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## **Research Symposium: Human Rights and Democratisation**

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# **Research Symposium: Human Rights and Democratisation Friday, 21 July 2017, Faculty of Law, University of Colombo**

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# Exploitation of Domestic Migrant Workers from Sri Lanka in Saudi Arabia

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## Abstract

Female domestic workers from Sri Lanka migrate to Saudi Arabia to help their families back home. While abroad they are commonly exploited by their employers with abuses that include no salary payments and confiscation of their documents to physical and sexual harassment among others. Many of the cases could be characterized as human trafficking. The objectives of this article are to expose the problem and analyze the obstacles to recognition of the human and labor rights of domestic workers in Saudi Arabia. The results of the study revealed that archaic laws systems in Saudi Arabia and the lack of interest to implement laws protecting domestic migrant workers in both countries contribute to perpetuating the abuses. In conclusion, the study shows that the lack of applicable labor laws in the two countries, combined with the patriarchal laws and systems, are obstacles that prevent the two governments from acting in protection of the domestic migrant workers. The net effect is a weakening of the system of monitoring and protection, leaving these workers vulnerable to violations of their human and labor rights.

Keywords: Domestic migrant workers, Saudi Arabia, Sri Lanka, abuses, human trafficking

## I. Introduction

Cases of human rights violations and physical abuse of domestic migrant workers in Saudi Arabia are widely documented by UN special rapporteurs and major NGOs such as Human Rights Watch and Amnesty International, among others, and appear regularly in the Sri Lankan media.

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“I've worked from 5 am to 3 am. I could barely sleep. They didn't give me food. I needed to steal food. I was starving. The man of the house was very nice, but the woman was bad, she put me to work all the time” (Interviewee 3, age 38, interviewed in Habaraduwa, Galle on 15 June 2017).

This report was given by one of the nine Sri Lankan domestic migrant workers who had returned from Saudi Arabia and who were interviewed for the research paper, "EXPLOITATION OF DOMESTIC MIGRANT WORKERS FROM SRI LANKA IN SAUDI ARABIA." This article is also based on that research paper.

## **II. Controversial legal system of Saudi Arabia**

The hostile scenario described above is what many female domestic workers encounter when they decide to migrate to Saudi Arabia to send money home to help their families. However, obstacles such as the *Kafala* system (a visa sponsorship system [Bajracharya & Sijapati 2012]), *Sharia* law (system based on the Muslim religion [Britannica. n.d.]), the system of guardianship (common in the Middle East [HRW, 2017]), and the exclusion from labor law protections violate human rights and international standards for labor laws. Violations range from salary exploitation or wage theft to physical and sexual harassment, and sometimes even neglect or torture resulting in the woman's death.

"The man had three wives, and one of the wives had a disabled kid, and I need to take care of all three families, cleaning, cooking, and taking care of the disability kid. I said I want to go back to Sri Lanka and they did not want to send me back I put myself in a room and said I would kill myself and they sent me back. I got a small amount of food. When I finish my work, they ask me to do more work. I need to be available to the family, I've worked from 5 am to 11 pm. The other house (second house) the madam was not good in her head, and she used to lock me up in the bathroom and hit me over there (in the back)” (Interviewee 7, age 48, interviewed in Colombo on 18 June 2017)

This case explains one of the problems that migrant domestic workers face when going to work in Saudi Arabia. Some laws applicable in the Arab states of the Persian Gulf are not

compatible with international legal standards. *Sharia* law, for example, permits the man to practice polygamy, so some men have multiple wives, hence multiple families. The *Kafala* system links domestic migrant workers to their employers' residence. Thus, the migrant signs a contract to work for a *kafeel* (the sponsor); however, if he has several families she is forced to work for all his families, which causes overwork and leads to sleep deprivation, among other abuses. In addition to exhausting work, the *kafeel* will sometimes accuse the worker of some infraction, with or without evidence, and she will end up suffering harsh punishment (HRW, 2017). There are even cases of women being stoned to death or beheaded in public after being subjected to unfair trials. The case of Rizana Nafeek, a teenager who was trafficked and later executed, is just one example among many injustices that are common under *Sharia* law.

