CANADA'S PERIODICAL ON REFUGEES

REFUGE

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CONFLICT, HUMAN RIGHTS, AND INTEGRATION OF REFUGEES

Human and Refugee Rights: New Challenges for Canada

Kohki Abe

When I grabbed a belatedly-issued UN pass and rushed into a conference room in the morning of March 26, 1999, the meeting was already in full swing with a "passionate" intervention by The Hon. Hedy Fry, Secretary of State for Multiculturalism and the Status of Women. Breaking down decades-old conventionalities, Ottawa sensibly sent a female minister to lead its large delegation to the 65th session of the Human Rights Committee, the monitoring body of the International Covenant on Civil and Political Rights. The Hon. Fry introduced Canada's voluminous fourth periodic report to the Committee of 18 experts, and responded to a long list of issues which had been prepared by the Committee working group prior to the meeting. Teaming up with competent federal and provincial officials, she seemed confident and eloquent.

Canada is generally recognized as a leader in human rights. It was, therefore, not surprising that the delegation showed an array of measures adopted to give effect to the rights in the Covenant and the progress made in the enjoyment of those rights in this country. Like many other state representatives, however, the Canadian delegation was not fully aware that the Human Rights Committee is not a fora for officials to only brag about their proud achievements in respective countries. In fact, a primary mandate of the Committee in examining periodic state reports is to identify the factors and difficulties affecting the full implementation of the Covenant and issue relevant recommendations with a view of inducing state parties to comply with the obligations provided therein. Thus, Justice Rosalyn Higgins, a former member of the Committee, points out that

> [w]hile violations are manifestly more severe in certain places than in others, the Committee has yet to find a country fully conforming with its human rights obligations. (Higgins 1996)

She, then, laments the fact that very few countries treat contact with the Committee as "an opportunity to make sure that everything is as it should be, that things

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are put right" (ibid.) Canada cannot escape her scathing criticism.

It is NGOs that always liven up the dialogue in the Committee. Despite Hon. Fry's encouraging statement that more than 200 vernacular NGOs were consulted in the report preparation process, one finds little, if any, hint of input from the civil society in the government-compiled bureaucratic documents. That explains why a significant number of Canadian NGOs presented themselves in New Y or k to keep an eye on an otherwise unproductive interaction between their government and the experts. To my pleasant surprise, their effective lobbying found expression in every question raised by expert-members to "probe but not praise" (in the words of Vice Chairperson Elizabeth Evatt) Canadian performance. Firmly backed by NGOs, experts called in from around the world unsparingly chiselled in close to the concealed Achilles heel of the world's humanitarian giant. Members' inquiries were so reflective of NGOs' insight that an indigenous representative, who happened to sitnextto me in the conference room, confided at the end of the meetings that he was "120% satisfied" with the outcome of the examination. His position on the issue was endorsed when the Committee adopted its Concluding Observations onApril9,1999,bynotingthatthe situation of the Aboriginal peoples was "the most pressing human rights issue facing Canadians." It proceeded to recommend specific remedial actions to be taken by the government.

Among NGOs strategically representing their own constituencies, there were two highly-experienced refugee and immigration rights advocates. No doubt their skilful submission and contact with expert members helped promote their key concerns and led to that part of the Concluding Observations which refer to concerns about the removal of aliens to countries where torture may be awaiting and the expulsion oflong-termalienresidents. To its credit, the Committee urges Canada to revise its current immigration policy which is deemed to be incompatible with the relevant provisions of the Covenant.

There is no assurance that the Committee's thoughtful concerns and recommendations will be taken heed of by the government. They might be simply shelved away until April 2004, when Canada's fifth report is scheduled to be examined. Yet, one cannot deny that the Concluding Observations will be a legitimate, legal yardstick to calibrate government policies. They may also raise public awareness about contemporary human rights issues in Canada. To me, a researcher of international human rights and refugee law, the Committee's observations look like another precedent to integrate refugee issues into human rights regimes. While a welcome instrument for the protection of refugees, one should note that this integration process has been accelerated, at least partly, by sheer lack of measures to monitor the implementation of refugee law, particularly in the 1951 Refugee Convention and its 1967 Protocol.

Media showed incredibly little interest in Canada's performance before the Human Rights Committee. In fact, the human rights agenda was overwhelmingly shadowed by the Kosovo crisis, which pitted powerful NATO forces against the regime in Belgrade. For the first time since the Korean War in the 1950s, Canada has joined the frontline battle by dispatching its highly equipped air fighters. As it is often the case with international lawyers, my first response was, "On what legal basis is the bombing justified?" Some critics say that in th~ absence of the UN SecurityCouncil's authorization, this "war" is illegal. Given the primary role of the Security Council in the maintenance of international peace and security under the UN Charter, their argument appears persuasive enough. Nevertheless, one might present an equally persuasive argument for the military action by carefully formulating a modern form of "humanitarian intervention." My concern here isnot to identify which interpretation should be pursued. Rather, it is about a conspicuous lack of in-depth discussion. To my understanding, the Canadian government has yet to demonstrate a *prima facie* case to support its

p.

military actian under internatianallaw, which daes a great disservice *to'* the principle *af* rule aflaw ininternatianal *saci*ety. It is all the mare *sa*, since the 1990s have been declared as the "UN Decade *af* Internatianal Law" in arder *to'* build up trust in internatianallaw thraugh*aut* the warld.

The sidestepping *af* the Security Councilmay create haunting ripples in the years *to'* came. When Canada was elected *to'* the Security Councillast October, the Canadian gavernment, acknawledging that it was a recagnitian *af* Canada's lang-standing *cammit*ment *to'* the UN, laudly pledged *to'* strengthen the mandate *af* the Security Council. One cauld say that the path Canada has taken in the past manth with its like-minded NATO allies is a negatian *af* this pledge and is tantamaunt *to'* admissian that the Security Council is red undant at a time when its actian is *mast* called *far.* Thus, thecredibility *af* the UN system, a fulcrum *af* Canadian fareign palicy, is at risk.

As the crisis intensified, tens *af* thausands *af* refugees and displaced persans were plucked *aut af* their hames. In respanse *to'* a request fram the UNHCR, Ottawa was quick in annauncing its affer *to'* accept 5,000 refugees. What impressed me enarmausly, was the exceptianal generasity extended by the Canadian public fram all walks *af* life. Far example, The Han. Lucienne Rabillard, Minister *af* Citizenship and Immigratian, nated in an address *to'* the Hause *af* Cammans an April 12 that

> The autpouring of offers of all kinds of assistance that we received at the 1-800 number since last Wednesday is truly astonishing. We have received over 7,000 calls and 1,000 faxes ... It reaffirms my belief that Canadians are a compassionate people who want to help those in need.

On the ather hand, as FranciscO' *Rica*Martinez *af* Canadian Cauncil far Refugees stated at the apening *af* this year's Refugee Rights Awareness Week (April 9, 1999), Canada's affer *to'* hast 5,000 *Kasava* refugees expased its dauble standard in the treatment *af* refugees. Far ane thing, "If Kasavars, why nat Sudanese, why nat East Timarese?"

Surely, this questian may nat be answered withauthitting a chard *af* institutianal racism ar Euracentrism. Mare natewarthy is a pracedural arrangement instantly devised far new ly-caming KO'savars. It was annaunced that Canada wauld receive 5,000 within days *af* the crisis. Then why, accarding *to'* the 1999 annual plan, daes Canada accept anly 7,300 gavernment-assisted refugees in a year?

It was reparted that Kasavars wauld be cansidered Can venti an refugees if they *sa* wish and be duly granted landed immigrant status. This wauld happen withautthe presentatian *af* satisfactary identity dacuments. Andrew Brauwer (1999,1) revealed that there are as many as 13,000 Canventian refugees living in legal limbO' in Canada taday because they are unable *to'* satisfy a requirement introduced intO' the Immigratian Act in 1992 that Canventian refugees present satisfactary identity dacuments *to'* be granted permanent status. If yet-unknawn Kasavars were pramised permanent status aff-hand, why nat Samalis, why nat Afghans, whO' are already recagnized by the warld-renawned Immigratian and Refugee Baard (IRB) as Canventian refugees?

The Canadian Human Rights *Cam*missian has repeatedly expressed cancern abaut the applicatian *af* the Right-af-Landing Fee *to'* refugees. In *ar*derta became permanent residents, refugees must pay the Right-af-Landing Fee *af* $975 in additian *to'* $500 processing fees per adult. The Cammissian's *Annual Report* 1998, reiterates its cancern:

> Beginning life in Canada with a large debt load can make integration difficult for any newcomer. This is particularly true for refugees, who have aften fled from traumatic human rights situations. Exempting refugees from payment of this fee, and from other expenses that serve to impede their speedy integration, would be in keeping with Canada's humanitarian tradition.

This traditian will be abserved if Kasavars came *to'* Canada. Then, why nat in relatian *to'* refugees already in Canada?

The plan *to'* bring in 5,000 *Kasava* refugees iranically sheds light an Canada's patential *to'* accammadate mare refugees withaut the aneraus hindrances that are applied taday. It is unfartunate that full manifestatian *af* this uniquely vast patential has been farcefully blacked by lack *af* palitical will. It is warth recalling that determinatian and sensitivity an the receiving end,may help facilitate sacial awareness *af* human and refugee rights as well as successful integratian *af* refugees intO' anew saciety, as it is implied by KahkiAbe and Maria Vargas in this issue *af Refuge.*

Like in *Kasava,* ethnic canflicts inevitably displace ahugenumber afpeaple. As canflicts drag an due *to'* palitical manaeuvring, their hardships deepen. Articles an Sri Lanka, Chittagang Hill Tracts, and Narth Karea, included in this issue *af Refuge,* make us aware *af* refugee martyrs tassed abaut in the starms *af* palitics. Resalutian *(ar* preventian far that matter) *af* canflicts is always hard wan, if ever wan. But it has *to'* be wan *to'* begin a process afrecanciliatian and recanstructian. The need *to'* achieve effective resalutian is saundly underlined in papers *af* this issue. ❚❚

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Correction

In *Refuge* vol. 17, no. 5 (November 1998), the opening paragraph in the article "Licensed to Traffic: The Sex Trade in Bangladesh" on page 24 mentions 1991 as the year in which Bangladesh "was born." It should have read 1971. *Refuge* apologizes for the error.

Sri Lanka: Human Rights in the Context of Civil War

Rudhramoorthy Cheran

Abstract

Violations of human rights in Sri Lanka have been fairly well documented. Unfortunately, the conflict in Sri Lanka, despite its intensity, has not attracted appropriate international attention. This article is a review of the current human rights situation in Sri Lanka in the context of civil war. The article also evaluates the prospects for peace building amidst heightening ethnic tensions, emergency regulations, and the lack of democratic governance in the southern part, a region which is outside the conflict zone.

