CHAPTER V

INTERNATIONAL PROTECTION OF HUMAN RIGHTS
Conventionally, the idea of human rights has been part of the "reserved domain" of the States which was "not, in principle, regulated by international law." What the State did inside its borders in relation to its nationals remained its own affair, an element of its own autonomy and "domestic jurisdiction". However, the first authentic major concern for human values and rights came with the World War II and with the birth of the international human rights movement.

The adoption of the International Bill of Rights culminated in the idea of universalisation of human rights. With increasing cooperation and communication, States became increasingly concerned about the spillover effect of conflicts, specially from the newly independent and less developed countries. The concern intensified when the process of globalisation set in. Many non-governmental organisations also joined the campaign for the international protection of human rights. The developed countries started preaching peace so as to garner markets for their multinational companies. At the same time, human rights compliance was used as an effective tool to proscribe countries of the opposite camp during the Cold War. Thus, universalisation suffered a setback due to politicisation of the idea of human rights. However, with the final document of the 1993 Vienna World Conference on Human Rights, the international community moved towards accepting the equality and indivisibility of all human rights.

5 See Section I, Para 1 of the declaration.
Developing States, though skeptical about interference from other countries in the name of human rights, fell in line due to international pressure and under threat of losing aid packages as well as other support. In due course of time, States also realised that upholding democratic principles as enshrined in the International Bill of Rights was imperative to sustain legitimacy. But, in practice, they continued to face many difficulties to do so due to secessionism, conflicting interests amongst various groups, ethnicisation of politics and vise versa, and wide gaps between demand and supply due to low economic development.⁶

In the case of Sri Lanka, international concern for human rights was expressed widely with the escalation of ethnic violence since 1983 and the consequent exodus of Tamil refugees worldwide. The island State has been stricktered several times at the UN for its poor human rights record. Also, being a small and aid-dependent State, Sri Lanka has been under the scanner of the donor community on human rights. On their part, the international human rights NGOs, independently or in collaboration with their local counterparts, consistently monitor the human rights situation in the island and provide critical inputs for better rights protection. This chapter is intended to analyse the role of international pressure in the form of international human rights instruments, international human rights NGOs and the donor community in improving the human rights protection in Sri Lanka.

INTERNATIONAL HUMAN RIGHTS INSTRUMENTS

The establishment of human rights as the moral essence of the twentieth century has led to the creation of numerous international human rights instruments. The UDHR represented the first of three stages in achieving the International Bill of Human Rights, based on universally binding obligations on States, and reinforced by effective administrative machinery. The three stages identified are:

a. declarations\(^7\) defining various human rights that ought to be respected;

b. a series of binding covenants;\(^8\) and

c. measures and machinery for implementation.

The list of declarations, covenants and machineries pertaining to the study are listed in Appendices (nos. 1, 2 and 3 respectively). In addition, there are six treaty bodies,\(^9\) comprising experts serving in their personal capacity, to monitor compliance of some of the above legal instruments. The treaty bodies also examine reports of the State parties to monitor the implementation of their treaty obligations at the national level. Each year they engage in dialogue with approximately a hundred national governments and issue concluding observations, commenting on the situations of the countries and offering suggestions and recommendations for improvement. In addition, these bodies are entitled to hear and consider certain individual communications. Under extra-

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\(^7\) A “declaration” is a general statement of principles that, while not necessarily legally binding, may have considerable authority.

\(^8\) A “convention/covenant” is a formal, legally-binding treaty or agreement between sovereign States.

\(^9\) These treaty bodies are the:
   a. Committee on the Elimination of Racial Discrimination (CERD);
   b. Committee on the Elimination of Discrimination against Women (CEDAW);
   c. Committee on the Rights of the Child (CRC);
   d. Committee against Torture (CAT);
   e. Human Rights Committee (Covenant on Civil and Political Rights); and
conventional mechanisms, a number of procedures have been established to monitor compliance with human rights norms. Then there are rules/principles/guidelines for member States to observe human rights standards within their respective frontiers. Those guidelines relevant to this study are listed in Appendix - 4.

Additionally, the UN Secretary General confidentially uses his good offices to raise human rights concerns with member States, including issues such as the release of prisoners and commutation of death sentences. The High Commissioner on Human Rights, since the inception of the office in 1993, carries out the functions of good offices in the field of human rights on behalf of the Secretary General and is, therefore, now the principal UN official responsible for human rights activities. In this connection, the Centre for Human Rights in Geneva implements the policies proposed by the High Commissioner.

Sri Lanka is party to 17 human rights instruments, making it the only country in Asia to have ratified most of the important international human rights

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10 Thematic procedures include the Representative of the Secretary General on internally displaced persons; working groups on enforced or involuntary disappearances and on arbitrary detention; and special rapporteurs dealing with extrajudicial, summary or arbitrary executions; torture; the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers; religious intolerance; the use of mercenaries; freedom of opinion and expression; racism, racial discrimination and xenophobia; the sale of children, child prostitution, and child pornography; and the elimination of violence against women. In addition, there is a 1503 procedure, established by the Economic and Social Council in 1970, for dealing with communications relating to gross and attested violations of human rights.

11 The High Commissioner is responsible for promoting and protecting human rights for all, and maintains a continuing dialogue with the member States pertaining to crisis management, prevention and early warning, assistance to States in periods of transition, promotion of substantive rights, coordination and rationalisation of the human rights programme.

12 http://www.un.org/rights/dpi1774e.htm
instruments. Table 5.1 provides a detailed picture of the instruments Sri Lanka is party to.

