India, while linguistic nationalism has been largely defused by the linguistic re-organization of the states, caste and tribal consciousness continue to be sustained by the special arrangements made for prescribed caste and tribal representation in union and state legislatures and in recruitment to the public services and educational institutions. Thus the fact that India's major linguistic groups are concentrated in territories large enough to be self-governing helps to mitigate linguistic nationalism; in contrast, the fact that dalit (untouchable) and tribal communities are scattered in locations too small to be self-governing makes it necessary to provide for explicit

caste and tribal quotas rather than secular arrangements for due representation to them in the legislatures, public services and educational institutions.

In this light, the residential concentration of Tamil speakers (or Tamils & Muslims) in the North East is an advantage in that it permits internal self-determination through secular devolution on a territorial basis. The alternative would have been to make special ethnicity specific arrangements such as in Malaysia, ensuring the perpetuation of heightened ethnic consciousness. It is not suggested that autonomous regions should be mono-ethnic – that would be a terrible disaster, or that past ethnic cleansing should not be reversed. In fact it is desirable for all autonomous regions (including the North East) to be ethnically diverse.

If a system of territorial internal self-determination is both desirable and inevitable, why was it not installed at the time of Independence or even earlier? Clearly, there was lack of foresight; also a lack of inter-ethnic consultation, which has been an unfortunate feature of our political culture. The Kandyan Sinhalese had pressed such territorial internal self-determination in the twenties and thirties, but the claims were expressed in Kandyan sectarian terms and opposed by the leadership of the other communities, including the Sri Lankan Tamils. Again, when the Sri Lankan Tamils were pushed to advocating territorial internal self-determination in the fifties and sixties, they too couched their demands in sectarian terms, provoking opposition from the others, especially the Sinhalese. Even the Communist Party, which had, in line with Marxist ideology, proposed a measure of territorial autonomy in the forties, could not find common cause with the Sri Lankan Tamil federalists. The opportunity to forge a multi-ethnic coalition to present federalism as a secular alternative to unitary governance was missed. In the event there

was a long erratic journey covering over five decades of political conflict and nearly two decades of civil war that has led us to recognize regional autonomy as the essential component of constitutional arrangements needed to hold Sri Lanka together. There was good progress in 2002, and talks are continuing, but peace is not yet secure. Regular, inter-ethnic consultation and cooperation at all levels are necessary to deal with further conflict in the decades to come.

Human rights for all

Superficially, ethnic conflict in Sri Lanka may appear to have been between the Sinhalese majority and the minorities, particularly the Tamils, and linguistic rivalry between the Sinhala speaking majority and the Tamil speaking minority. But the picture is much more complex. Religious distinction cut through the Sinhalese and Tamil ethnic and through Sinhala speaking and Tamil speaking linguistic categories. So do caste distinction. Overriding all these categories are class factors that, on the one hand, internally differentiate groups based on ethnicity, language, religion, caste, etc. and, on the other reinforce linkages that cut across all groups. Moreover, if we gradually disaggregate down to the provinces, district, divisions and towns and villages, or move our focus horizontally from province to province, district to district, division to division, town to town and village to village, we discover the varied wealth of our linguistic, religious and cultural heritage.

In most of the North and East, and in some localities elsewhere, the Sinhalese and the Buddhist are minorities. In the other provinces they constitute the majority but, even in these provinces, there are many localities in which their out numbered. In turn, within the North and

East, there are several localities in which the Sinhalese and Buddhists constitute the majority. So too in the case of Tamils and Muslims. Each of the major ethnic groups is a majority in several areas and a minority in several others. If conflict could be avoided or contained, this situation could help to establish tolerance, understanding and friendly inter-ethnic relations. Awareness that those of ones ethnic group are vulnerable minorities elsewhere in the island could help to temper the exercise of majoritarian power in areas in which ones ethnic group is dominant. On the other hand, violent inter-ethnic conflict in one area could provoke tit for tat retaliation elsewhere.

The experience of minorities vary from location to location and time to time. It would be useful to list some of the fears minorities may entertain, the prejudices they may encounter, the discrimination they may face even in the absence of the prejudices, and the disadvantages they may suffer even without explicit prejudice or discrimination.