Précis

La documentations sur les violations des droits humains au Sri Lanka peut être qualifiée de satisfaisante. Malheureusement, le conflit dans ce pays n'a pas attiré l'attention internationale appropriée, en dépit de son intensité. Le présent article passe en revue la présente situation des droits humains au Sri Lanka, dans le contexte de la guerre civile. L'article évalue aussi les possibilités de pacification au milieu de tensions ethniques allant en s'intensifiant, les consignes d'urgence, et le manque de gestion démocratique dans la zone sud de l'Ile, une région extérieure au foyer du conflit.

Introduction

It has been sixteen years since international journalists have conferred the status of "civil war" on the ethnic "cleavages" within Sri Lanka. The tiny, tear drop-shaped island in the Indian Ocean gained its political independence from the British colonialists fifty-one years ago. However, the post-colonial era has been characterized by long periods of emergency rule, vicious and brutal ethnic pogroms, and large-scale human rights violations.

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The current civil war is being waged by the Sinhalese-dominated government and the forces of militant Tamil nationalism spearheaded by the Liberation Tigers of Tamil Eelam (LTTE). Conservative estimates indicate that some 50,000 people have lost their lives as a direct result of the conflict. This figure does not include disappearances. The war has also produced one million internally-displaced people and 700,000 mainly Tamil refugees who have sought asylum in various European countries, North America, Australia and India.

The Sri Lankan civil war is one of the most violent conflicts in the world. Focusing on an aspect of this conflict, the UN Working Group on Enforced and Involuntary Removal of Persons states that Sri Lanka ranks number two in the world in terms of disappearances, next only to Iraq.[1] Last year, in October, more than 2,500 soldiers and Tigers died in a week-long battle in the northern part of Sri Lanka. Yet, the Sri Lankan war is one of the forgotten wars. While international media focuses attention on the self-determination struggles in Kosovo and Kurdistan, Sri Lanka appears to be too far—metaphorically and literally—from strategic concerns of the West.

In a recent *New York Times* editorial on NATO's war against Yugoslavia, the rationing of war news was cited as a familiar problem among American military leaders and their civilian superiors. The editorial went on to note that

> military briefings eroded Washington's credibility during the Vietnam war ... the Pentagon has continued to try to manage combat information, even during the impressive military successes of the Persian Gulf war.[2]

The information disseminated on the Sri Lankan war is no different. It has been erased from the face of Sri Lankan media by way of government censorship. No journalists, foreign or local, are permitted into the war zones. The information that is available is tightly controlled, manipulated and delivered through official military press conferences. The whole process is a classic example of what Noam Chomsky identifies as "manufacturing consent." Even in the absence of censorship, the mainstream media have not been critical of government policy of achieving peace through war.

In 1999, human rights monitors noted that the situation in the conflict areas of Sri Lanka is grave.[3] There remains, however, a perception that areas that do not directly experience the civil war are safe and that the government respects the human rights of its citizens in those areas. This perception has found its way into the decisions of Canada's Immigration and Refugee Board. One of the most common reasons for rejecting the refugee claims of both Tamils and Tamil Muslims[4] is the application of the "internal flight alternative" principle—the notion that a person may indeed be at risk of persecution within the northern or eastern regions of the country but is expected to find safety by relocating to the south and the capital city of Colombo.[5] This is also a perception shared by a number of European governments.[6]

The purpose of this article is to present a dissenting view that casts serious doubts on the validity of these generalizations. The article will also review the human rights situation in Sri Lanka, with particular reference to the developments in the southern part of the country, in order to assess the prospects for human rights compliance and peace building.

Ethnic Enmities

Let us start by listing certain incidents which have not been reported in any detail by mainstream media in Sri Lanka but only by Sri Lankan human rights monitors and some alternative newspapers supported by human rights organizations.

On September 7, 1998, a dispute between two individuals—one Sinhala and the other Muslim—in Kurunegala, a small town in the south, erupted into a clash between Sinhalese and Muslims in the area. Muslim shops were attacked and burned. Posters in the Sinhala language calling for a boycott of Muslim shops came up in the town.[7]

On September 8, 1998, two Sinhala men were killed on an estate in the Ratnapuara district as a result of a private dispute. On the nights of September 8 and 9, gangs raided several areas of upcountry Tamils and torched over 300 homes known as line rooms.

On September 26, 1998, in Kochchikade in the Negombo district just outside of Colombo, a disagreement between a Tamil trader and some neighbours over the construction of a parapet wall flared up into a Sinhala-Tamil conflict. Two Tamil shops were burned down and several other incidents of arson and violence were reported.

On February 17, 1999, forty shops belonging to the Muslim community were burned in Nochiyagama, 206 kilometres northeast of Colombo. Tension between Muslim and Sinhalese communities continued for several weeks.

In Kiribathgoda, a suburban town about 15 kilometres from Colombo, a bomb explosion in June 1998 destroyed a newly-built, Muslim-owned communication centre. This was later identified as part of a campaign against Muslim traders in the town. Residents told journalists and members of human rights groups who visited the area that no shop in the Bazaar area was permitted to display a Tamil sign board and that a systematic campaign had been launched to evict the minority traders from the area. Similar developments have been recorded in Welimada, Galagedera, Matale and Puttalam.

The ease with which conflicts that erupt between individuals in the past months have been quickly transformed into ethnic pogroms targeting Tamil and Muslim minorities is significant. The above-mentioned incidents point to a further escalation of ethnic tensions in Sri Lankan society. It is becoming increasingly evident that anti-Tamil or anti-Muslim riots could well become a part of daily life. In particular, well-orchestrated campaigns against the Muslim traders in certain areas (Galle, Gampaha, Puttalam, Kurunegala) are a reflection of a rapidly-deteriorating situation for the minority communities in the southern part of the island.

Careful scrutiny of the above incidents reveals that these are not just isolated events. There is a definite pattern of "ethnic cleansing" that must be placed in a proper context. For the past several years, Sinhala organizations—including the National Movement Against Terrorism (NMAT), Sinhala Veera Vidhana (Sinhala Warriors Society), All Ceylon Buddhist Congress (ACBC), Jathika Sanga Sabha (National Assembly of Buddhist Monks), and the Sinhala Commission—have launched a widespread public campaign against the minority communities, while at the same time protesting against political negotiation and third-party mediation to find a peaceful solution to the ethnic conflict. These organizations receive extraordinarily wide publicity in the mainstream Sinhala and English language press.[8] Some of these organizations also have their own newspapers in the Sinhala language. Some domestic human rights groups—notably Movement for Inter racial Justice and Equality (MIRJE), and alternative weekly Sinhalese language newspapers such as *Yukthiya* and *Raavaya*—accuse sections of the government as well as the opposition United National Party (UNP) of supporting these movements.

In early November 1998, the Movement against Terrorism (MAT) attempted to disrupt the delegates' meeting organized by the National Peace Council, an umbrella organization of peace groups in Colombo. However, the meeting went on and was attended by some 1,700 people from south and east Sri Lanka. As the meeting was underway, MAT demanded that prominent peace activists be arrested and charged under the Prevention of Terrorism Act (PTA).

Similarly, the Sinhala Veera Vidhana (SVV), whose activities gained momentum in 1998, has focused on defending and protecting the interests of the Sinhala Buddhist majority. Under the umbrella of SVV, the United Sinhala Traders Association (USTA), an organization for Sinhala traders, works to promote the interests of Sinhala traders and farmers. Human rights groups allege that USTA was a key player in the attacks against Muslim and Tamil trade establishments. USTA has 614 branches in the Sinhalese-speaking areas. Last year, the USTA began buying paddy from rural Sinhalese farmers, paying reasonably higher prices in competition with traditional Muslim traders.[9] The rural paddy farmers have been the backbone of the two predominantly Sinhalese political parties that alternated in power in post-independent Sri Lanka. The main goal of the SVV project is to mobilize the Sinhalese Buddhists against the perceived threat from the minority Tamils and Muslims. While the government is engaged in a war in the north and east to protect the territorial integrity of Sri Lanka, SVV and its allied organizations have assumed responsibility for guarding south Sri Lanka from the so-called minority threat. In fact, they even fault the government for not waging the war more aggressively.

Democratic Governance: The North-Western Provincial Council Elections

Sri Lanka has a provincial council system of governance, introduced in 1987 in response to Tamil demands for separation. Elections for the northwestern provincial council were held in January 1999 amidst wide-ranging irregularities and violence. The Center for Monitoring Election Violence (CMEV), an independent non-governmental organization, issued a scathing report after the elections. In the report, CMEV documented systematic voter intimidation, the removal of opposition polling agents through the use of force by government supporters, the blatant stuffing of ballot boxes in full view of election monitors and the media, and the violent presence of the ruling People's Alliance's (PA) in the vicinity of polling booths. The report concluded that the

validity of the election had been irrevocably undermined.[10]

The CMEV report also accused senior government ministers of contributing to election violations. However, the call by opposition parties, civil rights groups, and CMEV to declare the elections null and void was dismissed by the government. Nonetheless, pressure from various human rights groups as well some representatives of Western governments in Colombo prompted the regime to appoint a commission to inquire into election violations. The serious violation of free and fair elections, which is a basic tenet of democracy, and the government's earlier attempt to postpone provincial elections under emergency rule imposed throughout the country, point to a progressive erosion of democracy.[11]

Arrests and Detention

Large-scale, random arrests of Tamils based on their ethnicity continue in many parts of the country. In response to complaints by human rights groups and Tamil political parties that are working with the government, President Chandrika Kumaratunga set up an anti-harassment committee last year. The purpose of the committee was to regularize cordon and search procedures and minimize the suffering and harassment of Tamils in the south. The committee came up with several useful recommendations. The reality on the ground, however, has not changed. The committee proved to be totally ineffective in the face of abductions by undercover police and paramilitary personnel. A case in point was the abduction of a journalist, T. Madhusoothanan by security forces. After two weeks in detention, the journalist was released without being charged.[12]

Under government-imposed military censorship that began in June 1998, local and foreign journalists are not permitted to enter conflict zones. This has severely limited access to information. It also has enabled the government to evade any public scrutiny of atrocities committed in the war zones. It is within this climate of hostility, censorship, xenophobia, and deteriorating human rights in the south that initiatives for peace and reconciliation need to be examined.

Peace Initiatives

The broader consensus among various peace groups in Sri Lanka is the call for third-party mediation and the introduction of federalism as a means for achieving an end to the conflict. The various peace groups have formed a coalition called the National Alliance for Peace. The National Peace Council, one of the constituent members of the National Alliance for Peace, held its first conference in Colombo in October 1998. Three thousand people attended it, and the organizers received congratulatory messages from the Sri Lankan government as well as LTTE.

The National Peace Council continued its work of educating Sri Lankan Members of Parliament about peace processes and agreements in other countries. In December 1998, it organized a delegation of parliamentarians from all political parties, local council members, and Buddhist monks to visit Bangladesh, where there is an on-going peace process in the Chittagong Hill Tracts between the Bangladesh government and the Jumma people-based Parabatraya Chattagram Jana Sanghati Somity (PCJSS).

The peace groups have achieved some progress when they were able to engage the major business organizations in the struggle for peace. The Ceylon Chamber of Commerce, the National Chamber of Commerce, the Ceylon National Chamber of Industries, the Federation of Chambers of Commerce and Industry in Sri Lanka, and the Exporters Association of Sri Lanka are the organizations that jointly invited all the political parties and peace groups for a meeting. At the meeting, they came up with a ten-point program for a peaceful settlement of the conflict and called for all political parties to consider their program.