### TABLE 5.1

**INTERNATIONAL HUMAN RIGHTS INSTRUMENTS TO WHICH SRI LANKA IS PARTY TO**

<table>
<thead>
<tr>
<th>Name of the Convention</th>
<th>Date of Ratification/Accession</th>
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<tbody>
<tr>
<td>Slavery Convention as amended by the Protocol</td>
<td>21 March 1958</td>
</tr>
<tr>
<td>Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and practices similar to Slavery</td>
<td>21 March 1958</td>
</tr>
<tr>
<td>Convention for the Suppression of Trafficking of Persons and the Exploitation of the Prostitution of others</td>
<td>15 April 1958</td>
</tr>
<tr>
<td>Convention on the Nationality of Married Women</td>
<td>30 May 1958</td>
</tr>
<tr>
<td>International Covenant on Economic, Social and Cultural Rights</td>
<td>11 June 1980</td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights</td>
<td>11 June 1980</td>
</tr>
<tr>
<td>Convention for the Elimination of All Forms of Discrimination Against Women</td>
<td>5 October 1981</td>
</tr>
<tr>
<td>International Convention on the Suppression and Punishment of the Crime of Apartheid</td>
<td>18 February 1982</td>
</tr>
<tr>
<td>International Convention for the Elimination of All Forms of Racial Discrimination</td>
<td>18 February 1982</td>
</tr>
<tr>
<td>Convention Against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment</td>
<td>3 January 1994</td>
</tr>
<tr>
<td>Convention on the Rights of Migrant Workers and Members of their families</td>
<td>11 March 1996</td>
</tr>
<tr>
<td>Optional Protocol to the International Covenant on Civil and Political Rights</td>
<td>3 October 1997</td>
</tr>
<tr>
<td>Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts</td>
<td>6 September 2000</td>
</tr>
<tr>
<td>Optional Protocol to the Convention on Elimination of All Forms of Discrimination Against Women</td>
<td>15 October 2002</td>
</tr>
</tbody>
</table>

The island State carries on its international human rights obligations in two ways:

1. Convention and protocol obligations;
2. Preparation of briefing materials for each session of the Commission on Human Rights.
Convention and Protocol Obligations

Sri Lanka is party to six conventions that are relevant to our study.\textsuperscript{13} Both ICCPR and ICESCR were acceded to by Sri Lanka in 1980, just four years of the coming into force of these covenants. The two covenants, along with UDHR, form the “Magna Carta of Humanity”, which are comprehensive enough to cover all aspects of human rights. Some of the provisions of these three instruments are reflected in the 1978 Constitution of Sri Lanka and various other legal provisions discussed in detail in Chapter IV.

Though many of the rights provided under ICESCR appear difficult to implement by developing countries, Sri Lanka, in this regard, has a remarkable record. Its Human Development Index is on par with many of the developed countries. Unlike many of its South Asian neighbours, health and education are the State’s responsibilities. At the same time, economic blockades and child conscription are the two black marks. While the government is responsible for economic blockades, the LTTE indulges in large-scale conscription of children as young as eight years. While the INGOs have been fairly effective in condemning the blockade of essential items to the war-affected areas, this aspect of violations has not attracted much attention of the UN-related agencies. Indeed, this issue is repeatedly raised at the sessions of the UN Human Rights Commission, but only by voluntary agencies.\textsuperscript{14} The obvious reason for the concern for the INGOs on this aspect is that they face the ground realities of the implications of the blockade. On

\textsuperscript{13} Those include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEAFDAW), the Convention Against Torture (CAT), the Child Rights Convention (CRC), and two Optional Protocols: First Optional Protocol to the ICCPR; and the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

\textsuperscript{14} Statement of the International Council of Voluntary Agencies (ICVA) at 45\textsuperscript{th} Session of the UN Commission on Human Rights at Geneva, February 1992.
child conscription, it is discussed under the Convention on the Rights of the Child later in this chapter.

As far ICCPR is concerned, some of the important rights provided in it are ignored, viz., Right to Life, Right of Prisoners, and Right against Retroactive Criminal Legislation. In every status report to the international bodies, the island State has been promising progress on this front, but action on the ground has been slow. The PTA and emergency regulations clearly contravene the provisions of the ICCPR. The extent of derogation by these two legal measures has already been discussed in Chapter III. The First Optional Protocol to the ICCPR provides that parties to the ICCPR may recognise the competence of the Human Rights Commission\textsuperscript{15} to receive complaints from individual victims of abuse. The actual disposition of the complaint involves two stages:

a. consideration of petitions admissibility; and

b. subsequent substantive consideration of the petition.

Allegations of abuse must be submitted by the alleged victims themselves or by duly appointed representatives. An individual cannot complain of actions which are committed outside the accused State's territory, and more importantly, beyond its jurisdiction. Logically, if an individual is attacked by extragovernment/paramilitary forces, a complaint should be entertained since the incident is still within the State's jurisdiction and it is accountable for its failure to protect its citizens. However, if the government absolves itself of responsibility for human rights violations committed by rebel groups, the only recourse would be the rules of humanitarian warfare if the rebel group fell within the scope of the First Optional Protocol to the Geneva conventions. In the Sri Lankan case, an

\textsuperscript{15} Established under Article 28 of ICCPR.
individual can obtain remedy for abuses committed by the paramilitary, but not by the Tamil militant groups, including the Tigers.\textsuperscript{16}

Another precondition for admission requires that all domestic remedies must have been exhausted. If the target State denies that this requirement has been met, it must provide the petitioner with a detailed list of all effective remedies still available to him in light of the peculiar circumstances of his case under domestic law. However, the criteria relating to local and international remedies are interpreted in accordance with generally accepted principles of international law, and, thus, do not bar admission if those other procedures have been unduly prolonged. No petition is to be accepted without providing the accused State an opportunity to make comments regarding its admissibility. As soon as the HRC concludes that the petition is admissible, it is to notify both the petitioner and the implicated State, and the case is then examined on its merits. The State party must, within six months of receiving notification of the petition's admissibility, provide a written Statement and where applicable, any remedies undertaken. That, in turn, is relayed to the petitioner, who has six weeks to reply. The HRC may then issue its decision.\textsuperscript{17} Thus, the entire procedure is tedious and time-consuming.

On the Convention on the Elimination of All Forms of Discrimination Against Women, the Committee on the Elimination of Discrimination against Women (CEDW), in its 26\textsuperscript{th} meeting in January 2002, observed that “Sri Lanka had made sincere efforts to implement the provisions of the Convention", and that “the Government had made great strides in the fields of education and health and


had succeeded in creating an effective national machinery to promote the advancement of women.”

