

Monitoring and investigation through a UN field office in Sri Lanka

Since 2006, there have been calls for international human rights monitoring in Sri Lanka. In his March 2006 report, the UN Special Rapporteur on extrajudicial killings, Philip Alston, clearly recommended international monitors to be present in Sri Lanka. In April, after Sri Lanka's Human Rights Commission had ceased to function due to a constitutional snag, the Asian Human Rights Commission (AHRC) wrote an open letter to the UN Secretary General, stating that the country's complete lack of domestic human rights monitoring mechanisms was more than sufficient cause for international monitors. This was subsequently echoed by the UN High Commissioner for Human Rights, Louise Arbour, and the European Parliament in September.

Sri Lanka's deteriorating human rights situation was brought up in the 2007 Human Rights Council sessions as well. A group of Sri Lankan and other civil society groups submitted a written statement requesting the consideration of an Office of the UN High Commissioner for Human Rights (OHCHR) field office in Sri Lanka. The statement noted the escalation of human rights abuses throughout the country, as well as the lack of domestic institutions and political will to deal with them. Although several European Union member countries attempted to push for international monitoring during the sessions, they were not successful.

Most recently, the UN Special Rapporteur on torture, Manfred Novak and Louise Arbour, after their visits to Sri Lanka in October 2007, noted the necessity for UN monitors in the country. Prior and during Ms Arbour's visit, there was much local debate regarding her 'agenda' and the actual necessity of having a UN field presence in the country. A few articles from different sides of the debate are reproduced below.

Louise Arbour as a political football Secretariat for Co-Ordinating the Peace Process (SCOPP) Report October 15, 2007

The Sri Lankan government recently invited the UN High Commissioner for Human Rights to visit Sri Lanka. The poor lady is now here, and has found herself the focus of a series of articles in which she is presented as the potential savior of the Sri Lankan people. Her visit is presented for instance as a test for the political leadership of the country. No matter that simultaneously this claimant declares that the 'political intellect of the country has sunk to its lowest depths...the political intellect remains in a state of stupor.'

What is this stupor? Certainly those who view the lady as a modern day St George, battling a dragon, are very clear about what the battle is about. They are sure that she will recommend a UN monitoring mission, and all their arguments are intended to ensure that that mission is established.

Whether or not Louise Arbour came here with a determination to recommend such a mission, as they have all assumed, is not relevant. Though some foot soldiers in the human rights army were already gearing up their applications for positions in that mission, the Sri Lankan government which invited her has to assume that she is adult enough to reflect on a situation she came here to observe, and to decide what recommendations may best serve the purpose she is dedicated to achieving.

What is more interesting is the motivation of those who have predetermined that such a mission is essential, and who are counting on her to promote their agenda. Foremost amongst these it would seem is the UNP, as represented by Mr Lakshman Kiriella, who not only keeps requesting such a mission but even claims that nothing can stop it if the UN recommends it. He goes so far as to claim that there would be an economic embargo from the European Union if the government tried to stop it. Sadly he has now been joined by Mr Mangala Samaraweera, who has reiterated the constant refrain of his erstwhile critics in claiming that Sri Lankan government is 'being isolated by world'.

Then we have Mr Basil Fernando, a doughty activist in the past who had to flee the country when the UNP death squads were in their element, who compares Sri Lanka with the Nepal of 2005 and the Cambodia of 1989. The former accepted a High Commissioner's office to 'monitor human rights in order to deal with the conflict that existed between the authoritarian regime of the king and the Maoist rebels'. In Cambodia it was not a human rights office, it was a Transitional Authority that had in effect to run the country because of the 'crisis as four factions were engaged in an armed struggle which led to the collapse of Cambodian society.'