In an attempt to elicit the perspectives of the "border villages"—villages situated along areas in the northeast that separate majority Sinhalese and minority Tamil and Muslim people—on war, several community-based organizations under the auspices of MIRJE have come together as the Co-ordinating Committee for the Border Villages. The committee has initiated a series of fact-finding missions to villages located in eight districts: Puttalam, Anuradhapura, Vavuniya, Polonnaruwa, Trincomalee, Batticaloa, Amparai, and Moneragala. The committee's interim report entitled "Emerging issues in the border villages" was submitted to the government and LTTE leadership in December 1998, following a rally which was attended by 5,000 people from the border villages affected by war.

In his November 1998 annual Great Hero's day speech commemorating the fallen LTTE martyrs, the LTTE chief Prabhakaran expressed his willingness to open a dialogue with the government to find a lasting solution to the war. However, the government did not respond to his offer in a positive manner. Yet, in an exclusive interview with the Indian magazine *Frontline*, President Chandrika Kumaratunga indicated the possibility of negotiations with LTTE, but with a tight time frame.[13] In January 1999, a South African parliamentary team visited Sri Lanka. South African President Nelson Mandela's offer of mediation has been welcomed by LTTE and peace groups in Colombo. However, the Sri Lankan government is sceptical about negotiations and it is certainly not willing to accept third-party mediation yet. Whatever materializes in terms of mediation, there are some fundamental issues that need to be addressed before embarking upon any peace process.

The prospects for durable peace in the absence of a drastic restructuring of the post-colonial Sri Lankan state, which is highly centralized and unrepresentative of minorities, appear slim indeed.

The Sri Lankan State

One of the major factors that has contributed to the ethnic conflict and its escalation into civil war, is the nature and structure of the post-independence Sri Lankan state and its policies toward ethnic minorities. The state apparatus

itself became monolithic, representing the Sinhala-Buddhist majority in the aftermath of independence.[14] This process began at the time of independence in 1948. It was replicated by governments of all shapes and stripes, and culminated in the constitutional entrenchment of Sinhala Buddhist dominance over the minorities in the Republican Constitution of 1972 and the 1978 Constitution. The constitutions declared Sinhala the only official language (Article 19) and conferred the "foremost place" to Buddhism (Article 9), thereby defining the Sri Lankan polity as essentially a Sinhala Buddhist state. Even in the much-publicized 1995 devolution proposals—later modified to the "legal draft of January 1996" and used as a template to formulate a draft constitution in October 1997—the government failed to address these fundamental issues. The draft constitution proposed to eliminate provisions with regard to the unitary nature of the state, paving the way for change from a centralized, unitary model to a decentralized, federal model. However, the government is clearly reluctant to incorporate multiethnic and multilingual reality of Sri Lankan society into this draft constitution.[15] The draft constitution has also run into another problem: it has failed to win the support of the main opposition Sinhalese party, the United National Party (UNP). Without support from the UNP, the draft cannot be made into law, as it requires a two-thirds majority approval in Parliament, which the governing coalition does not have. For this reason, there is little likelihood of constitutional reform in the near future.

In my view, the fundamental changes necessary for a peaceful, equal and just coexistence of the different ethnic communities in Sri Lanka should include a restructuring of the state along federal or confederal lines and the transformation of public institutions to be representative and inclusive of the country's population. From the current situation in which the institutions of Buddhist faith and national governance are enmeshed, a policy of secularism must be adopted. For democracy to thrive in Sri Lanka, it is important that primacy is not accorded to any particular religion, language or culture, because unrecognized minority group claims for self-determination, nationhood, and identity are the roots of the current civil war.

Disappearances

The overall effect of security legislation enacted at the time of war—Emergency Regulations, Prevention of Terrorism Act (PTA)—and growing impunity have contributed to grave human rights violations. This legislation is still in place. Recommendations made by the UN Working Group on Enforced and Involuntary Removal of Persons and Amnesty International that the legislation be brought in line with international standards, however, have not been implemented. According to Amnesty International reports, more than 600 people disappeared in Jaffna alone in 1996.[16] Another 190 cases were reported in 1997. According to the report of the three commissions appointed by the government to inquire into disappearances, 16,742 people disappeared between 1988 and 1994. Another 10,135 cases are still being inquired into.[17] The human rights groups say that the number of disappearances is more than 60,000. An analysis in the journal *Christian Worker* suggests that 60 percent of the people who disappeared were below 30 years of age; 14.82 percent of those disappeared are children below 18 years.[18] Yet, the present government has not appointed a commission to inquire into disappearances that took place after it came to power in 1994.

There are reasons to believe that the disappearances are not just the result of "excesses," as widely claimed by the successive governments, but are carried out as a deliberate official policy. Indeed, overwhelming evidence indicates that the political leadership has been the cause of the disappearance of tens of thousands of persons.[19]

For example, witness reports and narratives from petitioners to the disappearance commission illustrate the fact that what we are looking at in terms of disappearances in Sri Lanka, is an orchestrated, well-planned state policy which still exists. The U.S. State Department's country report on Sri Lanka also indicates that the security forces were responsible for 33 extra-judicial killings and at least eleven individuals disappeared in 1998. It also reported that another 25 people disappeared or were killed after being seen last near the army's forward defence lines.[20] Most disappearances now occur in the context of war, a fact that the government often invokes to justify and explain away the human rights violations.

Amnesty International report (1998) states that torture and ill-treatment in army and police custody are widespread, and the government has unauthorized places of detention in the north, east, and in Colombo.[21] The U.S. State Department report also states that torture and impunity for those responsible for human rights abuses remain a serious problem in Sri Lanka.[22]

Food as a Weapon of War

According to Save the Children Fund, 800,000 persons in the war-ravaged north and east now depend on government food rations. Prior to the onset of the civil war, people in these regions were self-sufficient farmers, fisherfolk and employees in the service sector. A government-imposed economic embargo, a ban on fishing, and the continuing insecurity of civil war have decimated the region's economic base and deprived the local population of even minimal level of subsistence. Of the half-million displaced persons in the region, 140,000 people are housed in 350 government-run camps. 457,000 people live in LTTE controlled areas in the districts of Mullaithivu, Vavuniya, Kilinochci and Mannar.[23]

Since 1995, the government has taken control of the distribution of relief supplies on the grounds that such supplies distributed by humanitarian agencies might fall into the hands of LTTE. The Additional District Secretary of Mullaithivu district says that out of 40,000 displaced families that need dry rations in the district, only 14,000 are getting it.[24]

Throughout the last quarter of 1998, there were many reports of high rates of malnutrition and starvation among

more than 80,000 families in Kilinochchi and Mullaithivu districts in the north. These people are suffering due to persistent cuts of dry rations by 32 percent introduced by the government in July 1998. Following protests, the decision with respect to Jaffna and Mannar districts has been reviewed. However, the cuts remained in place in the rest of the northeast.

The issue of food has been a bone of contention between the Ministry of Defence and Tamil government officials in these two districts. While government agents, Doctors without Borders (MSF), the International Committee of the Red Cross (ICRC), and other relief organizations maintain that many displaced persons in these areas are starving due to denial of food, the government contends that figures of persons eligible for dry rations are inflated and falsified. However, there is no evidence to support the government's claim. In December, the government permitted the Commissioner General of Essential Services to visit some areas under the control of LTTE. After the visit, the Commissioner increased the number of people eligible for dry rations by 50,000. Still the food supply is inadequate.

The denial of adequate food rations as well as medicine and medical supplies to the areas of conflict are a serious human rights violation. Jordan J. Paust argues that the Sri Lankan government's denial of these necessities to the displaced violates Geneva conventions and constitutes war crimes.[25]

Human Rights Defenders

There has been a systematic campaign against non-governmental organizations (NGOs) and human rights groups. While the government itself is responsible for the call to monitor NGOs, xenophobic groups and mainstream media are very vocal and active in their campaign against human rights groups. Peace groups are gaining some new momentum, but they are often slow and too late to respond. Some of the peace groups initially supported the present government. Some senior members of the peace movement later became part of the propaganda unit of the government. This has created the problem of credibility of these groups among the minority communities. The other difficulty associated with the peace lobby is its lack of sufficient grassroots work and support. Nonetheless, in the past few years, peace groups in Sri Lanka have reorganized themselves and appear to be maintaining their independence vis-à-vis the state.

In May 1998, Peace Brigade International (PBI), which had been working in Sri Lanka for nine years providing protection to persons at risk of political violence, terminated its work in Sri Lanka when Defence Ministry officials demanded that PBI submit all its reports before publication.

The government pushed through an amendment to the Voluntary Social Service Organizations (Registration and Supervision) Act, which allowed the government to replace the NGOs' executive committee with an interim board, if there was evidence of fraud or misappropriation. The original act itself allowed government officials to inspect NGO offices and attend meetings. Practically all human rights groups, media monitors, and civil rights groups in Sri Lanka are NGOs. These organizations vehemently opposed the Voluntary Social Service Organizations (Registration and Supervision) Act.

The 1999 Human Rights Watch report also points out that

> local and international organizations that worked in the conflict areas or with conflict-affected people faced restrictions on their activities, and some found themselves accused of partisan loyalties.

The report further states that peace groups and groups advocating free expression also ran the risks of censure.[26]

Politics of LTTE

The emergence of LTTE as a major militant force in the mid-eighties was the result of its unrelenting guerilla attacks on Sri Lankan forces since 1983, and its ruthlessness in eliminating all its opponents, including other Tamil militant groups in Tamil society. In the past twenty years, LTTE has been transformed into one of the most organized, resourceful, and brutal militant organizations in the world.

In Sri Lanka, the president declared that LTTE was an illegal organization and effectively banned it last year. Nevertheless, it is clear that LTTE has been a major player in the struggle of Tamil people. Richard Falk, a respected American political scientist, has suggested that in international law terms, LTTE qualifies as a national liberation movement, much like the African National Congress (ANC) during the apartheid era in South Africa.[27] In the context of a systematic human rights violations, LTTE and other Tamil nationalist groups have the right to use force as a means of self-defense and achieving a just and reasonable solution to the problem. However, LTTE must be condemned for exploiting the same tactics of terror meted out by the Sri Lankan security forces.

LTTE appears willing and capable of perpetuating a protracted guerilla war as a political strategy until the right "moment," when the international community will accept a separate state for Tamils. In addition to documented authoritarianism and ruthlessness, there is growing evidence of Tamil chauvinism within LTTE and Tamil diaspora communities in Europe and Canada.[28] The vision of a Tamil nation that is gaining ascendancy is the idea of an exclusive Tamil "nation," devoid of Tamil-speaking Muslims. Muslims were systematically expelled from the Tamil majority northern province by LTTE in 1990. Also, the activities of peace groups in the south are not only viewed with suspicion but are also outrightly ridiculed and condemned by these radical elements. For instance, the respected National Peace Council, an umbrella group based in Colombo, has been labelled by these elements as Sinhala and a racist peace council.