Ironically, at the same time, there was a growing prevalence of violence, especially against minority women in the island. The Sri Lankan government, in its periodic reports, claimed that “economic difficulties and civil unrest” had been the major hindrances in improving the condition of women, and it had been trying its best to improve the condition of women. The establishment of the National Committee on Women, which is “mandated to examine the progress made in the realization of the Charter obligations and to monitor the achievement of the Charter objectives”, has been repeatedly cited as a major achievement under the CEDW. However, in reality, the Committee enjoys little autonomy given the fact that it operates under the Ministry of Women’s Affairs.

Contradictions between Sri Lanka’s obligations under the Convention and still-existing discriminatory legislation, including laws on land rights, inheritance, abortion, incest and rape continue to exist. Women, specially those living in conflict areas, are not aware of grievance procedures. Even if complaints are made, remedial measures are not appropriately effective. This has been the major concern of the Committee. The island is also not signatory to the Optional Protocol to the Women’s Convention, which entitles the CEDW to consider petitions from individual women or groups of women who have exhausted national remedies on human rights abuses. The Protocol also entitles the Committee to conduct inquiries into grave or systematic violations of the Convention. Among seven treaty obligations with respect to elimination of

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violence against women, Sri Lanka has thus far fulfilled only three (ratification of the Convention on the Elimination of All Forms of Violence Against Women, Specific Directives with regards to the Development of Legal and Administrative Mechanisms to Ensure Effective Justice for Victims of Violence, and Full Reporting of the Problem of Violence Against Women to International Human Rights Mechanisms).

Despite appreciating certain generic positive aspects like setting up of the National Human Rights Commission, Inter-Ministerial Committee, and other safeguards, the Committee on the Elimination of Racial Discrimination, in its 2001 Report, expressed concern over the draconian legislations like the PTA and the ERs, restrictions on the freedom of movement, especially on those living in the north-east region, situation of Veddhas, and the condition of Plantation Tamils. At the same time, the Committee recognised that the serious internal situation faced by the State party has not been conducive to the effective implementation of the Convention.

The Convention on the Rights of the Child (CRC) is another treaty which is mostly violated in Sri Lanka. Article 38 of the Convention constrains the parties to the treaty from recruiting children below 15 in any kind of combat activities.

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20 Obligations of the States spelled out under Article 4 of the Declaration on the Elimination of Violence against Women are:

1. ratification of the Convention on the Elimination of All Forms of Violence against Women;
2. specific directives with regards to the development of legal and administrative mechanisms to ensure effective justice for victims of violence;
3. to ensure that there is specialised assistance in terms of support and rehabilitation for women victims of violence;
4. training of judicial and police officials;
5. reforms of educational curricula;
6. promotion of research; and
7. full reporting of the problem of violence against women to international human rights mechanisms.

While the Sri Lankan State strictly observes this Article, militants are involved in indiscriminate conscription of children even below the age of eight. But the point is how to prevent a militant group which is not a party to the Convention. The international community has done precious little to prevail upon militant groups (specially the LTTE) in safeguarding the rights of the children.

On the other hand, the CRC also stipulates the member States to “protect the civilian population in armed conflicts and take all feasible measures to ensure protection and care of children who are affected by the armed conflict”.

While Sri Lanka cannot be blamed for violation of provisions under Article 38 of the CRC, one can proscribe it for not being able to take effective measures to protect children affected by armed conflict. It is true that many centres are being run to rehabilitate surrendered child cadres of the LTTE. But the treatment imparted to them is tardy. They are also seen as potential threats by civilians in the areas where the centres are located.

The underlying problem in implementing international legal norms is Sri Lanka’s dualist legal system that prevents the international legal system to take effect in the domestic arena unless appropriate legislation has been passed. Additionally, there is no procedure by which a Sri Lankan court tests the conformity of any Sri Lankan law, or of its executive or administrative actions with international human rights treaties to which the Republic is party to. The Human Rights Committee expressed similar concern that Sri Lanka did not fully comply with its treaty obligations. The main criticism was the non-compatibility

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22 Article 38 of the Convention on the Rights of the Child.
23 For instance, the massacre of 21 LTTE cadres at the Bindunuwewa rehabilitation centre was perpetrated by the civilians of the area with the connivance of the police. *The Hindu*, 15 December 2001.
of the island's domestic legislations with international human rights instruments. In its examination of Sri Lanka's third periodic report under the ICCPR in July 1995, it Stated:

The Committee considers that the domestic legal system of Sri Lanka contains neither all the rights set forth in the Covenant nor all the necessary safeguards to prevent their restrictions beyond the limits established by the Covenant...as a matter of priority all legal provisions or executive orders be reviewed to ensure their compatibility with the provisions of the Covenant and their effective implementation in practice.25

For instance, the ER are clearly in violation of Article 9(2) of the ICCPR, which requires that all people arrested shall be promptly notified of the reasons for their arrest and informed of any charges against them. It also contravenes Article 9(3) of the ICCPR, which specifies "anyone arrested or detained on a criminal charge shall be promptly brought before a judge...and shall be entitled to trial within a reasonable time or to release." Emergency laws also violate customary international law such as Code of Conduct for Law Enforcement Officials, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.26

Similarly, Sri Lankan domestic laws relating to freedom of expression are inconsistent with or in violation of international laws and standards. The main legislations relate to the arbitrary use of criminal defamation laws, restrictions prevalent in the law of parliamentary privilege and regarding contempt of court, the lack of a Freedom of Information Act, and unfair law and practices relating to censorship.27