But, as Aristotle put it, recalled in time by one of the Human Rights Watch activists in Geneva, the roots of injustice lie in treating like things in unlike ways and unlike things in the same way. This had clearly not occurred to the Portuguese ambassador to the UN in New York, when, talking on behalf of the United Nations, he clustered together Sri Lanka and the Sudan and Somalia and Iraq and the Democratic Republic of the Congo. The Portuguese ambassador in Geneva, who had engaged with the Sri Lankan Mission there along with his colleagues, was much more circumspect and laid aside the resolution he had originally indicated he had been instructed to put forward. There is reason to suppose that he did this because of the constructive engagement pursued by the model Sri Lanka Mission in Geneva. That indeed is the policy of the government, to discuss issues openly, weigh up advice, and respond constructively. After all, we have a democratic government, elected twice as it were, in elections that have been universally accepted as fair, except for the plaintive cry of the UNP that they were deprived of the mass vote they were anticipating. Interestingly, the EU monitors for the 2004 election gave it a clear bill of health except in the North and East, which produced the 22 TNA MPs the UNP was counting on to give it a majority.

Despite such successful and we trust productive engagements, which the government continues to pursue, not only in Geneva, not only with Ms Arbour, but also with the world at large – and in particular our Asian friends who seem in Mr Samaraweera's view no longer to constitute the world – the Human Rights army believes that there is only one way to engage, one way for Ms Arbour to react to the Sri Lankan situation, one way for the Sri Lankan government to respond. The pluralism that should be the pride of Sri Lanka socially is to be avoided in moral and intellectual activity, whether Ms Arbour's or that of the rest of us.

What are the weapons they use to pursue their agenda? Sadly, chief amongst them is falsehood, persistent falsehood, on the Goebbellian grounds that if you lie loudly and often enough, people will believe you. So we were assured a couple of months back that there would be a EU resolution against Sri Lanka. When that did not transpire, we were told that Sri Lanka narrowly escaped censure. We were also told that Sri Lanka was saved by 'banana republics and potty regimes', which presumably characterizes all the countries in Asia and Africa and the Americas and the whole Non-Aligned Movement who pledged their support for Sri Lanka. Jehan Perera, normally more moderate than most of his peers, argued that the UN Human Rights Council was so myopic that it would not discuss the situation in Myanmar, his article appearing on the very day I believe that a debate on Myanmar did take place.

People of course believe what they want to believe. However it is only in Sri Lanka that such beliefs appear as responsible journalism, combined with an awesome respect for things Western, and a naïve belief that all Westerners are deeply interested in the Sri Lankan situation. Thus there was a categorical claim that the European Union Parliament was to debate the human rights situation in Sri Lanka, when in fact all that happened was that one parliamentarian set up a discussion with Human Rights Watch which attracted just one other parliamentarian. And even Basil Fernando showed his rather sad devotion to the mother country when, in citing a ridiculous article that appeared in Sri Lanka, he claimed falsely that it was from the 'London Daily Mirror'.

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hen there is emotional language. None of these characters obviously has read Orwell, and his strictures on clichés and extravagant adjectives. Basil Fernando cannot conceive of abuses, they have to be gross, a crisis must be acute, a situation must be abysmal, helplessness is utter. The adjective political is applied to lunacy, realism, intellect and disasters, plus another half dozen or so words. Dr Saravanamuttu has now decided to dwell on words such as apparatchiks and fellow travelers, and accuse the targets of his criticism of abuse and invective, whilst relishing his own use of words such as silly, myopic, callous, antediluvian, obsolete and obsession.

Does all this matter? It would not, in the ordinary world, but Sri Lanka is not ordinary. In this country relentless propaganda has contributed to change of government that nullified the wishes of the electorate. Mrs Bandaranaike was the victim of this in 1964, Mrs Kumaratunga in 2001, though she now seems to have forgotten this.

More seriously, it is not only the opposition that wants such change, or the few foreigners who, as an American recently put it, have an unhealthy nostalgia for the Wickremesinghe regime. The most concerted determination to upset the government comes from the LTTE, which has been anxiously plugging the Human Rights angle when it found that others did not work.