LTTE was responsible for many deaths of civilians in the southern part of the country. The deaths occurred during LTTE suicide-squad bombings in Colombo. At least four political assassinations in the Jaffna peninsula in 1998 were attributed to LTTE.[29]

Conclusion

Peace cannot be imposed from the top. It has to be cultivated from below. This needs an enormous amount of painstaking community mobilization, education and a conducive political climate. It is unfortunate that the political leaders of the parties involved in the conflict are totally incapable of understanding the plight of ordinary people.

The peace process can be a very difficult path to embark upon given the open wounds and the protracted enmity between the communities. However, there is an urgent need for Tamil and Sinhalese nationalists to look very critically at their policies and programs/pogroms. The strengthening of the peace lobby in the south, whatever limitations it may have, is a necessary and worthwhile project for Tamils.

Any durable peace in Sri Lanka is conditional upon reconciliation among the various communities. In the absence of any meaningful political and social reconciliation, only two scenarios will claim the terrain. One, Sri Lanka will go into the next millennium with increased bloodshed and more refugees. Two, if the Sri Lankan state continues with its failure to address the fundamental issues that underlie the conflict, bifurcation of the island will be the logical end result. ■

Notes

1. General E/CN.4/1998.
2. *The New York Times*, 5 April 1999.
3. U.S. Department of State, *Sri Lanka Country Report on Human Rights Practices for 1998*, February 1999; *Human Rights Watch Report, 1998*; MIRJE *Annual Report for 1998*; INFORM, *Human Rights Monitor*, Colombo, Sri Lanka, situation reports, January–December, 1998.
4. Muslims are also Tamil-speaking but they articulate a distinctive ethnic identity based on religion and culture in the Sri Lankan political and social context. The strengthening of their identity and the subsequent emergence of Muslim identity politics in Sri Lankan politics are largely the result of Sinhala-Tamil ethnic conflict, in which Muslims were targeted by Sinhalese governments as well as Tamil militants.
5. See, for example, CRDD Decisions U96-04802, February 16, 1998; U97-00276, March 25, 1998; and U96-02184, July 16, 1998.
6. For example see *Report on Sri Lanka*, Ministry of Foreign Affairs, Government of Germany, Bonn, January 1999. The governments of Switzerland, the Netherlands and Norway send rejected Tamil refugees back to Colombo, Sri Lanka.
7. Information relating to all the incidents was from INFORM situation reports, *Sarinihar*, a fortnightly newspaper in Tamil language, Colombo, and *Yukthiya*, a Sinhalese language weekly news paper, Colombo.
8. MIRJE, *Annual Report for1998*.
9. *Sarinihar*, issue 165, February 1998; MIRJE, *Annual Report for 1998*.
10. CMEV report, January 1999, Colombo.
11. The government extended emergency regulation to the entire island in August 1998. The regulation remains in place to date and gives the government wide-ranging powers of arrest, detention and disposal of bodies without a judicial inquest.
12. *Human Rights Watch Report*, 1998; MIRJE, *Annual Report for 1998*. For unauthorized places of detention, see Amnesty International statement ASA/37/23/1998.
13. *Frontline*, vol. 15, issue 26 (December 19, 1998–January 1, 1999).
14. For an overview of these developments and roots of the conflict see: A. J. Wilson, *The Break-up of Sri Lanka: The Sinhalese-Tamil Conflict* (London: C. Hurst & Co, 1988); Jonathan Spencer, ed., *Sri Lanka: History and Roots of Conflict* (London: Routledge, 1990).
15. Rohan Edirisinha, "An International Review of Peace Initiatives," *Accord*, issue 4, August 1998.
16. *Amnesty International Report*, ASA 37/04/98, February 1998; ASA 37/24/97, November 1997.
17. The three commissions appointed were for (i) the Western, Southern, and Sabaragamuva Provinces, (ii) the Central, North Central and Uva provinces and (iii) the Northern and Eastern Provinces. The report of the commissions is available at <www.disappearances.org>.
18. Christian Worker, *Quarterly of the Christian Workers Fellowship*, August, 1998, Colombo, Sri Lanka.
19. See supra note 17.
20. See supra note 3.
21. *Amnesty International Report, 1998*.
22. U.S. Department of State, *Sri Lanka Country Report on Human Rights Practices for 1998*, February 1999.
23. Save the Children Fund report as cited in *Midweek Mirror*, Colombo, Sri Lanka, December, 9, 1998.
24. Ibid.
25. Jordan J. Paust, "The Human rights to food, Medicine and Medical Supplies, and Freedom from Arbitrary and Inhuman Detentions in Sri Lanka," in *Vanderbilt Journal of Transnational Law*, vol. 32, 617.
26. *The U.S. Human Rights Watch Report, 1998*.
27. Proceedings of the case Suresh Manikkavasagar vs. Canada, serially published in *Ulagath Thamilar*, fortnightly newspaper of the World Tamil Movement, Toronto, Canada 1997.
28. There are several Tamil publications and newspapers that publish extreme Tamil nationalist articles and view points: *Ulagath Thamilar*, fortnightly, Toronto, Canada; *Muzhakkam* (Thunder), weekly newspaper, Toronto, Canada; *Namnaadu*, weekly newspaper, Toronto, Canada; *Erimalai*, monthly magazine, published in Paris, France.
29. MIRJE, *Annual Report for 1998*; U.S. Department of State, *Sri Lanka Country Report on Human Rights Practices for 1998*, February, 1999. □

The Chittagong Hill Tracts Peace Accord: A Landmark Model for a Viable Solution to the Refugee Problem

K. C. Saha

Abstract

The Chittagong Hill Tracts (CHT) area of Bangladesh, home to the Chakma and eleven other major tribes, has experienced civil strife since the early 1970s. The demand for autonomy by the local tribal leaders and the settlement of Bengalees into the CHT sparked armed insurgency. The fighting between the tribal hill people and Bangladesh army continued for almost two decades, resulting in a large flight of predominantly Chakma refugees into India. Talks between India and Bangladesh officials regarding these refugees resulted in the creation of tribally-led local governments in the CHT, and a rehabilitation package for Chakma and other refugees. This process laid the groundwork for the Chittagong Hill Tracts Peace Accord signed on December 2, 1997 between the Bangladesh government and the Hill Tracts People's Solidarity Association (PCJSS). Shortly after, about 60,000 refugees returned to the CHT from India, and guerillas surrendered their arms. The objective of this background paper is to examine the Chittagong Hill Tracts Peace Accord and its role in providing a framework for a viable solution to the refugee problem in the CHT. It also highlights those aspects of the Accord which serve as a model for preventing refugee flight and displacement of people in any conflict situation.

Précis

La zone des Traités de la Colline de Chittagong (Chittagong Hill Tracts: CHT) *au Bangladesh, patrie des Chakma et de onze autres importantes tribus, fait l'objet d'enjeux sécessionnistes depuis le début des années 1970. Les aspirations autonomistes des chef tribaux locaux et l'installation de bengalis sur la CHT a fait éclater l'insurrection armée. Les affrontements entre les populations tribales de la colline et l'armée du Bangladesh se sont poursuivis pendant presque deux décennies, entraînant un flot massif de réfugiés à prédominance Chakma vers l'Inde. Des pourparlers entre l'Inde et les officiels du Bangladesh au sujet de ces réfugiés ont mené à la création de gouvernements locaux sous contrôle tribal dans la CHT, ainsi qu'à une entente de réhabilitation pour les Chakma et autres réfugiés. Ce processus a pavé la voie à l'Accords de Paix de la zone des Traités de la Colline de Chittagong, signé le 2 décembre 1997 entre le gouvernement du Bangladesh et l'Association de Solidarité des Peuples de la Colline* (PCJSS). *Peu après, environ 60,000 réfugiés sont retournés dans la CHT depuis l'Inde, et la guérilla a déposé les armes. Le but de cet article de fond est de procéder à un examen de l'Accord de Paix de la zone des Traités de la Colline de Chittagong, et le rôle qu'il joue dans la mise en place d'un cadre susceptible de mener à une solution viable du problème des réfugiés dans la CHT. L'article attire aussi l'attention sur les aspects de l'accord pouvant servir de modèle pour une prévention des flots de réfugiés dans toutes situations de conflit.*

Historical Background

On December 2, 1997, a landmark peace accord aimed at ending the decades-old insurgency in the Chittagong Hill Tracts (CHT) in Bangladesh was signed by the Government of Bangladesh and the Hill Tracts Peoples' Solidarity Association (PCJSS—or Parbottiya Chattogram Jana Shanghati Samiti). The accord was widely acclaimed by the international community as a major peace initiative.

The CHT, comprising of the three districts—Khagrachhari, Bandarban and Rangamati—lies in the southeastern-most part of Bangladesh, wedged between the Indian States of Tripura and Mizoram. The CHT has an area of 5,093 sq. miles, which represents 10 percent of the total land area of Bangladesh and contains 47 percent of its forestland. The major tribes of the area are Chakma, Marma, Tripura, Tanchangya, Reang, Chak, Khyang, Khumi, Murrung, Lushai, Bawm, and Pankho. The largest tribes in the CHT are the Chakmas and the Marmas, who account for nine-tenths of the tribal population. The Chakmas and the Marmas are Buddhists. The British, under the CHT Regulation 1900, exempted the CHT from their administration as an "Excluded Area" and left the tribal people to rule themselves ostensibly to preserve minority "tribal" culture and heritage.

Demographic changes were enforced by the Pakistan Government and later by the Government of Bangladesh, whereby people from the plain areas called Bengalees were encouraged to settle in the CHT. This led to the growth of Chakma and other insurgencies among indigenous people. The hill people organized themselves and formed the PCJSS in 1972 to champion the cause of regional autonomy. An armed military wing of PCJSS called Shanti Bahini was created in 1975. Shanti Bahini took up arms against the Bangladesh army and the settlers. In the ensuing war, the army and the police carried out counter-insurgency activities.

The PCJSS made a number of demands: (a) self determination with a separate legislature; (b) restoration of the fundamental rights of the tribal people; (c) constitutional arrangements to ensure the preservation of the tribal national identity, and (d) a total ban on

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further settlements, dismantling of the existing ones, and transfer of land ownership to the tribal people.