### **III. Human Trafficking**

Even those who reported that they were "well cared for" by the receiving family, and did not complain of physical and sexual abuse while working abroad, all unknowingly had their labor rights violated. They did not have a stipulated weekly hours schedule, they were not permitted periodic breaks or days off, nor were they provided access to healthcare or provided a pension (HRW, 2007). These violations are allowed to perpetuate because domestic workers are excluded from labor laws both in Sri Lanka and Saudi Arabia. Some actions practiced by the host families in Saudi Arabia can even be categorized as human trafficking because the workers have their identity documents confiscated, are physically and sexually harassed, are obliged to work with no payment, have no freedom of movement, and are forced to work excessive hours. Due to the terrifying stories of abuses that are passed mouth-to-mouth or divulged by the media, Saudi Arabian families are forced to pay large amounts of money as a bonus for a maid to be interested in migrating.

Recruitment: The employment agencies commonly lure applicants and lie about the employment terms. Some argue that the women, who are often desperately in need of money, will be coerced to work without fully understanding what is expected of them in Saudi Arabia, where they are likely to be subjected to human and labor rights violations. Very often the employment agency commits contract fraud by having them sign contracts which they do not

understand (often written in a language different from that spoken by the worker) and making verbal promises different from written terms such as salary, family number and hours of work.

Transition: The worker has her passport confiscated and is allowed no mobility or early return, even for cause, without paying exorbitant fines. With the payment of a bonus to sign a two-year binding contract and imposition of a fine for failure to fulfill the term of the contract, the worker's passport is taken to ensure that she will take the flight as planned.

Exploitation: As soon the domestic worker arrives in Saudi Arabia her passport is confiscated, she is denied freedom to leave the house unattended, and is subjected to various abuses, including physical and sexual abuse (DMWs interview, 15 and 18 June 2017).

These are the definition of the three stages of human trafficking, and many of these domestic migrant workers are being trafficked. However, there has never been a prosecution for human trafficking related to foreign employment in Sri Lanka nor Saudi Arabia, even though both countries ratified the Palermo Protocol (a supplement of the United Nations Convention against Transnational Organized Crime [UNTOC] and binding transnational mechanism that investigates and prosecutes human trafficking offenses [UNTOC 2000]).

#### **IV. Conclusion**

Low wages, low social status, the *Kafala* system, *Sharia* Law and the lack of international mechanisms to enforce international legal protection for the domestic migrant workers, all align to allow abuses to perpetuate. Authorities in Sri Lanka and Saudi Arabia must work together to develop policies, laws, and mechanisms to prevent and punish abuse of domestic migrant workers.

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# **Unseen: The Ghost Child Prisoners in the Philippines**

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## **Abstract**

A little over ten years since the Juvenile and Justice Welfare Act of 2006 (JJWA) has been passed, lapses and gaps in the implementation still prevail, one of which is the continuing deprivation of liberty to children. The focus of the paper is to better define these children's deprivation of liberty in the scheme of juvenile justice. Children are still subjected to treatment similar to what children over a decade ago undergone, before the law had been passed. Abusive and degrading treatment against children continue to persist in obscurity, hidden and barely made aware to the public. 'Ghost child prisoners' exist, and the atrocities children experience under the juvenile justice system remain to be either inadvertently or deliberately made unseen and invisible. This paper is part of the author's dissertation entitled A Study on the Arbitrary Detention of 'Rescued' Children in the Philippines.

**Keywords:** Juvenile Justice, Children in Conflict with the Law, Children at Risk Children deprived of liberty, 'Rescued' Children, Ghost Child Prisoners, Police Child Prisoners, Street Children

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## **I. Introduction**

It would appear, at least on paper, RA 9344 amended to RA 10630 or the Juvenile Justice and Welfare Act of 2006 (JJWA) of the Philippines is a laudable law on juvenile justice currently adhering to CRC, UN rules and guidelines on juvenile justice, and restorative justice framework. However, despite this, child rights violations continue to exist. One rights violation is deprivation of liberty to children. Mostly unrecorded, these children are dubbed as 'ghost child prisoners' and 'police child prisoners', and are under vulnerable conditions that make them more susceptible to further atrocities and abuses.

## **II. The Ghost Child Prisoners**

JJWA prohibits detention, suggest for alternative measures, and should it be necessary, only for a short period of time. Furthermore, it prohibits jailing children with adults. However, there have still been police stations and temporary holding centers that placed children in inhuman living conditions, mostly unknown to the public.