25 CCPR/C/79/Add.56, para 10 CCPR/C/79/Add.56, para 33.
Yet another example of incompatibility is Sri Lanka’s fulfillment of obligations under the UN Convention against Torture (CAT). Under Act 22 of 1994, Sri Lanka made an attempt to incorporate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into the law of Sri Lanka. The Torture Act passed by Sri Lanka’s Parliament in November 1994 and certified on 20 December 1994 makes torture punishable by imprisonment for a term not less than seven years and not exceeding 10 years and a fine. Regrettably, however, several provisions in the CAT were not fully implemented in the Torture Act.\(^{28}\) First, the definition is more restrictive of “torture” than that contained in the UN CAT. While the CAT defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes...,” the Sri Lankan Torture Act excludes the causing of “suffering” from its definition.\(^{29}\) Second, the judiciary is exempted from the purview of torture. In other words, the Sri Lankan courts can impose cruel, inhuman or degrading punishments under the penal code.\(^{30}\) Third, the Sri Lankan Torture Act has not given effect to Article 3 of the UN Convention, which provides that “no State party shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” In addition, to date, Sri Lanka has not made declarations under Article 21 and 22 of the UN CAT to recognise the competence of the Committee against Torture to receive communications from another State party\(^{31}\) or from individuals under their jurisdiction\(^{32}\) who wish to complain about

\(^{28}\) For detailed analyses of this aspect, see Amnesty International, Sri Lanka: Torture in Custody, ASA 37/010/1999.

\(^{29}\) See subsection (1) of Article 2 of the Act.

\(^{30}\) Under Sections 310 to 329.

\(^{31}\) Article 21 of CAT.

\(^{32}\) Article 22 of CAT.
alleged violations of the provisions of the Convention. Indeed, torture victims can also complain to the Human Rights Committee as per the provisions of the First Optional Protocol to the ICCPR. But, as observed earlier, it is a cumbersome and time-consuming process.

At the institutional level, the United Nations has also been making efforts in improving human rights protection in the island. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities first adopted a resolution on Sri Lanka in 1984 following extensive testimony regarding communal violence against the Tamils. The Commission on Human Rights has also responded in 1987 by calling upon the parties to “consider favourably the offer of the services of the International Committee of the Red Cross to fulfill its functions of protection of humanitarian standards, including the provision of assistance and protection to victims of all affected parties.”

The Commission called upon Colombo “to further intensify its efforts to ensure the full protection of human rights....”

Preparation of Briefing Material

Ratification not only means compliance, but also periodic reporting by the member countries to the concerned body responsible for the convention or the protocol on the measures adopted and progress made. The Ministry of Foreign Affairs, on behalf of the Sri Lankan government, submits periodic reports as per

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its obligations under signed conventions and protocols in coordination with relevant government and non-government institutions of the country. However, due to paucity of research capacities and an inadequate database on the subject, reports of obligations have neither been full nor timely. At times, there are instances when the island submitted reports of two years clubbed together. Though action has been taken to establish a research unit with computer facilities within the Foreign Ministry with a view to assisting the concerned ministries with regard to reporting on international treaty obligations, the effectiveness of reporting is still inadequate.

A permanent high-level Inter-Ministerial Standing Committee was also established in 2000 to monitor action taken by government agencies in respect to allegations of human rights incidents and violations brought to international attention, and oversee preparation of “information bulletins” on action by government agencies on such allegations for dissemination through Sri Lanka missions abroad to the UN and other intergovernmental and non-governmental organisations. This ministerial-level concern came about after realising that “failing to meet the international obligations on [the] human rights front would result in serious consequences.”

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36 One standard recommendation by the HRC and various other independent bodies on the feedback of the periodic report submitted by Colombo is a request to submit the next report on time.
38 Department of Information, Sri Lanka News, 8 December 2000.
GLOBAL CIVIL SOCIETY

Global civil society is “the domain of State sovereignty free actors with transnational scope.”\textsuperscript{39} That classical paradigm of “international law excludes people” is now an outdated presumption. With increasing participation of international civil society (or INGOs) in the making of international law at the various summit conferences like Rio, Vienna, Copenhagen, Cairo, Beijing and Istanbul, their role is well recognised.\textsuperscript{40} As the “role of the State was reappraised and alternatives sought with which to solve problems, these organizations emerged as critical actors - private in form and public in purpose.”\textsuperscript{41} The INGOs play a crucial role in constant monitoring, reporting, campaigning, and recommending individual countries to abide by international human rights standards and agreements. They also lobby intergovernmental organisations, donor countries, the mass media and the public of the developed countries to promote human rights and seek to build the capacity and effectiveness of their human rights work in conflict-ridden countries.

As far as protection of human rights in Sri Lanka is concerned, the role of international civil society can be analysed under the following two broad heads.

a) Monitoring.

b) Field Activities.

Monitoring

The global civil-society organisations involved in monitoring human rights practices mainly deal with investigation, compilation, and dissemination of


Amnesty International (AI) works for internationally recognised human rights in over 150 countries with 1.5 million members and supporters. It undertakes "research and action focussed on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights."42 The organisation critically reviews the reports of the State parties submitted to the Human Rights Committee, and gives wide-ranging recommendations on improvements that need to be made by individual countries on the compliance of ICCPR.

AI is known for its comprehensive monitoring and reporting of human rights practices in Sri Lanka through periodic visits since the 1970s. Especially, since the outbreak of ethnic conflict and the resultant gross violation of rights, AI has taken up certain specific aspects of disappearances43 and torture and called for immediate attention and action. While concentrating more on civil and political rights, focus on economic, social and cultural rights are not ignored. It also keeps a tab on the other international monitoring bodies, specially the UN institutions, and their actions on the improvement of the human rights record in the island.

42 http://web.amnesty.org/pages/aboutai_index
43 AI's 86-page detailed report published in September 1986 exclusively on disappearances in the island is widely acclaimed and is so far the only resource that looks comprehensively into the issue. See AI Index: ASA 37/08/86.
However, AI is generally seen by successive Sri Lankan governments as “another terrorist movement with terrorist sympathizers in sheep’s clothing” that “did diabolical things to destabilise democratic governments.” But all AI reports or news releases are equally critical of the government institutions and the militants responsible for human rights abuses. AI has repeatedly exposed child conscription by the LTTE, and not hesitated to condemn the Tigers on their assassinations or suicide attacks.