The tragedy is that it has so easily found followers for this. Most of them may be sincere, but they have then to be seen as at best illogical. There is for instance the influential European Union official, who was at the forefront of threats about economic sanctions, who seemed to oppose elections in the East since he had been advised that they would be controversial. His principle reason seemed to be that no remedies had been found for the strictures of the European Union monitors on the last parliamentary election.

He does not seem to have revealed the source of his advice. Not entirely coincidentally, the most vociferous opposition to elections in the East has come from the TNA, who were the chief beneficiaries of the flaws noticed by the European Union monitors. But that factor would escape the notice of a doubtless idealistic European who has no time to go into details.

The link between our Human Rights army and the LTTE became clear when Tamilnet on September 30th reported on a meeting at which the speakers included Ms. Sunila Abeysekera, Executive Director, INFORM, Ms. Karen Parker, Mr. David Rampton, School of Oriental and African Studies (SOAS), Dr. Paikiasothy Saravanamuttu, Executive Director, Centre for Policy Alternatives (CPA), Rev. Fr. Alphonsus Bernard, Director, CEPAHRC, Jaffna, Fr. Jeyakumar (HUDEC, CARITAS Jaffna) and Mr. Kasinather Sivapalan, Deputy President, Northeast Secretariat on Human Rights (NESOHR) and local nominee to SLMM Trincomalee. Karen Parker, it should be noted, is the American lady who put up a spirited defence of recruiting children over 15 as fighters in her intervention at the UN Human Rights Council.

Now there is nothing wrong in engaging in discussion and debate with the LTTE. The Sri Lankan official delegation to the Council also had this privilege, as regards Mr Sivapalan, who it seems is now resident in Ireland, and Fr Bernard, who also has been abroad for some time. The problem with those Sri Lankans who are usually in Sri Lanka is that they would not engage in the debate to which we had invited them, nor did they invite us to their discussion, which was publicized after we had all left Geneva. The representatives of the UN and Western missions who came to the debate we had set up would doubtless have welcomed listening to an exchange of views, but instead of that our own home grown activists and the LTTE representatives now living abroad had their own cosy little meeting at which they seem to have agreed with each other, like Lear's Pelican Chorus.

On the strength of such meetings, these Catos, who in their little Senates give themselves their own laws, have decided that 'The fact of grave human rights crisis has been established.' So they can assert that Ms Arbour's 'visit is not a fact finding mission'. I have no idea whether Ms Arbour shares this view. But one would hope that she is experienced enough to ensure that her office is not used as a tool for political agendas that have no place--particularly when shared by terrorists--in the constant struggle to promote human rights worldwide.

Rajiva Wijesinha
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**ASIA: Orwell, Rajiva Wijesinha and the discussion on human rights monitoring in Sri Lanka
A Statement by the Asian Human Rights Commission (AHRC)
AS-243-2007; October 15, 2007**

The following is a reply to a report published on October 12, 2007 in The Official Website of the Sri Lankan Government's Secretariat for Coordinating the Peace Process, written by the Secretary General, Rajiva Wijesinha,

My comments in some previous columns regarding Cambodia and Nepal seem to have appeared dangerous to Rajiva Wijesinha, who seems to think that Sri Lanka's problems are different. Naturally no conflict is similar to another. However, what are similar is the consequences of prolonged conflict on any place; that is, the serious disruption or even complete collapse of all the state institutions and the consequent disruption of life in the society. In short, all prolonged conflicts create a state of lawlessness. That is what is common to Cambodia, Nepal and Sri

Lanka. Unless some extraordinary measures are taken to make a beginning towards a recovery this situation will not only create abysmal results but can even create catastrophes. What happened in Cambodia and Nepal was an intervention by the United Nations which helped to create a beginning in the direction of recovery, while in Sri Lanka the downward spiral still continues.