Physical Insecurity and Humiliation

The most disturbing fear is of physical insecurity. Since the anti-Muslims riots of 1915, for over 4 decades, Sri Lanka was remarkably free of nationally significant ethnicity related violence. Unfortunately this record was broken in 1956 (beginning with attacks on Tamil satyagrahis on Galle Face Green) and, on a much bigger scale and in many locations, in 1958. After a lull period of nearly two decades, ethnicity related violence broke out again in 1977, reached a peak in the 1983 pogrom, and has continued on an off ever since. In several instances (e.g. in the 1983 pogrom directed against Tamils) the violence was accompanied by ethnic cleansing; in some (e.g. in the expulsion of Muslims from Jaffna), ethnic cleansing was achieved through threat of violence. The armed forces and militant Sinhalese, Tamil and Muslim Groups have

engaged in ethnic cleansing, specially in the East; the victims have included thousands of Sinhalese, Tamils and Muslims. Nationally, the scale of the violence has reduced during the course of year 2002, but in some areas, notably in the East, the tension has increased and, occasionally, erupted into violence.

The racially discriminatory and humiliating requirement for Tamils in Colombo and elsewhere to register their residence with the police, and to again register temporary and even overnight stay elsewhere created much resentment and feelings of insecurity. These registration provided information for the police to target Tamil homes for late night visits in the guise of security checks and for harassment at roadblocks. Happily, these practices appear to have virtually come to an end outside the North East, but problem remains in many areas of the North East. Sinhalese, Tamils and Muslims complain of oppression, some on the part of the security forces or allied groups, and some on the part of the LTTE or allied groups. Apart from fears of physical insecurity and harassment at check points, many localities remain ethnically cleansed. Although it may be claimed that ethnic segregation is in the interest of peace and security, in fact ethnic segregation breeds prejudices and ethnic cleansing invariably results in hostility and resentment; segregation could never form the basis of durable peace and security.

Linguistic Discrimination and Marginalization

A major, long standing and yet unresolved crisis a rose in the 50s on the issue of Official Language (s). This was a logical consequence of the tilt in the political balance resulting from the *Malaiyaha* Tamils losing their citizenship and voting rights. *De jure*, this crisis is too has been overcome with the acceptance of Tamil as an official language but, *de facto*, the situation is worse in some respects than it ever was.

The proportion of Tamil speakers recruited into the public services has been declining over the decades; they now form less than 5% of the total, and are mostly posted in the North East. In consequence, there is little or no capacity to serve Tamil speaking public in government offices outside the North East. In turn, the proportion of Sinhala speaking public servants posted in the North East has been declined.

A visit to a government office or to a bus depot in almost any part of the island will reveal the prevalence of this problem. Even in most areas with mixed population, and contrary to the laws of the land and the language policy of the government, many offices affectively function in one language only; very few function trilingually. These offices effectively deny service to which those who do not speak the dominant language. Even the name and sign boards may not be in all three languages, or may exclude one or the other of the official languages. Overall, Sinhala speakers are disadvantaged on this account in most of the North and East, and Tamil speakers in the other provinces, even in Colombo, other major cities, and districts with large proportions of Tamil speaking populations.

Half hearted attempts to overcome of this problem through assistance of providing a small number of translators plus modest incentives to gain language proficiency have proved to be quite inadequate. Urgent and radical changes are required in respect of recruitment and posting of public servants to at least mitigate this problem to tolerable limits. In the long run necessary additional reforms are required in respect of schooling and requirements for entry into the public services. Facilities and incentives need to be provided to gain trilingual capability at the school level prior to entry into the public services. For the present, it is necessary to make immediate provision for at least minimal Sinhala

and Tamil language capacity in every office in every part of the island and to embark on a phased programme to progressively provide full facilities for the public to transact their business in government offices in their own language at least in areas of mixed population.

Ethnic Diversity

The presence of at least a few of each of the three major ethnic categories in every part of Sri Lanka is a desirable long-term objective. By and large, such a situation prevailed up to the mid-50s. Since then, beginning with the ethnic cleansing effected by the 1958 riots, there has been a decline in the number of ethnically mixed residential centers, educational institutions and work places in many parts of the island. The 1983 pogrom marked a major shift, but there have been numerous incidents in many parts of the island, notably in the East, which have also contributed to ethnic cleansing. This situation needs to be corrected.

Happily, there is very little racial prejudices in Sri Lanka but, unfortunately, there is much caste prejudice all over the island, but most acute in Jaffna. There are also prejudices linked to other features of ethnicity. Even apart from prejudice, there could be discrimination, e.g. even an unprejudiced employer may find it convenient, for various reasons, conscious or unconscious, to recruit employees exclusively of one ethnic category or to use only one working language. In consequence, minorities may suffer many disadvantages, and those of the majority ethnic group may not even be aware that the minorities are so disadvantaged. Invariably, the minorities are deeply aware of their disadvantages and feel alienated. In each locality, the different ethnic groups may have very different perceptions of the nature and scale of the problem.