Taken from recent reports and interviews with key-informants, the following itemizes the abuses and atrocities 'rescued' and arrested children who are detained arbitrarily:

- (a) No separation between 'rescued' (children committing status offenses and decriminalized acts when committed by children) and arrested children (committing offenses violating Philippine laws);*
- (b) Prison-like conditions;*
- (c) Punitive treatment and torture;*
- (d) Lack of social work and management information system for monitoring;*
- (e) Limited access to therapeutic, rehabilitating and development activities;*
- (f) Prolonged detention;*
- (g) Inaccessibility to justice;*
- (h) Jailed with adults and/or as adults; and*
- (i) Targeted for extra-judicial killings.*

### **III. Gaps allowing child rights violations during implementation of rescue or arrest and detention**

#### *(a) Rescuing the children or rescuing from the children*

Coupled with the use of 'rescue' to call an operation that arrest children, is the interpretation of 'rescue' in itself. It is questionable who these law enforcement officers are actually rescuing. With the way these officers have been performing their duty, it would appear that they are more of functioning under securing the public order of their jurisdiction, at the expense of children. With this, it is apparent that there has been lack of distinguishing the difference between CAR and CICL.

#### *(b) Lack of awareness and training of key duty bearers*

There has been lack of awareness and training of the key law enforcement officers, especially the police officers and *barangay tanods* who are responsible for the initial contact with the child. The same can be observed with the staff in holding centers or BPAs. It is noteworthy that aside from the law enforcement officers handling the 'rescue' and arrest operations, other duty bearers like social workers, lawyers and judges also lack awareness and familiarity of the law. The lack of enforcement and proper adherence also can be attributed to the misinterpretation of the JJWA in relation to other laws or ordinances. Offenses like vagrancy, prostitution, mendicancy and solvent are decriminalized in the amended JJWA. The misinterpretation is seen when authorities treat children who violate state ordinances like they are adults. Instead of properly 'rescuing' these children at risk as mandated by the manual, apprehension and detention took place.

#### *(c) Less of a social work, more of a police operation*

The lack of social workers CICL are to be turned over to, their unavailability during night time of which most 'rescue' and arrest operations take place, and in addition, the lack of coordination between the PNP and the local city or municipal social service and development office can also contribute to children' arbitrary detention. Moreover, if children are ever turned over to a social worker, the first option usually is deprivation of liberty, either in temporary detention centers or BPAs.

This research also finds it problematic how the first contact of the ‘rescuing’ or arresting a child, if the purpose is of restorative justice and to divert the child from the adult justice system does not require the presence of social workers. The initial process then appears as a police operation that is not any different to arresting adults, not just to the child, but even to onlookers and the public. The ordeal then makes children feel like they are adult criminals.

*(d) Lack of facilities: Less Houses of Hope, more prison-like detention centers*

The amended JJWA mandates each province and highly-urbanized city to allocate BPA for CAR and CICL. However, as to date, according to JJWC, there have only been 38 operational BPAs around the country. In other cases, detention centers that used to be juvenile jails function as temporary holding centers for CAR and CICL at cities that do not have BPAs. These detention centers do not meet the minimum standards. From being juvenile jails before, to seemingly comply with the law, their names have been changed into less-threatening terms, guising the still prison-like and inhuman conditions that children befall under. At times, they are also called as *Bahay Pag-asa*. Furthermore, the lack of BPAs and detention centers makes as an excuse for some cities and municipalities to detain children in the police stations and eventually lock them up to adult jails.

*(e) Less restorative justice, more punitive culture*

There is apparent lack of understanding on the framework of which the law is anchored on, which is restorative justice. It is also telling that in the Philippines, corporal punishment is not yet prohibited and the positive discipline bill remains pending in the congress. A punitive culture is not just within the justice system but also permeates in the community that believes punishment and retribution are means to teach children lesson. Such community hinders the respect, fulfillment and protection of child rights and contradicts restorative justice, and in turn opposes the spirit of the amended JJWA.

*(f) Lack of sustainable alternative measures in the community*

Detention becomes the likely only option when community—the city or municipality and down to the smallest unit of government, the *barangay*—have no sustainable intervention and diversion programs for CAR and CICL. Although the law encouraged for alternative measures, in reality, it is barely practiced.

*(g) Impunity and lack of accountability*

There is lack of investigation of police stations detaining and abusing children. Neither have been detention centers been permanently closed because of inability to meet minimum standards. As to why there is a failure to investigate on these matters, especially on jailing children with adults, it is important to note the virtue of the prevailing *esprit de corps* among government employees (Caparas 2009).

Grass-root mechanisms for complaints and redress on matters concerning CAR and CICL, especially when they are abused, tortured or detained arbitrarily are not placed. Poor children suffer the brunt of the lack of accountability by key duty bearers and government agencies. There are other laws such as the Anti-Torture Act and the law on child abuse (RA 7610) that the CAR and CICL can depend on. However, pressing charges through these laws can be impossible especially without access to lawyers or without mechanisms that facilitate this. And most of the times, children and their families, coming from poor economic background and with low educational attainment, are also hardly aware of child rights and the laws that can protect them.