The International Working Group for Indigenous Affairs submitted a report on human rights situation in the CHT to the Social and Economic Council of the United Nations. In the report, the working group referred to the CHT Commission report of May 1991, which had observed that

> there have been massive human rights violations in the Chittagong Hill Tracts, which constitute a genocidal process. Hill people have been murdered, crippled, raped, tortured, imprisoned and deprived of their homes and livelihood. They have been denied civil and political rights. They have been denied economic, social and cultural rights. There has been extensive and massive illegality over land under Bangladesh Law.[1]

The CHT Commission had recommended that

> No further settlement in the CHT by outside settlers should be permitted. Involuntary reorganisation of both hill people and Bengalees into cluster villages in the CHT should be dismantled immediately. CHT must be demilitarised. Autonomous political institutions stronger than the existing District Councils should be established. There should be a referendum in the CHT on autonomy with the voting confined to the hill people. There should be constitutional protection of any future autonomous government—a Continuing Monitoring body to continually watch human rights in CHT. A Special Rapporteur of the UN should be established, supplemented by continuing investigations by ILO and competent NGOs.[2]

Reacting to the Commission's report, the Bangladesh permanent representative to the United Nations in Geneva said that

> there could be no question of any indigenous population and the Constitution of Bangladesh does not recognise any individual grouping within Bangladesh. The fact that the people of CHT have freely elected three members of Parliament, reconfirms the degree of political freedom and legal rights enjoyed by all people of Bangladesh including those living in CHT. The report of the Commission is biased and flawed. The report of the Amnesty International, the 1991 report of the U.S. State Department on Human Rights, the reports of the responsible church organisations and above all the Subcommission on Human Rights expressed satisfaction over the treatment of the people of the CHT by the Government of Bangladesh. CHT is one of the most thinly populated areas. About 10 percent of the land area is now being inhabited by 0.5 percent of the population. Bangladesh is probably the most densely populated area of the world. Hence, movement of people in search of safe homestead and reasonable living is a normal phenomenon in our country. Our laws, like those of any free country, permit movement of people from CHT to other areas of Bangladesh in search of home and employment and vice versa. Armed insurgents called Shanti Bahinis are causing widespread destruction and death in the CHT area. Villagers have been encouraged to organize themselves into cluster villages so that the Government could provide proper educational and health facilities to the people of the area and create necessary social infrastructure. The armed insurgents find such a settled and prosperous life against the sinister designs of their paymasters. It is a normal practice in a civilized country to call upon the army to assist the civil authorities in emergencies. Bangladesh laws provide for assistance of Army in aid of civil authorities in emergency situation. In CHT, there is an on-going armed insurgency by a small group of adventurers who are being financed and trained and armed by anti-Bangladesh forces. The normal police force at the disposal of civil authorities of CHT do not have the fire power and fighting skill to effectively deal with these armed insurgents who are equipped with the latest automatic weapons and explosives. As soon as these terrorist activities by outsiders can be brought to an end, there would be no need to maintain army presence in CHT.[3]

There were a series of attacks on tribal peoples by settlers and the armed forces. For instance, on March 25, 1980, 300 Chakmas were killed in the Kalampati massacre. In the Bagaichhari massacre of August 9, 1988, tribals were attacked in retaliation to a Shanti Bahini attack on the army troops. In another incident, the Longdu massacre of May 4, 1989, settlers attacked local Chakma villagers. The Shanti Bahini, on the other hand, launched attacks on non-tribal villagers and the armed forces.

The war and instability in the CHT led to refugee migrations to the State of Tripura in India since 1986. In February 1987, for example, there were 49,000, mostly Chakma refugees living in camps in Tripura.[4] By 1997, the number had gone up to 60,000.[5] The Chakma refugee issue became a major irritant in Indo-Bangladesh relations. There was a difference of opinion between India and Bangladesh on the number of refugees. According to the authorities in Bangladesh, the numbers of refugees, as provided by the Government of India, were highly inflated. It was also alleged that the Indian Government was backing the Shanti Bahini insurgents who operated from across the border in India. Furthermore, the Government of Bangladesh maintained that the Indian authorities in Tripura prevented the repatriation of Chakma and other refugees. The Indian Government, however, denied these charges and maintained that the Bangladesh Government had not taken any significant steps to address the root causes of refugee migration. The Bangladesh Government, on the other hand, maintained that the flow of Chakma and other refugees was due to the terror created by Shanti Bahini. For instance, in a press conference on May 13, 1987, the Bangladesh Foreign Minister said that

> Shanti Bahini are indulging in anti-state activities which no government would tolerate. They are inspired by an alien political ideology [that] seems to have been rejected by the vast majority of tribes themselves.[6]

As a confidence-building measure, the Bangladesh Foreign Minister indicated on April 7, 1988, that

everything possible has been done and is being done by the government, not only for the early return of refugees to their hearths and homes but also to ensure that the tribal people in the CHT live in peace with their ethnic, religious and cultural identity not only protected but also promoted in every possible way.[7]

A bill was passed in the Bangladesh Parliament to allow for the creation of local governments in all the three districts of the CHT. The governments were to be led by those elected by all members of the Local Government Council. However, the Local Government Councils established in the districts did not meet the aspirations of PCJSS, because the latter always demanded that a Regional Council be formed with a clause in the Constitution guaranteeing the status of the Regional Council.

Several rounds of talks were held between India and Bangladesh regarding the problem of insurgency in the CHT and the repatriation of Chakma and other refugees. During a visit by the Prime Minister of Bangladesh to India in 1992, the two leaders discussed the issue:

> The two Prime Ministers agreed to arrange speedy repatriation of all Chakma refugees to Bangladesh in full safety and security. In this context, the Bangladesh side agreed to set up a representative political level committee that would encourage the refugees to return. The Indian side assured that its authorities would cooperate fully in the process of repatriation.[8]

The Bangladesh Government sent delegations of tribal leaders, senior officers of the government, and ministers to visit refugee camps in Tripura and convince the refugees to return. The Government of Bangladesh also announced a revised rehabilitation package for repatriated refugees in the CHT. The package included: financial assistance to each family for construction of dwelling units and development of agricultural land; allotment of land for settlement; general amnesty for insurgents; restoration of land to returnees; adequate arrangement for security of life and property of the returnees; and facilities for free admission to schools and colleges for returnee students.

Although an agreement was signed by the two countries to facilitate repatriation, implementation of the agreement was problematic.. This was partly so, because the refugees remained unconvinced about assurances given by the Government of Bangladesh about safety and security in Bangladesh. Also, they remained sceptical about the promised rehabilitation package. Thus, despite the measures initiated by the Government of Bangladesh, refugee repatriation could not be effected.

The Chittagong Hill Tracts Peace Accord

The Accord[9] was signed on behalf of the government by the Chief Whip of the Bangladesh National Parliament and the Convener of the National Committee on CHT, Abul Hasnat Abdullah. The Chairman of PCJSS, Jyotindriya Bodhipriya Larma, alias Shantu Larma, signed it on behalf of PCJSS. The Preamble of the Accord states that the Accord has been signed by PCJSS, keeping full and unswerved allegiance to Bangladesh's state sovereignty and territorial integrity in Bangladesh's CHT region under the jurisdiction of the Constitution of the People's Republic of Bangladesh. The main features of the Accord are:

- General amnesty to Shanti Bahini members.
- Shanti Bahini cadres to surrender arms.
- Criminal cases against them to be withdrawn, those in prison to be freed, and assistance to be provided to restart life.
- Reinstatement in jobs in government and autonomous bodies.
- Bank interests to be waived.
- Bank credit to be provided on easy terms.
- A Tribal Welfare Ministry to be formed in the CHT.
- Regional Council to be constituted which will oversee bottlenecks in the administration and development activities.
- Hill District Council of each district to have power to recruit local police up to the rank of Sub-Inspector.
- Tribal people to get preference for all posts in the government, semi-government and autonomous bodies in the CHT.
- No *khas mahal* land (Government Land) can be leased out, purchased, sold or transferred without the permission of the Hill Council.
- Hill District Council to collect the land revenue.
- Hill District Council to have power over land and land administration, local police, tribal law and social justice, youth welfare, environmental protection and development, local tourism, licence for local trade and commerce, and regulations regarding *jhum* or shifting cultivation.
- The appointment of a land commission to be headed by a retired judge that would settle all land disputes.
- Land commission empowered to cancel the ownership of land, which was illegally captured and allotted.
- A three-member committee to oversee the implementation of the Accord.

Though the Accord was signed on December 2, 1997 by the Government of Bangladesh, led by the Awami League, there had been several meetings and negotiations by the representatives of the previous governments and the Chakma leaders. For instance, in 1980, President Zia, after meeting with Chakma leaders, had said that

> we are doing some wrong there. We are being unfair to the tribe. It is a political problem that is being dealt with by police and army action. Yet it can be settled politically very easily. We have no basis for taking over these lands and pushing these people into a corner. We should at least call a meeting of the tribal leaders and ask them about their demands.[10]

The peace process was initiated in 1982 after consensus was reached in the army that it would be difficult to resolve the issue of Chakma and other ethnic groups without political settlement. In July 1982, after coming to power, General Ershad met Chakma leaders and

decided to propose a package deal that would resolve the Hill Tracts crisis. He formed a National Committee in 1987 to find a political solution to the problem. In February 1989, a bill was passed in Parliament to allow the creation of local governments in all the three districts in the CHT. In 1992, the government, led by the Bangladesh National Party (BNP), formed a committee to resolve the Chakma problem. In October 1996, the National Committee on CHT was reconstituted by the Awami League Government in order to give fresh impetus to talks between the government and PCJSS.

Since the signing of the Accord, there has been polarization in public opinion. Opposition political parties, in particular the Bangladesh National Party (BNP) and Jatiya Party (JP) have attacked the entire Accord. Their main arguments for opposing the Accord are as follows:

- The Constitution does not recognize the CHT as a "secluded" or "special area." The Constitution does not permit demarcation of an area of the country for some people.
- The unitary character of the Constitution had been violated.
- Chief Whip Abul Hasnat Abdullah had signed on behalf of the government but since he was not holding an executive office he had no legal standing. Similarly, Jyotindriya Bodhipriya Larma had no authority to sign the Accord on behalf of the people of the CHT as he was not an elected representative and had no mandate to represent the people of the area.
- Provisions of the Accord violated the Constitution and undermined national sovereignty.
- The Accord could be made only between two sovereign countries but not by parties within a country.
- Shanti Bahini leaders have got what they wanted minus a province and power to legislate.
- Government did not have people's mandate to sign the Accord.
- The Accord means "self-rule" for the tribals. One-tenth of the country's territory had been surrendered.
- The Accord may harm territorial integrity and encourage a similar clamour for devolution of powers in other areas of the country.
- The Accord would encourage the misguided tribals to demand autonomy and finally independence.
- During peace negotiations, non-tribals, who constitute 50 percent of the population, should have been consulted but had instead been left out of the consultations. The government acted unilaterally in extending all facilities to insurgents.
- Non-tribal settlers fear retaliation and persecution once the tribes are at the helm of power. The Accord has virtually made the non-tribal population "second class citizens."
- Induction of insurgents into the police force would be an embarrassment for regular forces, while the non-tribals have apprehensions that the insurgents-turned-police would pursue them.
- Non-tribals may resort to insurgency activities and thus one kind of insurgency would be substituted by another.
- All the Shanti Bahini men may not surrender arms.
- The proposed Regional Council with its vast powers is, in effect, a miniature legislature. And nothing will move without the prior consent of the omnipotent Regional Council.
- The Hill District Councils and the Regional Councils should have proportional representation of all tribals and non-tribals. Reserving the office of the Chief of District Councils and Regional Council for tribals, and non-proportional representation of tribals and non-tribals in these bodies, would be discrimination and a violation of citizen's rights that the Constitution has guaranteed.