Rajiva Wijesinha is quite aware of the downward spiral. For many years he has been writing books and articles on the erosion of democracy in Sri Lanka. Among his best contributions are the detailed analyses of J.R. Jayawardene's contributions to the collapse of democracy by the introduction of the executive presidency and the pursuit of the same through many other measures by Jayawardane as the first executive president. With regard to the plunge into the dark depths of authoritarianism and the resulting dismantling of the constitutional framework, I would not think Rajiva Wijesinha would argue, that these things have come to an end. In fact, constitutionalism is a word without much meaning in Sri Lanka now. Together with the new conception of power developed by the executive presidency the basic institutions such as the police, the prosecution system under the attorney general, the judiciary under Sarath Nanda Silva, and the parliament itself have suffered extraordinary setbacks. I have constantly referred to these systems as having become dysfunctional. This means that these institutions now produce the opposite results of what they are meant to produce within a system of the rule of law and democracy. Jayawardene's scheme of displacing the rule of law and democracy continues with greater vehemence now, and, sadly, even some critics of that scheme such as Mahinda Rajapakse and Rajiva Wijesinha have now also become operators of the same scheme.

Squealer's Role

Referring to some adjectives that I have used he says: "Then there is emotional language. None of these characters obviously has read Orwell, and his strictures on clichés and extravagant adjectives. Basil Fernando cannot conceive of abuses, they have to be gross, a crisis must be acute, a situation must be abysmal, helplessness is utter. The adjective political is applied to lunacy, realism, intellect and disasters, plus another half dozen or so words." While the belief that he alone must have read Orwell can be excused as trivial vanity of a Sri Lankan professor teaching English, Rajiva Wijesinha must surely know that Orwell also wrote, among other things, two celebrated works, those being: *Animal Farm* and *1984*. While the particular historical circumstances that Orwell's writings are based on may be different, the essential content of the political systems he wrote of remain more valid today, not only to those particular historical circumstances but also to others. Today's Sri Lanka is very much a reflection of the Orwellian nightmares. Despite long years presumably teaching these texts, Rajiva Wijesinha has been unable to see the connection. In the present context of being a part of a propaganda machinery of an authoritarian state, he, among others, has taken on the role of Squealer in Orwell's *Animal Farm*. (The character of Squealer represented the Russian media, which spread Stalin's version of the truth to the masses).

The problem about adjectives is that when describing situations of the collapse of the rule of law it is difficult to find words that can adequately describe the actual depth of the tragic situation. Like some natural tragedies, for example the recent experience of the tsunami or manmade tragedies by way of wars and civil wars, language becomes an inadequate tool to describe the experience. One has unfortunately to rely on adjectives which fall far short of expressing the enormity and human and social consequences of such tragic experiences. However, Rajiva Wijesinha, in his role of Squealer, objects to these adjectives for a very simple reason: he has to make out that no really big problems exist in Sri Lanka. His role is to deny or trivialize or understate the situation that the country is actually facing.

Orwell's argument in "Politics and the English Language" is that the bad language used is a result of the failure to think clearly. That is really the problem that one has to address in thinking about the continuing catastrophe in Sri Lanka. What I mentioned in my column is that there is a degeneration of the political intellect in the country and a lack of capacity to develop political realism that some of the political leaders in places like Nepal and Cambodia developed as a result of the sufferings caused by a prolonged crisis. Even bad leaders who have themselves contributed to the civil war in these countries realized that, even from the point of view of their own self-interest, some outside help was needed to bring an end to the ongoing civil war. The help obtained from the United Nations did not and could not solve all their problems. But it did help to bring the violence and civil war to an end. It is on those issues that clear thinking is needed in the country. And of course if one has opted to play the role of Squealer, then one has to abandon even the wish to think clearly.

Orwell also wrote *Burmese Days* which also provides insight into the types of characters that Rajiva Wijesinha has to deal with in his new role. The character of U Po Kyin (an excerpt from the book is given below), is very much

similar to many Sri Lankan characters active in political and public life in the country. It is not an enviable task to become a spokesman responsible for whitewashing the acts of such characters.