*(h) Slow justice system*

The Section 14 (1) of the Bill of Rights in the Philippine's 1987 Constitution particularly highlights due process of law. In reality, this is hardly realized. Most often, justice is delayed and denied at the expense of the poor who have no or little access to lawyers. An accused could be in detained for years just waiting for his trial. The more there are accused denied of speedy trial, the more are detained, resulting to overpopulation in prison cells. Such circumstance is also the same for the case for CAR and CICL. Judges and public lawyers are often overwhelmed with cases, and even unfamiliar with the JJWA and child rights (CLRDC & OMCT 2016). A child who committed a petty crime can wait in detention for a year or more for his trial. There are no specialized judges assigned to handle cases of CAR and CICL to hasten the process.

*(i) Lack of political will, commitment and belief of child rights*

Political will and few commitments from politicians contribute to the weak implementation and lack of adherence to the spirit of the amended JJWA (S. Cullen, personal interview, April 5, 2017). It is apparent that children cannot vote and guarantee votes for politicians. In a country that is marred of corruption, it is less likely that politicians vest interests

on children, let alone children in the margins. Moreover, there are government officials who are either less aware of child rights or do not believe in them (Child Rights NGO Program officer, personal interview, April 21, 2017). With none or little awareness to child rights and the amended JJWA, the state actors such government officials, law enforcement officers, social workers, staff of the BPAs and detention centers, lawyers and judges are less likely to champion child rights and juvenile justice.

#### **IV. Conclusion**

It had been apparent that there has been gap in the law and its enforcement, but what has been mostly overlooked is the weak implementation of the law and the lack of adherence to what the law mandates, which then allows the persistence of abuse and maltreatment of CAR and CICL. What has been less looked at by legislators and critics of the amended JJWA is that despite a law that is supposed to create a separate juvenile justice system and should protect, rehabilitate and not deprived children of their liberty, a decade after the JJWA has been enacted, children are still arrested like adults and detained in living conditions not shy away from prison, if they are not already placed in prison. This paper further posits the state has been averting from fully performing its responsibilities as duty bearers in the full implementation of JJWA. This can be attributed to the culture of punishment and impunity still entrenched in the Philippines. In a society that heavily normalizes punishing children so as to teach a lesson, the concepts of restorative justice and child rights can be hard to sell. There has been barely enough probing and addressing of social problems and other contributing factors that made children resort to crimes. CAR and CICL are stigmatized and are easily regarded as criminals. It would look like the system is blaming children who may be more of victims of circumstances than criminals. Criminalizing these children, consequently criminalizes poverty, instead of alleviating it, and further marginalizes and ostracizes children. Criminalizing these children deters the government from mending the lapses of the JJWA implementation and taking full accountability on respecting, fulfilling, promoting and protecting child rights of children in contact with the justice system.

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# Women Political Representation of Myanmar in Parliament of Yangon Region (2010 - 2015)

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## **Abstract**

The main objective of the study is to outline the role and participation of women in politics in two terms of democratic transition, 2010 and 2015, in the regional parliament of Yangon, Myanmar. The study aims to identify the factors leading to the increase of women representatives in these years; analyze the means of further improving women participation in political affairs; and draw lessons for further improving women representatives in politics. The study is a qualitative analysis based on the primary and secondary data survey and key informant interviews. The data collected is with the aim of obtaining a holistic view of women participation at all levels of politics; and the views of individual and member of women organizations, during these transition periods. In this paper, the discussions of the paper will explore challenges that are inherent in the system that impact women's equal participation in politics, and current achievements in women's political representation and the effective of public life, in the context and history of democratic transition. Finally, the paper will refer to the 2016 - CEDAW committee's review, as a vital baseline to establish and entry point towards advocating State obligation to promote women's political rights. The committee's reviews of "Concluding Observations on the Combined Fourth and Fifth Periodic Reports of Myanmar(CEDAW/C/MMR/CO/4-5)" are referred to as the indicators by which the following may be progressively evaluated: women's political rights to greater political representative and participation, to empowerment of future implication women program and form quota system in the parliaments of Myanmar's transition of democratization process.

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<sup>3</sup> Nan Khan Yone is a Master's student in Mahidol University's Institute for Human Rights and Peace Studies. Since 1995, she was graduated but she received her Bachelor Degree of Sciences from Mandalay University, Upper Myanmar in 1998. Since 1996, she started to work in community-based and right-based at remoted areas as a staff by the NGOs and CSOs Organization field about twenty years. Now, she has been working as an activist and conducting many trainings for ethnic leadership development and campaign activities that are related to addressing human rights, women rights and child rights issues and advocating to increase women participation in politics sector of Myanmar.