Contrary to the arguments of those who are opposed to the Accord, the Government of the Awami League and others who are in favour of the Accord argue that:

- The Awami League Government had shown courage, commitment and willingness to take risks in solving the several decades-old problem in the CHT area.
- State sovereignty and territorial integrity have not been compromised.
- The Accord would ensure human rights. It is basically an instrument of understanding whereby insurgents would come under legal and constitutional boundaries.
- The principle of coexistence between non-tribal and tribal people has been basically upheld through the Accord and it cannot be said that the government has rewarded the terrorists.
- The CHT has been enjoying special status since the promulgation of Hill Tracts Regulation Act 1900 during the British rule. The Hill Tracts Manual of 1900 was cancelled in 1963 and was not incorporated in the Bangladesh Constitution. The special status was again protected under the 1989 Act passed by the Ershad Government whereby District Councils were formed.
- Regional Council is like a development agency coordinating the activities of the three district councils and has no legislative power. There is no bar in the Constitution to establish such a body. Moreover, the government has the full authority to dissolve the Regional Council and District Councils.
- Tribals and non-tribals, having a common stake in the economic growth of the area, will work in close cooperation. Once peace is restored, natural resources such as timber, agro-based products, fisheries, oil, gas, and tourism could be properly exploited which will lead to the development of the CHT area.
- The Accord has enhanced the country's image and paved the way for national development through peace and harmony.

In order to give legal clout to the peace accord, the CHT Regional Council Bill and the three Local Government Councils (Amendment Bills) for the three hill districts in the CHT, were passed by the National Parliament in May 1998. However, there had been strong opposition to the signing of the Accord and the

passing of bills. For example, there have been *bandhs*, protest marches and violent agitations which were only put down by strong police actions. To block the passage of the bills, the opposition political parties also boycotted the Parliament. A writ petition was also filed in the High Court challenging the legalities of the CHT Peace Accord. The Court, however, held that the petition was not maintainable. The necessary legal cover to the Accord could be given only after a gap of four months.

The immediate impact of signing the Accord was the repatriation of 60,000 refugees belonging to the Chakma and other indigenous groups. The refugee repatriation began in the first week of January 1998, and by March, 1998, all the refugees had repatriated. They repatriated in batches, and were welcomed back home by local officials, political leaders, relatives and old neighbours. Senior officials of the Indian State of Tripura saw the refugees off as they left Indian soil. It was suggested that the tribal leaders deliberately allowed refugees to repatriate in batches in order to maintain the necessary leverages for negotiation and implementation of the terms of the Accord.

The Accord also led to the surrender of arms by the Shanti Bahini guerillas. On February 10, 1998, for example, 739 Shanti Bahini guerillas surrendered their arms and left for their homes. Each guerilla received a cheque of Taka 50,000 for resettlement and reintegration.

Representatives of foreign missions, and journalists witnessed the formal arms surrender. On the occasion, the U.S. ambassador to Bangladesh said that "it would begin a new chapter on human rights in Bangladesh."[11] The Australian Foreign Minister said that, "the signing of the CHT Accord without any third party participation or involvement was indeed laudable. There had been precedents of concluding such accords with the insurgent groups."[12] The British Prime Minister said that, "I am particularly impressed with the deposit of weapons by former tribal leaders."[13]

In order to ensure the security of the Shanti Bahini members, Village Defence committees have been constituted. Three thousand Village Defence Party (VDP) members who were equipped with firearms to assist the army in policing the three hill districts of the CHT during tribal insurgency have since been disarmed. About 1,000 Shanti Bahini members have been recruited to the Police Department. A massive program of refugee resettlement with assistance from other countries has been proposed. Representatives of donor countries and agencies have sought detailed information required for carrying out the resettlement and development programs in the CHT. The Australian Government has already agreed to provide financial support for development activities in the CHT. It has been said that the Australian assistance would be provided as a "peace dividend" for the government's "excellent" initiative in ending the long-drawn conflict. The Bangladesh Government is likely to seek $100 million from the donors for the implementation of short-term development programs in the CHT on an emergency basis. The government has asked the Special Affairs Division to prepare project proposals seeking financial assistance of approximately $100 million from the donors. Emphasis has been placed on the resettlement of refugees and the construction of infrastructure such as schools, clinics, rural feeder roads, and village markets.

Implications of the Accord

The Chittagong Hill Tracts Peace Accord is an attempt to find a solution to the insurgency problem in the CHT within the framework of the Constitution. The disturbed conditions in the CHT continued for a long period because, on the one hand, the insurgents who claimed to fight for the cause of tribals carried on their activities and, on the other hand, the police and the army carried on the counter-insurgency operations. There were serious violations of the human rights of the hill people, causing a massive refugee flow to India. The Accord is expected to reverse such a trend and is supposed to guarantee the hill people that their human rights will be protected. It is a recognition of the fact that the life and property of ethnic minority groups need to be protected by special legal provisions and institutional changes in the political and administrative systems. The Accord also emphasizes that political, economic, civil, social and cultural rights would be maintained by necessary legal and administrative measures.

It will be worthwhile to consider how such an important peace accord came to be signed. There had been other peace initiatives by the Government of Bangladesh in the past, but the real transition point came during the June 1996 Parliamentary election. The Awami League declared in its election manifesto that if voted to power, it would earnestly try for a permanent solution to the CHT insurgency problem. The Awami League got an overwhelming majority in the Parliamentary elections. Immediately after coming to power, the Awami League Government initiated important measures such as reconstituting the National Committee on the CHT, which started dialogue with the tribal leaders, and visiting the refugee camps in the State of Tripura in India. The Government of India, being the host country, played a very important role in convincing the refugee leaders that they should co-operate with the Bangladesh authorities in finding a permanent solution to the crisis in the CHT.

The previous governments in Bangladesh had maintained a very rigid attitude towards the insurgents and had made clear that there would be no compromise with the insurgents in finding a solution to the CHT crisis. The approach they followed was to intensify police and army action against the insurgents and find a solution without their involvement. The Awami League government, on the other hand, realized that no meaningful solution would be achieved without the involvement of insurgents, thus making a complete departure from the past. It decided to bring the insurgents under the legal and constitutional bounds. The tribal leaders, who were rigid in their demand of

self-determination with a separate legislature in the CHT to protect the rights of the hill people, changed their position and agreed to the establishment of the Regional Council and the Hill District Councils with adequate powers. The local self-governments are legal entities derived either from the Constitution or an Act of Parliament. The government made it very clear from the beginning that any solution has to be within the framework of the Constitution. The government, while conceding to the demands of the tribal leaders for setting up local self-governments, insisted that the insurgents surrender their arms, which they agreed to do. The Government of Awami League took major initiatives in the whole peace process, and the tribal leaders were fully involved, resulting in the Accord's materialization.

It is important to consider the contents of the Chittagong Hill Tracts Peace Accord. The most important aspect of the Accord relates to measures for creating peace and security. Decisions such as the granting of general amnesty, surrender of arms, and withdrawal of criminal cases against insurgents are very significant, as it is difficult to find general agreement on such matters. The victims of insurgent activities in the local population and also in the police and the administration always tend to be against any such measure of compromise with the insurgents. But such major decisions alone can bring about reconciliation. The Accord details the power of the Regional Council and the Hill District Councils. The Regional Council has been given vast powers to oversee all aspects of administration and development activities in the CHT. The Hill District Councils' power to recruit local police and control all matters relating to land and land administration, including power to collect land revenue, would really make the councils effective. The Hill District Councils will be able to prevent future transfer of tribal land. In the CHT, the issue of land alienation by tribals was the root cause of unrest. The Accord proposes, through a land commission, to restore land to tribals that had been illegally captured and allotted to non-tribals. The Accord outlines the package of welfare measures for the rehabilitation of refugees as well as insurgents. Measures such as the reinstatement of jobs, preference of tribals in government jobs, and making available soft loans through banks would enable quick economic rehabilitation. The power of the Hill District Councils on matters such as youth welfare, environmental protection, and the development of local tourism, development trade, industry and commerce, and infrastructure would encourage local initiative and lead to integrated development of the region.

Though the Accord and subsequent legislations have addressed the root causes of insurgency and the refugee flow, much would depend on the actual implementation of the terms of the Accord. The rehabilitation and resettlement of refugees and insurgents would not only call for assistance to meet their immediate requirements for dwellings and other needs, but also to provide substantial assistance so that they could engage themselves in economic activities. Refugees who have spent more than a decade in camps are not in a good position to take up any economic activity of their own. Furthermore, it would not be possible for the government to create jobs to employ all of them. The Bangladesh Government has projected that it needs $100 million from external sources to develop infrastructure in the CHT. It is important that such external assistance is mobilized so that the assistance package could be made available to the refugees without much delay. Otherwise it would lead to resentment amongst the tribals and resurrect the insurgency.

In the CHT, the role of the district administration under the charge of a Deputy Commissioner will undergo a complete change. Many aspects of administration looked after earlier by the Deputy Commissioner will now be managed by the District Councils duly supervised by the Regional Council. The non-tribals in the CHT are opposed to the vast powers which have been given to these institutions. Thus, much would depend on how objectively these institutions function. Any discriminatory action which would affect non-tribals would disturb the peace in the CHT. The work of the land commission—proposed to be set up to resolve land disputes and restore land to tribals—would perhaps be most difficult. The non-tribals who, after payment of a considerable amount, have taken possession of such land and have settled there for more than twenty years. Being dispossessed of such land now could cause major resentment. However, the land commission can easily restore to tribals these lands that have illegally possessed by non-tribals. Even in such cases, non-tribals should be paid adequate compensation. Under normal circumstances, such compensation is not payable when the land transfer is illegal, but in the CHT, the whole peace initiative is based on the philosophy of reconciliation and coexistent. Therefore, payment of such compensation will take care of resentments which will otherwise resurface. It would not be possible for the government to ensure a sufficient area of land for each tribal family to make the family economically viable. Therefore, greater emphasis should be placed on encouraging economic rehabilitation through joint activities and development of small and cottage industries. The demographic changes, which have already come about over a period, should not be disturbed. Instead, effective measures should be taken to discourage new non-tribal settlers to settle in the CHT.

Peace has returned to the CHT after more than a decade of conflict. People have heaved a sigh of relief. There has not been any major incident of violence in the CHT since the signing of the Accord. However, there are serious apprehensions in the minds of non-tribals in the CHT that they could be victimized. Thus, any minor law and order problem can become a major issue, which will be politicized immediately by being said that it is all because of the Accord. The continuance of the Awami League Government is of vital importance to the Accord's successful implementation. Any change in the government at this stage would lead to mistrust, which may upset the fragile peace in the CHT.

There have been frequent changes in the government in Bangladesh in the past. The opposition parties are making all efforts to pull down the government on the single issue of the Chittagong Hill Tracts Peace Accord.