U Po Kyin

As a magistrate his methods were simple. Even for the vastest bribe he would never sell the decision of a case, because he knew that a magistrate who gives wrong judgments is caught sooner or later. His practice, a much safer one, was to take bribes from both sides and then decide the case on strictly legal grounds. This won him a useful reputation for impartiality. Besides his revenue from litigants, U Po Kyin levied a ceaseless toll, a sort of private taxation scheme, from all the villages under his jurisdiction. If any village failed in its tribute U Po Kyin took punitive measures--gangs of dacoits attacked the village, leading villagers were arrested on false charges, and so forth--and it was never long before the amount was paid up. He also shared the proceeds of all the larger-sized robberies that took place in the district. Most of this, of course, was known to everyone except U Po Kyin's official superiors (no British officer will ever believe anything against his own men) but the attempts to expose him invariably failed; his supporters, kept loyal by their share of the loot, were too numerous. When any accusation was brought against him, U Po Kyin simply discredited it with strings of suborned witnesses, following this up by counter-accusations which left him in a stronger position than ever. He was practically invulnerable, because he was too fine a judge of men ever to choose a wrong instrument, and also because he was too absorbed in intrigue ever to fail through carelessness or ignorance. One could say with practical certainty that he would never be found out, that he would go from success to success, and would finally die full of honour, worth several lakhs of rupees.

And even beyond the grave his success would continue. According to Buddhist belief, those who have done evil in their lives will spend the next incarnation in the shape of a rat, a frog or some other low animal. U Po Kyin was a good Buddhist and intended to provide against this danger. He would devote his closing years to good works, which would pile up enough merit to outweigh the rest of his life. Probably his good works would take the form of building pagodas. Four pagodas, five, six, seven--the priests would tell him how many--with carved stonework, gilt umbrellas and little bells that tinkled in the wind, every tinkle a prayer. And he would return to the earth in male human shape--for a woman ranks at about the same level as a rat or a frog--or at best as some dignified beast such as an elephant.

Emotions

Rajiva Wijesinha writes about the emotional language of what he calls the foot soldiers of the human rights army. He seems to have acquired the capacity to speak unemotionally about, for example, the massacre of the 17 aid workers belonging Action Contra La Faim. His comments on the issue to the effect that this French NGO was itself responsible for the 17 deaths caused embarrassment even to the Sri Lankan government, his employer, which through its Minister for Foreign Affairs clearly stated that his comments did not represent the view of the government. An appeal to be unemotional while talking about massive disappearances, extrajudicial killings, torture and lawlessness implies that one has to accept these things rationally as unavoidable occurrences.

This is quite different to a one-time Rajiva Wijesinha who wrote quite emotionally and at some length about the extrajudicial killing of his school mate Richard De Zoysa. In that article he exposed everyone involved in the role and quite rightly exposed the role of the then Attorney General Sunil Silva, regarding the inquiries into that death. Perhaps Richard deserved different treatment as a friend and what Rajiva Wijesinha called in that article, a member of a family of the Sri Lankan aristocracy to which he thinks he also belongs. What that aristocracy is I have never understood but the class distinctions that are made between the ordinary folk and the elite are quite common in Sri Lanka. The elite are quite unemotional when talking about disappearances and other matters of the people of other classes in the south, north or the east. Those who are presumed to have read Orwell are treated in one way and those who have not in a different way. Despite of the long connections of Rajiva Wijesinha with what was called the 'liberal party' in Sri Lanka, his mindset is no different to many others of that group called the elite whose origins was the ambition, to use Orwell's language in *Burmese Days*: 'To fight on the side of the British, to become a parasite upon them.'

One would ask what is wrong with being emotional. Human beings are both rational and emotional. An integrated personality is one where reason and emotion are always present. However, when one has to espouse a cause that is

morally indefensible, such as to justify human rights abuses, naturally one cannot be emotional about it. All Squealers are very unemotional people and to criticise others for being emotional is a common Squealer technique.