Keywords: democratic transition period, women political rights, representation and participation, decision-making, quota system

## **I. Introduction**

In Myanmar, women were granted the right to vote in 1935, one of the earliest countries in Asia. Myanmar was ratified the Beijing Platform in Action in 1995 and became a member of Convention on the Elimination of All Forms of Discrimination against Women in 1997. Since 2013, Myanmar has National Strategic Plan for the Advancement of Women to implement as a priority as ensuring women's participation and leadership in governance at all levels from the community to the state for about 10 years action. In reality, women's ability to take part in political life has been very limited after the 1962 of dictatorship and military regimes as Nepotism<sup>4</sup> system for about 70 years. This dynamic was changed as first as at 2010's election by the leading of quasi military Ex-president, U Thein Sein. At 2015's election, was the land slide changed by won National Leagues of Democracy. In these two termed of elections, women political representatives are very low such as 4.8% at 2010- 2015 and 10.5% each in current up to national parliament(Pyidaungsu Hluttaw), 2015-2020.

In such a context, this research study used the qualitative approach in order to obtain in which institutional blocks to women to be able to participate in their political rights on the state obligation of CEDAW and BPA. By using this qualitative method, we can better understand how to empowerment women to be participate in politics, why are the 5.7% promptly increase women representative in this termed and how can increase the women representative in Parliaments(Hluttaws) to represent and voice out of women over population than men by census in 2014. This study aimed to explore the implication of women empowerment capacity building by the NSPAW to be formed gender balance quota system and advocacy of 30% quota system across all levels of governance mechanism in Myanmar.

The research found that gender-based discrimination in governance of public life by human rights, women rights and how men have perspective on the deeply rooted norms that dictate different roles for men and women in politics life. In this new public elected government

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<sup>4</sup> Using the military power or influence to get resources or unfair advantages for members of their regime family from the state.



to ensure that women are represented in all areas of governance by a quota system to follow the state obligation as a special temporary measure by CEDAW committee's conclusion observation in 2016 recommendation, it could bring about the necessary shift for NSPAW enacted effectively and political will to be more women's participation by a national priority. This is not just a need, but a basic right that should not be denied the women participation in political representative of Myanmar's Hluttaws.

## **II. Findings the Research**

This section attempts to present what is the role and responsibilities of women in parliaments(Hluttaws), why is the increase different rate of women participation in two terms of politics and what are the measure that could strengthen women participation as representatives in the political activities. The findings will be divided into two parts as including as (1) general findings for women political representation and (2) main findings in regional Yangon Parliaments(Hluttaws).

### **A. General findings for women political representation**

All facts have evaluated that men fail to empathize with women when a man takes part in politics he has supported office family. However, when women get involved in politics, the family members do not support them most of the time. As a result, they do not have access to information, they do not have political knowledge and they do not have self-confidences. Therefore, they are finding it difficult to carry out their public duties. Stereotyping and Culture Norms are difficult, how to tackle? The husband of female politicians must appreciate the fact that men and women are equal and his wife has the rights to engage in politics.

Current women representation is not cover the whole of women population, voiceless and unempower to amend or appeal the women rights violation laws and by-laws. In this part, media is the most important player with gender sensitivity awareness in all sectors of levels.

The women empowerment training should include updating political affairs by intensively and integrating such as civic education, voter education, leaderships management, sex and gender sensitively, political education, advocacy and campaign, human rights and

women rights. They need mentors and experts to participate to foster and promote leadership skills and decision-making abilities and train the people without discrimination of age, sex and religions.

To form Quota System by enact new election law and election method or system, its practice and enforce in the parties by voluntary internal gender policy and the election commission has complaint mechanism to action not follow the system. In the election period and election campaign, the women groups network or CSOs initiate role to advocate the quota system policy and monitor in election.

From the community level start, the initiated political leaders build Man Championship and Engagement programs with gender sensitivity in each sector and level by implementing the national strategic plan and action and support as governance mechanism by the multi sectors of Ministries. Every law enacted by comprehensively policy consultation by implication of all stakeholders and beneficiaries including politicians and parties.