Human Rights Watch is an independent human rights watch body that strives “to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice.” HRW, like AI, is also very active in reporting the human rights situation in the island. It has brought out detailed annual reports (as part of a world report) highlighting human rights condition in the island since 1978. One unique aspect of HRW reports is that they look critically at the role of the international community, especially the US, in the betterment of the human rights situation in Sri Lanka. Consequently, the pressure from the international community, based on HRW reports and observations, has not failed to work in Sri Lanka. HRW is also one of the pioneers in defending the freedom of expression and of the media in the island. However, the main problem with the HRW reports is that they display a Western bias in terms of rights standards, without taking into consideration the cultural and developmental differences in the developing countries.

45 For more details on Human Rights Watch, see http://www.hrw.org/; the Sri Lanka section is available at http://www.hrw.org/asia/srilanka.php
Founded in Berlin in 1952, the Geneva-based ICJ is dedicated to the primacy, coherence, and implementation of international law and principles that advance human rights. It provides legal expertise at both the international and national levels to ensure that developments in international law adhere to human rights principles, and that those international standards are implemented at the national level. Commensurate with its objectives, the ICJ has conducted several fact-finding missions to Sri Lanka and has produced the following reports based on those visits.


Established in 1996, the Asia Pacific Forum of National Human Rights Institutions is a coalition of national human rights institutions, the UN, governments and non-government organisations. Through this mechanism, the Forum has demonstrated its role as a catalyst for the mobilisation of technical cooperation funds for human rights initiatives and as a facilitator for the establishment of new national institutions.

The work of the Forum can be categorised under three broad areas.

a. Strengthening the capacity of individual Forum members to enable them to more effectively undertake their national mandates.
b. Assisting governments to establish their own national institutions in compliance with the minimum criteria contained in the Paris Principles.

c. Promoting regional cooperation on human rights issues.

The Peace Brigade International (PBI) is an INGO working for the peaceful resolution of conflicts worldwide with an associate status with the United Nations Department of Public Information. Since 1989, it has been in operation in Sri Lanka, and offered protective accompaniment to many Sri Lankan democratic activists when they faced threats to their work for peace, reconciliation, and human rights safeguards.\textsuperscript{47} It has included the accompaniment of communities in the east which have felt threatened by multiple armed parties. It has also published regular reports on the human rights situations and distributed them internationally "in order to reinforce the international support network that has proven so essential for encouraging respect for democracy and human rights."\textsuperscript{48} However, its activities were brought to an abrupt end recently when the Sri Lankan government demanded the right to censor the organisation's reports on the human rights situation in the east of the country.\textsuperscript{49} The organisation decided to wind up rather than placing its report for censorship to the government.

\textit{Field Activities}

In Sri Lanka, currently there are numerous INGOs that are involved in directly protecting human rights of the victims as opposed to just monitoring and

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{47} Peace Brigades International news release, 5 May 1998.
\item \textsuperscript{48} PBI’s International Council Chair Anne Harrison’s letter to President Chandrika Kumaratunga, 24 April 1998.
\item \textsuperscript{49} In a meeting with the Ministries of Defence, Foreign Affairs, and Plan Implementation and Parliamentary Affairs on 4 March 1989, PBI was told that if it wished to remain working in Sri Lanka it would have to submit its reports to the authorities to be censored prior to their publication.
\end{itemize}
\end{footnotesize}
reporting. Prominent among these INGOs are the International Committee of the Red Cross (ICRC), CARE, Médecins Sans Frontières (MSF), and OXFAM.50

The ICRC has a clearly defined mandate and plays a unique role in the conflict in relation to other aid actors. It focuses its activities on areas affected by the conflict, particularly Vanni, the Jaffna peninsula and the Eastern Province. It assists internally displaced civilians and resident populations whose livelihood, access to medical care or contacts with family members have been disrupted by the fighting. The ICRC also acts as a neutral humanitarian intermediary between the warring parties, works to persuade combatants to respect the rights of civilians, and visits people detained in connection with the conflict. It also works at creating awareness of international humanitarian law among not only the general public, but also the State security forces, the LTTE, and other Tamil armed groups.51 Though the visits by ICRC personnel since 1989 have not been regular owing to inconsistent permission by the LTTE, the visits have reduced the risk of torture and resulted in detainees being provided medical treatment, or being transferred out of the custody of the law enforcement officers responsible for torture.

The Government of Sri Lanka also claims that since 1990 it has invited the ICRC to commence humanitarian functions in the island in association with the country’s relief and rehabilitation authorities to provide humanitarian assistance to people affected by violence perpetrated by the LTTE. The ICRC has free access to all places of detention. The government’s policy objective in this regard is to “ensure that internationally accepted norms are maintained for the safety and

50 Though UNHCR is a UN body and does not strictly fall under the category of an NGO, its role is included here as Sri Lanka is not a signatory to the refugee convention.
51 For the details of the ICRC activities in Sri Lanka, see the section on Sri Lanka of ICRC Annual Report 2001.
well-being of inmates by allowing the ICRC to interview detainees in confidence and in private."52 Thus, acceptable to both warring parties, ICRC enjoys a higher level of credibility than most INGOs in the island.

CARE is an independent humanitarian organisation working to end world poverty. With programmes in over 65 countries, CARE touches the lives of over 30 million of the world’s poorest people. CARE also provides emergency food and shelter to survivors of natural disasters, wars, and conflicts. CARE International began work in Sri Lanka in 1956, and until the mid-1980s, its core programmes focused on food support to vulnerable mothers and children, but later it also provided emergency relief to internally displaced people affected by civil war in northern Sri Lanka in addition to rehabilitation and community development.53 The most significant project in this regard is VOICE (Vulnerable Groups Organised in Conflict Areas) in war-affected Jaffna, which aimed at empowering vulnerable people whose lives and livelihoods had been adversely affected by the long-running civil war in Sri Lanka. VOICE helped civil-society organisations to identify their strengths and weaknesses and draw up a long-term plan for their own development, in addition to organisational training and technical assistance.