In the final analysis, it can be said that a political settlement—within the framework of the Constitution of a country—can bring about a viable solution to a refugee problem which addresses the root causes of insurgency, and also takes into account the aspirations of ethnic minorities. Such political settlement brings about not only the repatriation of refugees living in other countries but also ensures that future refugee outflow is very unlikely. Violations of human rights can be prevented only through such political settlements. The Chittagong Hill Tracts Peace Accord is in a way a model peace accord, which can be adopted in many refugee situations and also amongst internally-displaced persons. ■

Notes

1. A. S. Bhasin, *Indo-Bangladesh Relations, 1971–1994*, Vol. II, (New Delhi: Siba Exim Pvt. Ltd., 1996), 1151–1152.
2. Ibid., 1151–1152.
3. Ibid., 1160–1164.
4. Ibid., 1125.
5. Suhas Chakma, "Chittagong Deadlock—The Chakma Plight Remains Unsolved," *Pioneer*, 24 January 1994.
6. See Bhasin, *Indo-Bangladesh Relations, 1971–1994*, 1151.
7. Ibid., 1145.
8. Ibid., 1179.
9. For the text of the Accord, see Annex.
10. *Public Opinion Trends*, New Delhi, 13 December 1997, 1237.
11. *Public Opinion Trends*, New Delhi, 12 March 1998, 247.
12. Ibid., 259.
13. Ibid., 407. □

Annex:

Text of the Chittagong Hill Tracts Peace Treaty

Following is the English rendering of the peace agreement signed between the National Committee on Chittagong Hill Tracts Affairs, formed by the Government of Bangladesh, and the Parbatya Chattagram Jana Sanghati Samity, reports *Daily Star* (3/12) quoting BSS.

(Text): Keeping full and unswerved allegiance in Bangladesh's state sovereignty and territorial integrity in Bangladesh's Chittagong Hill Tracts region under the jurisdiction of the Constitution of the People's Republic of Bangladesh, the National Committee on Chittagong Hill Tracts on behalf of the Government of People's Republic of Bangladesh and Parbatya Chattagram Jana Sanghati Samity on behalf of the inhabitants of Chittagong Hill Tracts reached the following agreement in four parts (namely: Ka, Kha, Ga, Gha) to uphold the political, social, cultural, educational and economic rights of all the people of Chittagong Hill Tracts region, expedite socio-economic development process and to preserve respective the rights of all the citizens of Bangladesh and their development.

KA) General

1. Both the sides recognised the need for protecting the characteristics and attaining overall development of the region considering Chittagong Hill Tracts as a tribal inhabited region.

2. Both the parties have decided to formulate, change, amend and incorporate concerned acts, regulations and practices as soon as possible in keeping with the consensus and responsibility expressed in different sections of the agreement.

3. An implementation committee will be formed to monitor the implementation process of the agreement with the following members: Ka) a member nominated by the prime minister: Convenor, Kha) a Chairman of the task force formed under the purview of the agreement.... Member Ga) President of Parbatya Chattagram Jana Sanghati Samity.... Member

4. The agreement will come into effect from the date of its signing and execution by both the sides. This agreement will be valid from the date of its effect until the steps are executed as per the agreement.

KHA) Chittagong Hill Tracts Local Government Council/Hill District Council

Both the sides have reached agreement with regard to changing, amending, incorporating and writing off the existing Parbatya Zila Sthanio Sarkar Parishad Ain 1989 (Rangamati Parbatya Zila Sthanio Sarkar Parishad Ain 1989, Bandarban Parbatya Zila Sthanio Sarkar Parishad 1989. Khagrachhari Parbalya Zila Sthanio Sarkar Parishad Ain 1989) and its different clauses before this agreement comes into force.

1. The word "tribal" used in different clauses of the Parishad Ain will stay.

2. The name Parbatya Zila Sthanio Sarkar Parishad will be amended and the name of Parishad will be "Parbatya Zila Parishad".

3. "Non-Tribal permanent residents" will mean those who are not tribals but have legal lands and generally live in hill districts at specific addresses.

4. Ka) There will be 3 (three) seats for women in each of the Parbatya Zila Parishad. One-third (1/3) of these seats will be for non-tribals.

Kha) 1,2,3 and 4 sub-clauses of clause 4 will remain in force as per the original act.

Ga) The words "Deputy Commissioner" and "Deputy Commissioner's" in the second line of Sub Clause (5) of

Clause 4 will be replaced by "Circle Chief" and "Circle Chief's".

Gha) The following sub-clause will be incorporated in the Clause 4—"The concerned circle officer will ascertain whether a person is non-tribal or not on the basis of submission of certificate given by concerned mouza headman/ Union Parishad chairman/ pourashabha chairman and no non-tribal person can become the non-tribal candidate without the certificate received from the circle officer regarding this."

5. In the Clause 7 it has been stated that the chairman or any other elected member will have to take oath or give declaration before Chittagong Divisional Commissioner before taking over office. Amending this in place of "Chittagong Division Commissioner" the members will take oath or give declaration before "any high court division judge."

6. The words "to Chittagong Divisional Commissioner" will be replaced by "as per election rules" in the fourth line of Clause 8.

7. The words "three years" will be replaced by "five years" in the second line of Clause 10.

8. In Clause Number 14 there will be provision that a tribal member elected by other members of the Parishad will chair and discharge other responsibilities if the post of chairman falls vacant or in his absence.

9. The existing Clause Number 17 will be replaced by the following sentences: a person will be considered eligible to be enlisted in the voters list if he/ she (1) is a Bangladeshi citizen (2) he/ she is not below 18 years (3) appropriate court has not declared him mentally sick (4) he/she is a permanent resident of hill district.

10. In Sub-clause 2 of Clause Number 20 the words "delimitations of constituencies" will be incorporated independently.

11. In Sub-Clause 2 of Clause 25 there will be a provision that the chairman of all the meetings of the Parishad or a tribal member elected by other members of the Parishad will chair meetings and discharge other responsibilities of the post of chairman falls vacant or in his absence.

12. As the entire region of Khagrachhari district is not included in the Mong circle, the words "Khagrachhari Mong Chief" in Clause Number 26 of Khagrachhari Parbatya Zila Sthanio Sarkar Parishad Ain will be replaced by the words "Mong Circle Chief and Chakma Circle Chief". Similarly, there will be scope for the presence of Bomang chief in the meeting of Rangamati Parbatya Zila Parishad. In the same way there will be the provision that the Bomang Circle chief can attend the meetings of Bandarban Parbatya Zila Parishad meetings if he wishes or invited to join.

13. In Sub-Clause (1) and Sub-Clause (2) of Clause 31 there will be a provision that a chief executive officer of the status of a deputy secretary will be there as secretary in a Parishad and the tribal officials will get priority in this post.

14. Ka) In Sub-Clause (1) of Clause 32 there will be a provision that the Parishad will be able to create new posts for different classes of officers and employees for properly conducting the activities of the Parishad.

Kha) The Sub-Clause 2 of Clause 32 will be amended as follows: the Parishad can according to rules recruit class three and four employees and can transfer, suspend, terminate or give any other punishment. But condition would be that in case of such appointments the tribal residents of the district will be given priority.

Ga) As per Sub-Clause (3) of Clause 32, the government, in consultation with the Parishad, may appoint officers for the other posts and there will be legal provision to remove, suspend or terminate or penalise officers as per the government rules.

15. "As per rules" will be mentioned in Sub-Clause (3) of Rule 33.

16. In the third line of Sub-Clause (1) of Rule 36, the words "or in any way devised by the government" will be deleted.

17. Ka) The principal clause of the "fourth" of Sub-Clause (One) of Clause 37 will be valid.

Kha) "As per rules" will be included in Sub-Clause (2). Gha, of Rule 37.

18. Sub-Clause (3) of Clause 38, will be cancelled and Sub-Clause (4) will be amended in conformity with the follow text, "a new budget can be prepared and approved. If needed, at any time, before the completion of the previous financial year."

19. Rule 42 will incorporate the following subclause:

"The Parishad, with the allocated money from the government, will receive, initiate or implement any development project in the transferred subjects and all national level development programmes will be implemented through the Parishad by the concerned ministries/divisions/organisations."

20. The word "Parishad" will replace the word "Government" in the second line of Sub-Clause (2) of Rule 45.

21. Rules 50, 51, and 52 will be repealed and following clauses will be introduced:

"If needed, the government will give advice or regulatory directives for streamlining the Parishad activities with the objectives of the aforesaid rules."

"The government, if the government receives any hard evidence that any activity or proposed activity of the Parishad is violating the aforesaid rules or is inconsistent with it, will have the authority to ask for written information along with explanation. The government will also have the authority to give advice or directives in this regard."

22. "Within 90 days of abolition of the Parishad" shall be read in place of "after the expiry of defunct period" before the words "The Act" under Clause 53 Sub-Clause (3).

23. The word "Government" will be replaced by the word "Ministry" in the third and fourth lines in Clause 61.

24. A) Sub-Clause (1) in Clause 62 will be replaced by the following:

Whatever be the provisions in the currently prevailing laws, hill districts police sub-inspector and below shall be appointed by the Parishad as per the prescribed rules and the Parishad will transfer, and take action against them as per the prescribed rules.

However the condition will be that tribals of the district will get preference in case of this appointment.

25. The words "supports will be provided" will remain in third line in Clause 63.

26. Clause 64 will be amended as follows.

A) Whatever exists in the currently prevailing laws, without prior permission of the Parishad, no lands, including leasable khas lands in the district, can be leased out, sold, purchased or transferred.

However, it will not be applicable in case of the reserved forest, Kaptai Hydroelectricity Project area, Betbunia Satellite Station area, state-owned industrial enterprises, and lands recorded in the name of the government.

B) Whatever exists in the currently prevailing other laws the government cannot acquire or transfer any lands, hills and forests under the jurisdictions of the hill district Parishad without prior discussion and approval of the Parishad.

Ga) The Parishad may supervise or control the work of headmen, chairman, amin, surveyors, kanungo and assistant commissioners (land).

Gha) The fringe land of Kaptai Lake will be leased out on priority basis to their original owners.

27. Clause 65 will be amended to formulate the following: For the time being, whatever law is in force / the land development tax of the district will be in the hand of the Parishad and the tax to be collected on that account will be in the fund of the Parishad.

28. Clause 67 will be amended to formulate the following: Parishad and the government will raise specific proposals if it is necessary for the coordination of the Parishad and the government, and coordination of work will be done through mutual consultations.

29. Sub-Clause (1) of Clause 68 will be amended to formulate the following sub-clause:

With a view to fulfilling the objectives of this law, the government will be able to prepare rules after discussion with the Parishad through gazette notification. Even after the formulation of any rule, the Parishad will have the right to appeal to the government for reconsideration of such rules.

30. Ka) In the first and second paragraphs of Sub-Clause (1) of Clause 69, the words "prior approval of the government" will be dropped and following part will be added after the words "should be done" in the third para:

It is conditional that if the government disagrees with any part of the provision formulated then the government will be able to provide suggestions or directives regarding the provision.

Kha) in the (Ja) of Sub-Clause (2) of Clause 69, the other related laws, acts and ordinances and the Local Government Council Law of 1989, it will be settled as per the advice and the proposals of the regional council.

12) The government may form an interim regional council and give it the responsibilities of the council until and unless the regional council is formed on the basis of direct and indirect election.