#### B. Main findings in regional Yangon Parliaments(Hluttaws)

Structure of Yangon's Region has total seated 123 persons equally by selected from 92 plus military elected 31 seated. Among them 90 persons of selected representation are from two candidates of one township constituencies. As Ministers, 2 selected from ethnic representation based on the over population of 0.1% of ethnic groups, Kayin and Rakhine as Ethnic Ministers. First termed 2010 to 2015 was included 4 % women representative and participation without military women, 6 WMPs. At 2015 to present, the 14% women representative and participation included military women, 18 WMPs.

The Role of Regional Hluttaw's Assembly by the 2008 Constitution, it is Article 175, The functions shall be carried out at the Region or State Hluttaw session are recording the addresses delivered by the President; reading and recording the message sent by President and other messages permitted by the Speaker; recording the address delivered by the Chief Minister of the Region or the State; submitting, discussing and resolving on a Bill; discussing and resolving on the matters to be undertaken by the Region or State Hluttaw in accord with the provisions of the

Constitution; discussing, resolving and recording the reports submitted to the Region or State Hluttaw; submitting proposal, discussing and resolving; raising questions and replying; undertaking matters approved by the Speaker of the Region or State Hluttaw.

The Responsibilities of Hluttaws(Parliaments) are as to be representative for the voters, to do check & balance of the functions in the parliaments, legislative the laws and by laws to enact, to be ensured the legitimate as the government, to develop the practices of democratic politicians.

Existing Women, member of parliaments, MPs should lead the initiative lobby to carry out the research the parliamentarian to do the impact of Research, data and statistic to include women in politics. Day care centre of children must be opened for young female MPs, so that they can be in parliament passionately. Existing WMPs initiate building the research and development of women MPs data resources and building child day care center for the motherhood of young WMPs. Then to enact the laws for fully protection and ensure one stop service mechanism for women. They also suggested that female political leaders must participate in forums, seminars, workshops conducted by recognized persons and even have domestic and international exposure trips.

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# **Transitional Justice in Sri Lanka: Press Freedom through the Eyes of Journalists**

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## **Abstract**

Transitional justice is a pressing issue in post-war Sri Lanka. The country's new national unity government co-sponsored the 2015 UNHRC Resolution 30/1 'Promoting reconciliation, accountability and human rights in Sri Lanka' which advocated a national process of reconciliation. The Resolution is significant for involving the Government of Sri Lanka in its drafting and for allowing it to take ownership of the transitional justice process. Since then, however, the Government has been slow to implement transitional justice measures, bringing to question the political will of the Government, and putting the entire process at risk of losing political momentum and the window of opportunity. The role of the media in any transitional justice process is pivotal. However, their involvement is largely ignored in Sri Lanka. The role of a journalist is still rather vague when it comes to reporting on transitional justice processes. Due to past persecutions, some journalists find it difficult to find a safe space to report on and be critical of the transitional justice process. These issues disproportionately affect journalists from the country's Tamil ethnic minority, who were the primary victims of the country's civil war. The paper intends to understand the oppression faced by Tamil journalists in particular and examine their inclusion and representation during the transitional justice process.

Key Words: Transitional Justice, Journalist, Sri Lanka, Tamil, Human Rights.

## **I. Introduction**

A new government was elected in Sri Lanka in 2015 on a platform of *yahapalanaya*, or good governance, which promised a greater ability for citizens to exercise the freedom of expression as well as improved outcomes for Tamil communities in the country and transitional justice measures in particular.

Both these are directly relevant to Tamil journalists, this paper's main object of study. This paper intends to explore the inclusion and representation of Tamil journalists in the country's nascent transitional justice process. This paper will examine this primarily through a survey that was done on Tamil journalists on their inclusion and representation during the transitional justice process in Sri Lanka

Tamil journalists have been continually persecuted in Sri Lanka. This persecution continued throughout the last stages of the civil war in 2009, and continued thereafter under the Rajapaksa regime (BBC, 2010). After the regime change in 2015, there seemed to be a ray of hope for the democratic environment in Sri Lanka. However, this hope has quickly turned stagnant and non-progressive, exposing continued persecution and lack of press freedoms in Sri Lanka.

The paper focuses on Tamil journalists as Tamils are an ethnic minority in Sri Lanka. Besides that, the Government of Sri Lanka (GoSL) has a history of ethnocentric governance. Whilst calling itself a democratic republic, Sri Lanka has a past of strong control and rule by Sinhala Buddhist influence, which has fostered a deeply engrained belief that the island 'belongs' to Sinhala Buddhists. The country's civil war was in many ways an inter-ethnic conflict between the majority Sinhalese and the minority Tamils. Throughout, Tamil journalists faced persecution in the form of extrajudicial killings and enforced disappearances. Tamil journalists are also chosen to study to determine if there is any ethnic profiling when it comes to transitional justice initiatives towards the media and journalists.