Médecins Sans Frontières (MSF) is an international humanitarian aid organisation that provides emergency medical assistance to populations in danger in more than 80 countries.54 MSF has been working in Sri Lanka since 1986, caring for populations victimised or isolated by conflict in both government-held and LTTE-held areas, while denouncing all violence perpetrated against civilians.

53 For more details on CARE International’s work in Sri Lanka, see http://www.careinternational.org.uk/cares_work/where/srilanka/
54 For more updated details on MSF, see http://www.msf.org/about/index.cfm
MSF, apart from providing counseling and psycho-educational support to the IDPs and basic care to people in war-affected areas, disseminates the law of war to the security forces and the LTTE. However, despite eight ongoing projects, principally in the north and north-east, MSF is slowly winding up its operations in the wake of the ceasefire between the government and the LTTE.

OXFAM GB is a development, relief, and campaigning organisation dedicated to finding lasting solutions to poverty and suffering around the world. In Sri Lanka, OXFAM GB has provided direct assistance to those affected by violence and natural disasters since 1986. While initial focus has been on immediate assistance to meet minimum needs of shelter, food and clothing for the thousands of people displaced by the conflict, the programme expanded with the escalation of conflict in the late 1980s and 1990s. Concentration continues to be on the extreme poverty suffered by those who have had to leave their homes, and others directly affected by the conflict. Enhancing the capacity of individuals and communities to contribute to the prevention, mitigation, and reduction of conflict and ensuring women's rights and needs are OXFAM's other chief activities in Sri Lanka.

However, the challenges faced by human rights INGOs are numerous. They are caused by different structural aspects of a "global" context, which is imperfect and unpredictable. The first important challenge arises from the high concentration of INGOs in the West. With their executives and offices centralised in key Western cities, programme officers and coordinators are then sent to the field. From a practical point of view, this poses problems of different linguistic,

55 Wickramasinghe, n. 41, pp. 34-35.
56 For more details, see http://www.oxfam.org.uk/atwork/where/asia/lanka.htm
social, cultural, and economic circumstances with which INGO workers are not always familiar, or trained beforehand. The situations they have to face are unexpected and complicated. The subtle behavioural nuances of the people they are working with in the field have their own social and political customs. INGOs are not democratically structured, and their leaders not democratically appointed. Furthermore, the increasingly centralised nature of their executive power structures, coupled with more legitimacy, is accompanied by an increase in sheer political power.57

Another issue that concerns internal INGO debates is the definition of their mandates with respect to their own codes of conduct, ethical principles, and common understanding of what constitutes their human rights goals. This is especially the case with “monitoring” human rights groups such as AI or HRW. For instance, with the expansion of the scope of human rights, the INGOs are also forced to expand their rights talks. Invariably, the difficulties are multiplied, as contexts of implementation of aid programmes or human rights monitoring vary from one programme to the next. At the same time, some important human rights and humanitarian work has been set aside due to lack of funding or lack of institutional support. Finally, techniques of negotiation and methods of cooperation with governments, other international organisations and the UN have sometimes led to the marginalisation and/or weakening of the legitimacy of NGOs’ activities.58

58 Ibid.
INTERNATIONAL DONOR COUNTRIES

With increasing consciousness of human rights worldwide, there is immense pressure for donor countries to link aid with the human rights records of the recipient countries. There is also renewed concern among the aid agencies that they have an “express role to play in the promotion and protection of human rights world-wide.” Consequently, donors have increasingly been demanding connection of development cooperation with the observance of at least basic human rights enshrined in the International Bill of Rights.60

Sri Lanka is a major aid-dependent country. It is one of the world’s highest per capita recipients of foreign aid. The aid comes primarily from three sources: multilateral agencies, aid consortia, and individual donor countries (otherwise known as bilateral aid). On an average, Sri Lanka receives $898 million per annum in official development assistance through loans and grants in recent years, an amount equivalent to seven per cent of its GDP. With the ongoing peace process since 2002, this aid has increased phenomenally. As of early 2003, Japan was the largest donor, accounting for about 45 per cent of aid to Sri Lanka. The World Bank and Asian Development Bank together with Japan constitute nearly 85-90 percent of the total aid to Sri Lanka.61 Other leading bilateral donors are Germany, Norway, the Netherlands, the US, and Sweden. India is also slowly emerging as a leading donor. This apart, assistance in various forms comes from the UN, EU, and many INGOs. The principal donor coordination mechanism in Sri Lanka is the Development Forum (formerly the Aid Group Meeting), chaired by the World

Bank. The Development Forum is held every one to two years, and facilitates the overall coordination of aid policy and implementation in Sri Lanka.

**TABLE 5.2**

**DONOR COMMUNITY POLICY INSTRUMENTS AND CONCERNS IN SRI LANKA**

<table>
<thead>
<tr>
<th>Interests and Concerns</th>
<th>Foreign Affairs</th>
<th>Trade and Investment</th>
<th>Immigration and Refugees</th>
<th>Human Rights</th>
<th>Development Aid</th>
<th>Humanitarian Aid</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political settlement to the conflict within a united Sri Lanka</td>
<td>Trade relations: exports and imports</td>
<td>Refugees/returns and preventing outflows</td>
<td>Respect for international human rights and international humanitarian law</td>
<td>Structural stability</td>
<td>Economic development</td>
<td>Alleviation of human suffering</td>
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<tr>
<td>Regional security</td>
<td>Open economy</td>
<td>Human trafficking</td>
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<tr>
<td>Terrorism</td>
<td>Investment opportunities</td>
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<tr>
<td>Transnational networks and diaspora communities, e.g. arms, drugs, money laundering</td>
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<tr>
<th>Policies</th>
<th>Track I diplomacy, e.g. Norway and India</th>
<th>Private-sector support</th>
<th>Immigration agreements and border controls</th>
<th>Monitoring Advocacy, e.g. EU Statements</th>
<th>Provision of concession- and grant aid for a range of activities including infrastructure, health, education, etc.</th>
<th>Provision of basic needs and livelihood support in conflict-affected areas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Support for Track II initiatives</td>
<td>Foreign direct investment</td>
<td>Bilateral agreements with Sri Lankan government</td>
<td>Capacity building and training, e.g. legal services, judiciary, and security sector</td>
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<tr>
<td>Anti-terrorism measures, e.g. US support to Sri Lankan government</td>
<td>Support for liberalisation</td>
<td>Military equipment</td>
<td>Legal framework</td>
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<tr>
<td>Military assistance/security, sector training</td>
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<tr>
<td>Development aid to support good governance</td>
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</table>

As pointed out in the table (5.2) above, the objectives of the donor community are in three main areas. First, the settlement of the ethnic conflict within a united Sri Lanka. Second, development aid to stem the refugee flow from the island. Third, assistance to safeguard human rights.