Zoning

Among the many unfortunate consequences of the war is the effective partition of the island into "government controlled" and "LTTE controlled" areas with some border areas in dispute as to which category they fit into. For some purposes, e.g. maintaining security, policing, law and order, and the justice system, the sets of institutions serving the two categories, and the related rules and regulations are distinct and uncoordinated. This situation imposes conflict, confusion, uncertainties and other disabilities on the population. There is some reassurance in this connection from the statement of Dr. Anton Balasingham at the press conference on 5 Dec. 2002 in Oslo that, "When we have a final solution these police stations could be integrated into a regional police force that will come into effect with the negotiated settlement". Presumably, this will also apply to the law courts and other special institutions functioning in the LTTE controlled areas.

Those in LTTE controlled and the conflict areas, in addition to suffering many security related disabilities, have also been deprived of access to basic requirements such as those related to employment opportunities, health care, schooling, housing, public utilities, etc. The restoration of normal civilian governance, electricity, water service, roads and transport services need priority attention. The dilemmas of resettlement involve competing but seemingly compelling claims of security and rehabilitation needs, the rival claims of equally deserving categories of the displaced, or tension between the displaced and those among whom they are temporarily or permanently settled. These problems could be particularly acute when the competing groups are differentiated on account of ethnicity, caste, religion, language, territorial affiliations or social class. Such issues fall within the competence of the Committee on Humanitarian and Rehabilitation Action, but some of the complications warrant special mention.

Even where both parties belong to the same ethnic group, there could be tension and resentment on account of competition for the land, water, housing, schooling, health services, employment and other economic opportunities, especially if the displaced and the resettled are seen as not "belonging" to the localities (e.g. Muslims displaced from the North and living among Muslims in the Puttalam District may be seen in this light).

Even more problematic is where those displaced eventually return to their homes and lands to find these occupied by others displaced from elsewhere and unable or unwilling to return to their homes. These problems would be most acute if the "encroacher" has invested substantially in restoring or improving the property or if the "encroachment" is long enough to give rise to claims to prescriptive rights.

There are additional political problems where the detainees find their houses occupied by the armed forces or their lands categorized as "high security", or where there has been a history of ethnic cleansing as in the case of Muslims evicted from the North, and Sinhalese, Tamils and Muslims evicted from various locations in the East.

Women and Children

The agreement reported in the statement released by the Norwegian government on 5 Dec. 2002 at the end of the third session of the peace talks that a committee of women will be instituted to explore the effective inclusion of gender issues in the peace process is most welcome. Equally welcome is the priority given to improving "the situation for children affected by armed conflict" and the recognition that "children belong with their families or other custodians and not in the workplace, whether civilian or military". The concerns of women and children are covered in another publication and will not be elaborated here.

Human Rights, Minorities and the Peace Process

Minorities are not only ethnic but include political parties advocating diverse political views. The rights of all kinds of minorities are important. Normalcy will not return till full democratic rights and freedoms are restored in every part of the island. Further, statelessness, which has particularly affected the *Malaiyaha* Tamils, is a total denial of human rights and should be eliminated.

Human rights are indivisible and inseparable from peace and democratic rights and freedoms; if these are denied to any section of the population, all will be affected. Moreover, human rights can only be advanced in the context of peace. Anyone who is in or has been visiting the North East cannot fail to notice the dramatic changes. There are very large numbers of Sinhalese from all over the island visiting for the first time or after an interval of over two decades, and many displaced Tamils and Muslims re-visiting their abandoned homes, temples and mosques after a decade or so. Increasing numbers are resettling and looking for opportunities to begin or recommence professional and economic activity; some of the many visitors from overseas may also be considering such choices.

Check points are fewer, and the tension at those that remain is noticeably lower. The local population go past checkpoints more freely than they had for many years. The military and L.T.T.E personnel also seem to move freely, and many of them do not appear to be carrying arms. This is a sea change from the situation that prevailed up to end 2001. There do remain a few areas in which tensions continue or have even been aggravated. Many problems persist and may linger for several years but, overall, there have been positive developments.Conflict needs to be avoided, the peace process advanced and human rights, including democratic rights and freedoms, promoted.