## **II. Transitional Justice**

After the end of the war in 2009, Rajapaksa continued his rule, winning a further term as President in 2010. He was defeated in the 2015 Presidential Election by Maithripala Sirisena, bringing an end to a decade-long regime. As a promising new chapter in the country's democracy, Sirisena's government co-sponsored a 2015 United Nations Human Rights Council (UNHRC) Resolution 30/1 on 'Promoting reconciliation, accountability and human rights in Sri Lanka'. The Resolution was significant in that the Government contributed to its drafting and took ownership of the process (SACLS, 2016).

After the Resolution, the GoSL in a statement made at the UNHRC session in September 2015 promised to establish four offices: a Commission for Truth, Justice, Reconciliation and Non-Recurrence; an Office of Missing Persons; a Judicial Mechanism with a Special Counsel; and an Office for Reparations (SACLS, 2016). These four offices form the basic transitional justice process the state proposed to undertake.

Although the rudimentary processes were drawn up in the UNHRC Resolution, the Government has been slow to implement the measures, bringing to question its political will and putting the entire process at risk of losing political momentum and the window of opportunity (Aljazeera, 2015). Oddly, the mechanisms to engineer this transitional justice process were decided behind closed doors by the government. The involvement of the media was completely ignored. As a result, the role of journalists, and particularly Tamil journalists, as direct stakeholders, remains unclear.

### **III. State of the media**

Rajapaksa's regime was a highly dangerous time for the media and journalists due to the many rights violations, murders and enforced disappearances that occurred under it. As such, after the regime changed, many applauded the change of environment and how violations against the media decreased. However, Sri Lanka still falls below international benchmarks for media freedom; current international rankings for the country are very low. According to Freedom House, the status of Sri Lanka's press freedom is not, in fact, free with a score of 61/100 (House, 2017). Reporters without Borders also reported that Sri Lanka is still ranked low, at 141 as of 2017 on the World Press Freedom Index (Reference, 2017).

Besides that, it is clear that there is a strong culture of impunity in Sri Lanka. Although there were clear breaches of international humanitarian law and human rights law which amounted crimes against humanity during the country's civil war, the previous regime and the current one have not taken any measures to address these crimes. The perpetrators of these crimes are out there, but due to the culture of impunity that the government has practiced, justice is not served.



It is also important to take note that, although the new regime campaigned on “good governance” to come to power, they have yet to legislate to complete its ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED) and to reform its justice system to demonstrate its genuine political will to address past and ongoing human rights abuses (Brief, Sri Lanka: Combating Impunity – Journalist for Democracy Sri Lanka (JDS), 2011).

The ethnic breakdowns when it comes to the 25 journalists killed from 1999 to 2011 are 18 Tamils, six Sinhalese and one Muslim (JDS, 2017). It is not a surprise that the majority of killed journalists are Tamils. The deaths of all Tamil journalists, however, are generally swept under the carpet and no investigations on any of their deaths or disappearances have been opened so far (Brief, Sri Lanka: Combating Impunity – Journalist for Democracy Sri Lanka (JDS), 2011). Thus far, only the case of Lasantha Wickramtunga’s murder has been opened; how it will conclude is unclear.

It must be questioned why a Sinhalese journalist was given a probe first with the other 18 Tamil journalists not taken account of. TNA Parliamentarian M.A Sumathiran acknowledges the ethnic disparity by pointing out “Even in taking action, there is blatant discrimination. We commend you for taking action in the case of Prageeth Eknaligoda; in the case of Lasantha Wickramatunga, but there was a course of Tamil journalists who were killed. Why has the Government not moved one finger in respect of one of those assassinations? Why? Are Tamil journalists any less citizens of this country than Sinhala journalists? Is that your view? You do not have to answer that. It is blatantly obvious what your view is, when you do not do what you are supposed to do; when you do not do the right thing for certain sections of the community, but rush to do other things” (D.B.S.Jeyaraj, 2017).

It is clear that even after the regime change, there is underlying ethnic discrimination even in the effort of providing justice. The war victims are predominantly the Tamil people and the majority of killed journalists are Tamils. There are journalists like Aiyathurai Nadesan who were killed but there is no probe on him, in fact, he was one of the many journalists who are victims

of the war. The current government does not avoid racially discriminating against Tamils, as justice seems like it is reserved exclusively for the Sinhalese who were victimized in the past.