With the escalation of ethnic conflict and consequent violence since 1983, the Development Forum and individual donor countries of Sri Lanka have been consciously linking aid with corresponding improvement in the human rights situation and negotiated settlement of the ethnic issue in the island. The Sri Lanka Development Forum, which met in Paris on 18-19 December 2000 to discuss assistance plans for Sri Lanka, refused to pledge new assistance, calling instead for the government to “take concrete steps to end the war with the LTTE, speed up restructuring of the public sector, and account for previous assistance.” Donors expressed concern over the country’s disproportionately high level of military expenditure, and political interference in development and relief initiatives. World Bank Vice President for South Asia, Mieko Nishimizu, described Sri Lanka as a country “in deep crisis, public institutions are politicized, politicians are not accountable, people are not heard and they are isolated.” She noted links between poverty, war, and governance problems in the country, and suggested that progress on these fronts would be necessary before development partners provide additional support.62

At the bilateral level, with the end of the Cold War, the US foreign assistance became multifaceted: spread of democracy, human rights standards,

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containing internal conflicts, and recently, the “war against terrorism”. 63 Although US aid to Sri Lanka is only approximately $31 million (mostly in the form of food aid), the US is in a position to exert economic leverage through its participation in the Sri Lanka Aid Consortium, which accounts for approximately $1 billion in non-military grants and loans. At the Consortium meeting in October 1990 in Paris, US representatives acknowledged human rights abuses by government forces as well as the LTTE, and urged the government to discipline those involved in violations. The US refrained, however, from any effort to condition aid to an end to abuses.64

Through its Offices of Promotion of Human Rights and Democracy, Multilateral Affairs, and Country Reports and Asylum Affairs, the Bureau of Democracy, Human Rights and Labor (DRL), the US State Department compiles yearly reports on human rights practices in the island (along with over 194 individual countries). However, the human rights country reports brought out by the State Department sound pro-government, and are satisfied with the steps taken by Colombo on the rights front.65

Through its USAID programmes, Washington also “supports efforts of the government of Sri Lanka and the NGO community to improve protection of human rights, improve the ability of the judiciary to resolve complaints efficiently and effectively, and provide relief to those most affected by the conflict.” To restore confidence in the judiciary, programmes that support improvements in the efficiency and effectiveness of the District Courts have been expanded. USAID

also extended its programmes to reach children and families most affected by the conflict and related violence in order to help them return to a normal life.66

Japan is one of the few countries that has officially linked human rights issues with its foreign assistance. In its Official Development Assistance Guidelines adopted in April 1991, it is clearly spelt out that:

Full attention will be paid to [efforts by recipient countries]...to introduce democracy and market-oriented economy, and to secure human rights and freedoms. This guideline would be implemented in two ways: by providing increased aid to assist countries seeking to democratize and by suspending aid to countries that have committed serious human rights violations.67

Being the largest donor over the past two decades,68 Japan has emerged as a significant actor in the island's development and peace process. In the process, it issued many appeals and warned that the emergency measures and continued censorship of the media in Sri Lanka could violate Japan's Official Development Assistance Guidelines on human rights.69 At the same time, neither did it criticise nor threaten to cut assistance over military confrontation between the government forces and the LTTE.70

Since the outbreak of violence in 1983 and the subsequent refugee exodus to its frontiers, Canada has been linking its aid with the corresponding reduction of ethnic violence in the island. In 1984, Canada provided only $30 million worth

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68 45 percent of total aid received by Sri Lanka (including that received from multilateral aid agencies such as the World Bank and Asian Development Bank) comes from Japan.
of aid to Sri Lanka, as against $38.1 million in 1981 owing to the 1983 riots. It was categorically stated in subsequent years that until Sri Lanka improved its human rights records, the flow of aid would be denied. Sri Lanka, in turn, insisted on the "non-alignment" and "non-interference" principles.

The EU provides humanitarian assistance to vulnerable groups in the conflict-affected area and to Internally Displaced Persons (IDP); the European Commission Humanitarian Office (ECHO) has funded emergency aid for the civilian population affected by the conflict. This aid supports the UNHCR, NGOs, and international aid agencies. ECHO provided assistance to Sri Lanka totalling €20.8 million between 1993 and 2002 and has programmed a further €8 million for 2003. Some €16.6 million was allocated from the Aid to Uprooted People budget line between 1997 and 2002, with a further €9.0 million proposed for 2003/04 to provide assistance for healthcare, education, mine awareness, water and sanitation, shelter, and food security. The EU is keen to see a strengthening of governance, human rights and democratic processes developing from the peace talks.

India's concern for human rights violations in Sri Lanka goes back to mid-July 1983, when the Sri Lankan government reimposed emergency regulations in the north. While taking up the matter bilaterally at the diplomatic level, India also followed up by publicising the situation in the north-east, specially among Sri

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72 In fact, South Asia Partnership (SAP), a forum of Canadian NGOs, advocated a proactive approach in taking up the human rights issue with the Sri Lankan government instead of just being an "aid giver". Kirthie Abeysekera, "Canada Can Help Sri Lanka Achieve Peace," *The Island*, 20 August 2000.
Lanka's donors. India was hopeful that such pressure would help halt military operations against Tamils. In addition, India also raised the issue of human rights violations in Sri Lanka at the Human Rights Commission, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, and even the UN General Assembly since 1983.