Rajiva Wijesingha refers to my fleeing to escape from the UNP death squads. The death squads and the executive presidency are twins. As long as the present form of executive presidency remains the death squads will also remain. The death squads were a product of this political system. It is the role of death squads that is being whitewashed when one tries to deny the disappearances, extrajudicial killings and the like.

He also refers to the foot soldiers of the human rights army. This is no accident because he is a spokesman for the real army. He sees his opponents as another 'army'. We are reminded of Don Quixote's battles and the imagery Don Quixote created for himself in order to make someone appear to be another knight who was provoking him into a fight. In Rajiva Wijesingha's new role he will have to invent armies that he can fight and conquer. The latest adventure for him is to create the impression that he, with a few others, has successfully defeated a possible UN resolution on the need for human rights monitoring in Sri Lanka. What a great victory!

Ms. Louise Arbour, the United Nations High Commissioner for Human Rights, at the end of her visit to Sri Lanka stated that 'The weakness of the rule of law and the prevalence of impunity in Sri Lanka were alarming.' In an article published in the Sunday Times (October 14, 2007) Ms. Arbour went on to say:

"While the government pointed to several initiatives it has taken to address these issues, there has yet to be an adequate and credible public accounting for the vast majority of these incidents. In the absence of more vigorous investigations, prosecutions and convictions, it is hard to see how this will come to an end," she said.

The Squealers of Sri Lanka may boast that they managed a victory by avoiding any discussions on these matters with the UN High Commissioner. The continuity of the situation, the weakness of the rule of law and the prevalence of impunity in Sri Lanka is of course a matter of little concern to them.

Basil Fernando
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**Entertainment from the Human Rights Establishment: The forgetfulness of the Asian Human Rights Commission
Secretariat for Co-Ordinating the Peace Process (SCOPP)
October 17, 2007**

The Peace Secretariat is delighted at the new levels of debate developing in the Human Rights industry with the comparison of me to a character from an Orwell novel. Literary comparisons and a sense of humour are always welcome, and it is good to see that Basil Fernando of the Hong Kong based Asian Human Rights Commission has not lost his touch.

I am also grateful for his recognition of the criticisms I used to make of the Jayewardene regime. Earlier he graciously, having cited extracts from a report of the Jaffna University Teachers for Human Rights, asserted their credibility in terms of what he quoted as a certificate from me. I believe this shows he understands that I am supportive of Human Rights organizations that strive for objectivity in highlighting problems. This does not mean I accept that everything they say is true, but I would argue that their complaints must be taken seriously and investigated.

I am sorry therefore that I have now upset him. But what worries me is blanket generalizations and falsehoods that are either deliberate or culpably careless. I am also worried about intellectual shoddiness. If I might cite just one sweeping line from his most recent statement he claims that 'Together with the new conception of power developed by the executive presidency the basic institutions such as the police, the prosecution system under the attorney general, the judiciary under Sarath Nanda Silva, and the parliament itself have suffered extraordinary setbacks.'

Unfortunately Basil seems to have forgotten completely the situation in the eighties, when the concept of the all powerful executive presidency was developed. Though the power of the position has declined, not least because the massive parliamentary majority that backed it, with ready expulsion of MPs who opposed the boss, no longer exists, I am immensely proud of my opposition to the system then – when there was no Human Rights industry and, apart from the sterling Civil Rights Movement, criticism was by lone individuals.

To take one simple instance of Basil's failure to appreciate salient differences, he may disapprove of Sarath Nanda Silva, as he calls him, but no one would claim that the current Chief Justice is seen as an instrument of the government. There is not the slightest possibility of him being hauled before Parliament as happened to poor Neville Samarakoon, Jayewardene's personal lawyer, who was elevated to the post but finally decided that the regime was execrable.