#### **IV. International Standards on Freedom of Expression**

There are two major international human right standards pertaining to the freedom of expression, which are used to measure press freedom in this paper. First is the Universal Declaration of Human Rights (UDHR). Under the UDHR, which Sri Lanka is a signatory to, Article 19 states that one has the right of opinion and expression. Besides this, Article 19 in the International Covenant on Civil and Political Rights, which Sri Lanka has ratified, lays out that everyone shall have the right to hold opinions without interference. Importantly, Article 19 gives everyone the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds. As explicitly stated in the same article, this information can be in the form of oral, written, print, and artistic and through any other media.

General Comment 34 for the ICCPR by the Human Rights Committee which was released in 2011 gives specific remarks on the freedom of expression and the media (HRC, 2011). Some of the further comments are that the Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its functions. Besides that, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives are essential. This requires a free press and other media being able to comment on public issues without censorship or restraint and to inform public opinion, with the public also having a corresponding right to receive media output (HRC, 2011).

As per these international standards, media users which include members of ethnic and linguistic minorities must be able to receive a wide range of information and ideas, and it is state parties who should take particular care to encourage an independent and diverse media. In the Sri Lankan context, Tamils are an ethnic and linguistic minority to whom these standards should have been applied. Besides that, states parties should take all necessary steps to foster the independence of new media and ensure access of individuals thereto. Journalistic independence and editorial freedom also should be guaranteed by the state (HRC, 2011).

General Comment 34 also states that there must be effective measures to protect against attacks that silence those exercising their right to freedom of expression. This also applies so as to not invoke paragraph 3 wantonly. Paragraph 3 should not be a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights nor, under any circumstance, attacks on a person. This is because the exercise of their freedom of opinion or expression is not compatible with such forms of attack as arbitrary arrest, torture, threats to life and killing (HRC, 2011).

State parties should be cautious when it comes to treason laws and similar provisions when it comes to national security such as official secrets and sedition. Such laws need to make sure they conform to paragraph 3 and not contradict it (HRC, 2011). In short, such laws cannot suppress or withhold from the public information of legitimate public interest that does not harm national security or prosecute journalists. It is also important to note that penalizing media or journalists for being critical of the government cannot be acceptable under the freedom of expression.

Journalists should also have the protection of the same international standards regarding the freedom of expression. There should be no discrimination when it comes to giving accreditation schemes and permissions to journalists. Importantly, according to the Covenant, state parties should recognize and respect that element of the right of freedom of expression which embraces the limited journalistic privilege not to disclose information sources. It is also fundamental to define terms such as “encouragement of terrorism” and “extremist activity” as well as offences of “praising”, “glorifying”, or “justifying” terrorism, which are offences in Sri Lanka (HRC, 2011). This is very important so that they do not lead to unnecessary or disproportionate interferences with the freedom of expression. Further according to the General Comment of the covenant, extreme limitations in accessing information must also be evaded.

Most of these international standards are violated by the Sri Lankan legal regime. Under the Sri Lankan Constitution, the freedom of expression is protected as a fundamental right. However, this right can be restricted by the state if “in the interest of national security, public order and the protection of the public health or morality”. There are further laws in the country

which restrict and most often than not, persecute certain journalists. The Prevention of Terrorism Act (PTA) 1979 contains a tremendously broad set of restrictions, such as a prohibition on publishing content against the government. The PTA's provisions allowing detention without charge are often used to persecute journalists that were presumed to incriminate the government for its transgressions, especially towards ethnic Tamils post-civil war. Further, the Press Council Act 1973 prohibits disclosure of certain fiscal, defense and national security information and establishes a regulatory body to enforce those and other restrictions through penalties that can include imprisonment. Finally, the Official Secrets Act 1955 bans reporting on classified information, and those convicted of violating its provisions can be sentenced to up to 14 years in prison.

## **V. Conclusion**

Sri Lanka was given another two year extension for it to fulfill its commitments on the transitional justice process by the UNHCR, and it is incumbent that the GoSL showed political will by fulfilling its commitments. A fundamental task to be accomplished is enabling the freedom of expression up to an acceptable international standard. Tamil journalists, coming from a minority group, should not face racial discrimination in reporting on the efforts that are taken by the GoSL. The GoSL should be more inclusive and make sure that Tamil people are well represented when it comes to media and the efforts GoSL is taking when it comes to the transitional justice process. This includes at the very least removing legal barriers to properly-functioning Tamil journalism, such as the PTA; more substantively by seriously carrying out the GoSL's commitments under Resolution 30/1; and more proactively by engaging with Tamil journalists, by including them in transitional justice processes.

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