Apart from individual and multilateral donors, there are independent agencies like the Swedish International Development Agency (SIDA) and Canadian Development Agency (CIDA) which provide human rights-related assistance. SIDA provides support channelled via the State, international organisations, and private organisations for seminars on the conflict, the constitution, peace and tolerance; legal assistance and advice; and reporting and documenting human rights infringements. SIDA is also contributing to a project for reinforcing the Sri Lankan Human Rights Commission and its work on a centre for children affected by the war. The Agency is also supporting equal opportunities work regarding violence against women and human rights for women, among other things. A number of private Swedish organisations are also working in Sri Lanka using SIDA funding for social projects of various kinds.

Since 1999, CIDA has been involved in implementing the "Governance and Institutional Strengthening Project" (GISP) in Sri Lanka to support key organisations and institutions that promote human rights and democratic values. For this, GISP coordinates with government organisations, institutions, and civil society to address issues central to the resolution of the ethnic conflict, apart from

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enhancing the role of the civil society in promotion of human rights, re-enforcement of the democratic process, and promotion of dialogue and understanding within and among various ethnic groups.

In general, the demands of the donor community are focussed on:

1. continuing vigilance to ensure that individual rights are not violated; and
2. encouraging the government to strengthen its partnership with NGOs.75

However, the politics of the Development Forum are intense, and successive Sri Lankan governments have become quite adept at convincing the donor community that change is in the offing. Although the Forum represents an opportunity to develop a joint approach from the aid community and to influence incentive systems positively in relation to the conflict, divisions between donors prevent it from playing this role. In general, the bigger donors are reticent to raise human rights and governance issues, in contrast to a number of smaller bilateral donors. Policy dialogue at such meetings has served to raise general criticism rather than impose any explicit conditionality. There is a lack of a critical mass amongst the donor community to apply pressure on issues related to peace and human rights.

It has been argued that countries with large expatriate Tamil populations, such as Canada and Norway, have been more critical of the Sri Lankan government, and pushed more actively for a political response to Tamil grievances. The US has tended to work more closely with the Sri Lankan

government, and, in 1997, designated the LTTE as a terrorist organisation. They
have also been providing anti-terrorist equipment since 1994.76

The following steps were taken by Sri Lanka on the human rights front as a result of donor pressure.

1. Declassifying the list of various Emergency Regulations declared till 1993.
2. Appointment of the Human Rights Task Force in 1994, and subsequently the Human Rights Commission as an apex body to look into the violations of rights.77
3. Signing and ratification of many international human rights instruments, specially the ICCPR and its Optional Protocols, the Torture Convention (CAT), and the International Convention on the Elimination of All Forms of Racial Discrimination.
4. Reducing the harshness of certain repressive legislation and make them public.78
5. Acceding to sit together with the rebels to find solutions to the issues due to which human rights violations are flagrant.

A related question is: To what extent does aid help promote human rights?

There are allegations that aid funds were diverted for the “war for peace” programme. However, there is no evidence to substantiate this. But what is certainly clear is that threats of withholding aid and financial help in favour of protecting human rights have not worked to their fullest potential. Despite worsening of its human rights record, development aid from donor countries has

78 It is to be noted that because of international donor pressure, Colombo published and made public the whole set of Emergency Regulations in 1993.
continued to flow into Sri Lanka. Huge humanitarian assistance in the form of grants and loans for the displaced in the north-east has not ameliorated the condition of the displaced. A substantial portion of this aid was used to finance military operations that have only intensified militarisation and violence.79

The role of regional institutions is of prime importance, as they understand the problems better, and suggest appropriate means of redressal. In this regard, the European Commission on Human Rights, Inter-American Commission on Human Rights, and African Commission on Human and People’s Rights stand as examples. These regional bodies are based on a charter or convention that, for the most part, reinforces the International Bill of Rights. Unfortunately, Asia is the only region in the world without a regional intergovernmental mechanism for the protection of human rights.80 This is because Asia is “not easily definable in cultural, political or even geographical terms.”81

As far as South Asia is concerned, bitter political divisions within SAARC members has made any decision on human rights a non-starter. However, at the Sixth SAARC Summit in Colombo in 1991, human rights were mentioned for the first time. The Colombo Declaration Stated that:

In regard to human rights, the Heads of State or Government observed that civil and political rights on the one hand and economic and social rights on the other are inter-dependent and of equal importance. Human rights issues should not therefore be viewed in narrow and exclusively political terms. In this context, through the pursuit of development for all citizens in conditions of stability, which in turn guarantees the enjoyment of human rights of all persons.82

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But the declaration did not result in any substantial collective action towards the protection of human rights in South Asia.

CONCLUSION

It is clear that the steps taken to protect human rights by the Sri Lankan government have been partly due to international pressure, and partly to appease the donor community. But the problem is paucity of the correct information on the human rights situation in the island State. One cannot appreciate the steps that are being taken by the government until the real situation is known. The main problem in the international aspect of human rights protection is that the local community views it as acting under the manipulation of "conspiracy theories". Such differences existed between the international community and the vast majority of Sinhalese including Sinhalese NGOs, specially during 1983-87. The human rights INGOs are still viewed with suspicion as 'stooges of enemies of Sri Lanka' The government of the day also finds it convenient to encourage such a view to conceal itself from adverse exposure. Incompatibility of local legislation with the international standards of human rights continues. The ER and the PTA are identified by many international human rights bodies as the main contributors to human rights abuses in the island.

Yet another problem is the lack of similar international pressure on the militants, who are to be equally blamed for the violations. As the militants are dependent on funding from the international Tamil diaspora, the international can community is able to prevail upon the militants effectively.

The ordinary citizen is not aware of the safeguards available and the procedures involved at the international level. The fault in this regard lies partly with the government and the media, as they are responsible for dissemination of
information. Enquiries reveal that even at the higher levels, only a handful are aware of the international dimensions of human rights protection.

The international community has contributed a great deal to the development of national human rights institutions in the island. At the same time, it has to adopt necessary follow-up actions to ensure that the national institutions are engaged not only in their image-building exercises, but actually guard the human rights of the people.