Again Basil may disapprove of the attorney general, but there is nothing like the deliberate distortions that began well before the Richard de Zoysa murder with for instance the Ananda Sunil case, a mirror image involving a much poorer family that I have highlighted in my writings. Sadly, the establishment in those days did not care, and there was no one to protest, unlike today when everything can be questioned. And with all these questionings, there has been no challenge to the integrity or the intelligence of the current Attorney General, unlike Shiva Pasupathy who blindly followed Jayewardene and is now blindly following the Tigers, not wholly unlike some elements in the UNP.

The Time Machine of the Fantastic Four

But the Human Rights establishment really gets more preposterous every day. Now it claims that the government did not permit Louise Arbour to visit the East. The government tried very hard to persuade her to go to the East, but she strenuously refused, citing a lack of time. Where she would have found the time to go to Kilinochchi when she had no time to visit the East is another question, but doubtless, in pursuing her determination as she put it to convey her concerns to the LTTE she would jolly well have found the time. With regard to the East perhaps she was reassured by Sir John Holmes' comment that the situation there was much better than he had been led to believe.

Then we have the sanctimonious pronouncements of four members of the establishment, that they have resigned from a government committee, a resignation that has received much international publicity. One reason cited for this is that the government is not serious about reform, another is that the government sought to stop them speaking out because they were on the committee, another that they had been criticized by the Peace Secretariat.

The four have been members of the committee for well over a year, and have not between them attended many meetings. The reason for their resignation may well have to do with SCOPP, in that when one of them was holding forth in Geneva one of our staff pointed out that they were on a government committee, and should have attended its meetings and made such points there. It is not perhaps entirely coincidental that the discovery that the government was not serious occurred after twelve months and more, at the same time as Louise Arbour's visit when maximum publicity for the resignation could be achieved.

All this sleight of hand may not be noticed internationally, where reporters may not realize why opponents of the government are terribly anxious to claim that there is now a 'Showdown on key HR issues'. But it would be sad if the purported showdown diverted attention from what should be the more urgent responsibility of the international community, to persuade the LTTE to negotiate, instead of hoping that these shenanigans would weaken the government.

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Blind refusal to see the realities for what they are By Kishali Pinto Jayawardena

Inflammatory debate on whether or not United Nations High Commissioner for Human Rights Louise Arbour had called for the presence of a UN monitoring mission in Sri Lanka has served to conveniently obfuscate some eminently sensible points made by her last week. It is doubly unfortunate that the 'Secretariat for Coordinating the

Peace Process' has joined in this shrill exchange. Indeed, the Secretariat's angrily incessant verbosity hardly serves as encouraging sober discussions on these issues and leads one to question whether it may not be more appropriate to rename it rather, as the 'Secretariat for Coordinating the War Process.'

Leaving aside relative trivialities such as these however, the points made by Arbour go to the very roots of the credibility of Sri Lanka's domestic institutions that supposedly exist to enforce legal accountability. This is made clear in the formal press statement issued by her Office at the conclusion of her mission. The overall concern is the absence of 'an adequate and credible public accounting for the vast majority' of rights violations and the absence of 'more vigorous investigations, prosecutions and convictions.'

Arbour's further remark that 'critical elements of protection have been undermined or compromised' in relation to the Singarasa case together with the ICCPR Act which, as she points out 'only partially addresses the issues and risks confusing further the status of different rights in national law' is also extremely pertinent. Equally so is her warning that confidence (both locally and internationally) in the efficacy and independence of the Human Rights Commission of Sri Lanka has been undermined leading to a possible loss of accreditation to the international body governing these institutions.

The issues that she has raised, remain agonizingly familiar to domestic rights activists. As repeatedly adverted to in this column, the question of political will in regard to the investigations, prosecutions and convictions of grave human rights violations is central to any argument made on behalf of the government that national institutions are working perfectly satisfactorily.

The actual fact is that national institutions whose primary task is to ensure legal accountability, are not working satisfactorily at all, as buttressed by hard statistics thereto. One virtually unchallengeable example is the number of convictions of members of the security forces and the police for enforced disappearances of thousands of Sinhalese, Muslims and Tamils during the eighties, (as disclosed in official data submitted by the Government of Sri Lanka to the Committee Against Torture in February 2007), which are a mere twelve. In one hundred and twenty three cases, the accused had been discharged in the High Court. Many more cases have been pending for long years.

And these are just the relatively small number of cases that made it to the court in the first place whereas thousands of perpetrators were not brought before the law in that limited sense even though they were identified as such by the three 1994 Commissions of Inquiry into Involuntary Removal or Disappearances of Persons as well as the subsequent 1998 Commission. The law is meanwhile even more truant in regard to its enforcing of accountability in regard to wanton killings of civilians in the North/East. Specific documentation showing the all encompassing and (dare one say it) the seemingly deliberately engineered failure of the legal process thereto, illustrates this point very well.

So how, in the name of all that is sensible, could we say that our legal process is working satisfactorily, citing meanwhile only one or two high profile instances such as the Krishanthi Kumaraswamy case or the Embilipitiya disappearances?

Rather than empty rhetoric, actual prosecutorial and judicial will to bring about deterrent convictions of perpetrators is needed. Clumsily put together Commissions of Inquiry in terms of a law that was originally used for inquiring into the conduct of persons holding public office rather than for investigating complex cases of extra judicial executions and enforced disappearances, can accomplish only very little. What we need are carefully thought out changes to the prevalent criminal law and procedure, which is (in any event) not working satisfactorily even ordinarily, as manifested again by the 4% rate of convictions for grave crimes.

The fact that there have been just three convictions in terms of the Convention Against Torture Act from 1994 (date of enactment of this law) to date is another good reminder that there is great dysfunction between the reality of grave human rights violations and the response of the law thereto. Merely enacting a Witness Protection law will not do. There must be a comprehensive effort to adapt the system to confront one of the greatest challenges that the country faces today; namely the restoration of public faith in the efficient and apolitical working of the law in regard to extra judicial executions and enforced disappearances in particular.

This same logic applies to the reactivation of the 17th Amendment and the constitutional commissions. The credibility of the Human Rights Commission (HRC) of Sri Lanka is at its lowest ebb today. The strictures passed by Arbour are important given a scheduled re-accreditation of the HRC this month by the International Coordinating Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights, for which the Secretariat is the National Institutions Unit of Arbour's office.

The HRC is due to be examined by the ICC on two questions. First, whether the appointment of the current Commissioners is in compliance with the law of the Commission and in compliance with the Paris Principles, given that the prior approval of the Constitutional Council was not obtained. Secondly, whether the actual practice of the Commission remains balanced, objective and non-political, particularly in regard to the discontinuation of follow up to 2000 cases of disappearances in July 2006.

This second question relates to the HRC advancing an extremely disturbing reason for stopping the inquiries into these disappearances "for the time being, unless special directions are received from the government." A verbatim citation from a note of the Secretary to the Human Rights Commission dated 29 June 2006 attributed this decision to the fear that "the findings will result in payment of compensation, etc". With public outrage following the leaking of this instruction, the Minister of Human Rights was ludicrously compelled to advise the HRC to proceed, stating that it does not need 'instructions from the government' to do so. While the inquiries continued thereafter, their credibility remained in doubt.

Other recently contested actions of the HRC include the arbitrary issuance of a circular without public discussion, purporting to limit the period of time within which a petition could be filed before the HRC to three months, despite the fact that the empowering Act under which the HRC is established prescribes no such time limit. Indeed, in recent months, a staffer of a Colombo based nongovernmental organization had been threatened with contempt by a Commissioner for attempting to question the current working of the HRC.

This detailing of what is wrong with our domestic institutions is not to say, as this column has reiterated previously, that a UN monitoring mission will be the magical cure for all ills. First and foremost, we need to be able to remedy our own ills and use international support constructively and carefully for that purpose. But there is no doubt that those who insist that we have no ills to be remedied, should be clouted on the ear for their blind, complacent and self serving refusal to see the realities for what they are.