13) The government may formulate any law regarding Chittagong Hill Tracts subject to discussion with the regional council and that will be done as per the advice of the council.

14) Fund of the council will be formed from the following sources:

a) Finance received from the district council fund.

b) Finance and profits from all the property which have been provided and directed by the council.

c) Loan and grants from the government and other authorities.

d) Grants provided by any institution or person.

e) Profit from the financial investment of the ouncil.

f) Any of the finance received by the council.

g) Finance received from other sources of income provided to the council as per the direction of the government.

GHA) Rehabilitation, General Amnesty and Other Issues

Both sides have reached the following position and agreed to take programmes for restoring normal situation in Chittagong Hill Tracts area and to this end on the matters of rehabilitation, general amnesty and other related issues and activities.

1) An agreement as signed between the government and the tribal refugee leaders on March 9, 1997, at Agartala of Tripura State, on bringing back the tribal refugees staying in the State of Tripura. Under this agreement, repatriation of tribal refugees began on March 28, 1997. This process will continue and the leaders of the PCJSS will extend all possible cooperation in this regard. The internal refugees of the three hill districts will be rehabilitated through their proper identification by a task force.

2) The land record and right of possession of the tribal people will be ascertained after finalisation of the ownership of land of the tribal people. And to achieve this end, the government will start land survey in Chittagong Hill Tracts and resolve all disputes relating to land through proper scrutiny and verification in consultation with the regional council to be formed under this agreement. These steps will be taken soon after signing and implementation of this agreement between the government and the PCJSS and rehabilitation of the tribal refugees and internal tribal refugees.

3) The government will ensure leasing two acres of land in the respective locality subject to availability of land of the landless tribals or the tribals having less than two acres of land per family. However, groveland can be allotted in case of non-availability of necessary lands.

4) A commission (land commission) will be constituted under a retired judge for the disposal of all disputes relating to lands. Besides settlement of the land disputes of the rehabilitated tribals, this commission will have full power to annul all rights of ownership on land and hills which have so far been given illegal settlements or encroached illegally. No appeal can be made against the verdict of this commission and the decision of this commission will be treated as final. This will be implied in case of fringe land.

5) This commission will be constituted with the following members:

Ka) Retired judge.

Kha) Circle chief (concerned).

Ga) Chairman representative of the regional council.

Gha) Divisional commissioner/additional commissioner.

Uma) Chairman of the district council (concerned).

6) Ka) The tenure of the commission will be of three years. But the tenure can be extended in consultation with the regional council.

Kha) The commission will resolve disputes on the basis of existing laws, customs and systems of Chittagong Hill Tracts.

7) The loans, which were obtained by repatriated tribals from government agencies but could not (be) properly utilised owing to conflicting situation, will be exempted with full interest.

8) Rubber plantation and allotment of other lands. The allotments of lands to non-tribals and non-residents for rubber cultivation and other purposes but not yet utilised the lands for the projects properly during the last ten years, will be cancelled.

9) The government will allocate additional finance on priority basis for taking up maximum number of projects to develop Chittagong Hill Tracts. Projects will be implemented on priority basis for construction of infrastructure for the development of the region and the government will allocate necessary funds for this purpose. The government will encourage development of tourism for local and foreign tourists, taking into consideration the environmental aspect of the region.

10) Reservation of quota and allocation of scholarships: The government will continue the quota system for the tribals in case of government jobs and higher education till they reach at par with the people of other regions of the country. With this aim in views the government will provide more scholarships for tribals boys/girls in educational institutions. The government will provide necessary scholarships for taking education abroad and research pursuit.

11) The government and the elected representatives will be active to preserve the distinctiveness of the tribal culture and heritage. The government will provide due patronisation and assistance for expansion of tribal cultural activities at par with that of the mainstream of the national life.

12) The PCJSS will submit to the government within 45 days of signing of this agreement the full list of its armed members and description and accounts of all arms and weapons under its control and possession.

13) The government and the PCJSS will jointly decide the day, date and place for depositing arms by the PCJSS within 45 days of signing of this agreement The government will ensure all kinds of security for the members of the listed members of the PCJSS and their families for coming back to normal life after declaring the day, date and place for depositing arms by the listed members of the PCJSS.

14) The government will declare amnesty for those members who will deposit arms and ammunition on the scheduled date. The government will withdraw cases lodged earlier against those persons.

15) The government will take legal action against those who will not deposit arms and ammunition within the stipulated time.

16) General amnesty will be given to all PCJSS members after they return to normal life and this amnesty will also be given to all the permanent residents who were connected with the PCJSS activities.

Ka) Each family of the repatriated members of the PCJSS will be given Taka 50,000 in cash at a time for their rehabilitation.

Kha) All cases, warrants of arrest, hulia against any armed member or general member of the PCJSS will be withdrawn and punishment given after trial in absentia will be exempted after surrender of arms and coming back to normal life as soon as possible. The members of the PCJSS, if they are in jail, will be released.

Ga) Similarly, no case will be filed or no punishment be given to any person for merely being the members of the PCJSS after surrendering arms and coming back to normal life.

Gha) The loans obtained by the members of the PCJSS from any government banks or other agencies but could not be utilised owing to conflicting situation would be exempted with interest.

Uma) Those members of the PCJSS who were employed in various government jobs would be absorbed in their respective posts and the eligible members of their family will be given jobs as per their qualifications. In such cases, the government principles regarding relaxation of age will be followed.

Cha) Bank loans on soft term will be given to the members of the PCJSS for cottage industry and horticulture and other such self-employment generating activities.

Chha) Educational facilities will be provided for the children of the PCJSS and the certificates obtained from foreign board and educational institutions will be considered as valid.

17) Ka) Immediately with signing and executing the agreement between the government and the PCJSS and with the members of the PCJSS coming to normal life, all temporary camps of army, ansar and village defence force in Chittagong Hill Tracts excepting Bangladesh Rifles (BDR) and permanent cantonments (three in three district headquarters and in Alikadam, Ruma and Dighinala) will be gradually brought back to the permanent places and a deadline for this will be fixed. The members of the armed forces can be deployed under due rules and procedures in case of deterioration of law and order situation and in times of natural calamities or like other parts of the country under the control of the civil administration. The regional council may request the appropriate authorities for such help and assistance in case of such a necessity and in due time.

Kha) The lands to be abandoned by military or paramilitary camps and cantonments will be either returned to the original owners or to the hill district councils.

18) The permanent residents of Chittagong Hill Tracts with priority to

the tribals will be given appointment to all categories of officers and employees of all government, semi-government, parishad and autonomous bodies of Chittagong Hill Tracts. In case of absence of eligible persons among the permanent residents of Chittagong Hill Tracts for particular posts, the government may give appointment on lien or for a definitive period such posts.

19) A ministry on Chittagong Hill Tracts Affairs will be set up appointing one minister from the tribals. The following advisor committee will be constituted to assist this ministry:

1) The Minister in charge of Chittagong Hill Tracts Affairs;
2) Chairman/representative, regional council;
3) Chairman/representative, Rangamati Hill District Council;
5) Chairman/representative, Bandarban Hill District Council;
6) MP, Rangamati;
7) MP, Khagrachhari;
8) MP, Bandarban,;
9) Chakma Raja (King);
10) Bomang Raja;
11) Mong Raja; and
12) Three non-tribal members to be nominated by the government taking one permanent non-tribal resident from each three hill districts.

This agreement is prepared in Bangla and completed and signed in Dhaka on Agrahayan 18, 1404, December 2, 1997.

On behalf of the Government of the People's Republic of Bangladesh (Abul Hasanat Abdullah)	On behalf of the residents of Chittagong Hill Tracts (Jyotirindra Bodhipriya Larma)
Convener, National Committee on Chittagong Hill Tracts, Government of Bangladesh	President Parbatya Chattagram Jana Sanghati Samity

(POT)

Early Warning: North Korean Refugees in China

Donald S. Rickerd

Abstract

Very little is known about the tragic "flood" of poverty-stricken, starving refugees from North Korea who are seeking food and safety in the People's Republic of China. This article sheds some light on their plight and the emerging refugee crisis in that part of the world.

Precis

On en sait tres peu sur la tragedie du <<flux» de refugies affames, chasses de Coree du Nord par la pauvrete, et cherchant nourriture et securite en Republique Populaire de Chine. Lepresent article leve quelque peu Ie voile sur ce drame, et sur la crise de refuge en emergence dans cette partie du monde.

With the world's attention so focused on refugee crises in countries such as Afghanistan, Rwanda, and Yugoslavia, very little is known about, nor is much attention paid to, the thousands of refugees who have left their homes in North Korea and fled to the relative safety of the People's Republic of China (PRe).

Now, however, some reports filtering out of China suggest that Chinese authorities have become extremely concerned about the increasing influx of North Koreans, most of whom cross the Yalu River into Liaoning Province in the People's Republic of China. In China's three northeastern provinces of Liaoning, Jilin, and Heilongjiang, ithas been unofficially estimated that 200,000 to 300,000 refugees from the Democratic People's Republic of Korea (DPRK) are eking out a living. Those who are able to find work are often paid as little as one-sixth of the average Chinese wage. Thus, their living conditions are extremelypoor.

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In their homeland, North Koreans suffer from a harsh political regime, extremes of climate which are especially prominent in winter, and from a pervasive famine that has caused extensive malnutrition and many deaths. They have very few opportunities to flee these difficult living conditions. To the south, the famous Demilitarized Zone (DMZ) is so heavily mined and guarded that escaping across it is extremely hazardous. A few North Koreans have fled by sea, but the main route has been towards the nearby provinces of China.

While a few diplomats and other North Korean government officials have defected via Beijing or other foreign capitals after being posted there on official business, ordinary North Koreans have been trying to escape across the border into China. In so doing, they risk being killed by their own border guards or returned to North Korea by Chinese authorities.

The DPRK has been known to deal extremely harshly with repatriated nationals who had made it to the Chinese side. Because the DPRK is so secretive, it has never admitted that its citizens have been crossing the border to China in increasing numbers. Instead, information about North Korean refugees has come from various, mostly unofficial, sources within China, supplemented by reports from South Korea which may be somewhat skewed by the continuing propaganda warfare which continues between the two Koreas.

On February 5, 1999, *The Times* of London reported a recent change in Chinese policy whereby North Koreans who are caught fleeing across the Yalu will no longer be treated as refugees but will be pushed back across the border, where they will face punishment by the DPRK government and a continuation of the poverty and hunger which drove them to China in the first place. Chinese authorities in a town such as Tumen have also indicated that local people who are found harbouring Koreanrefugees will be fined 5,000 yuan, an amount equal to a year's income in that area.

The PRC police have been carrying outhouse-to-house search near the border, especially the houses of ethnic Koreans legitimately living in the area who are deemed most likely to help the North Korean refugees. Recently, the *South China Morning Post,* published in Hong Kong, quoted one such ethnic Korean peasant living near the border as saying: "Public security officials came a month ago and said it does not matter whether they starve to death or not, no one must help any refugee." The roundups of refugees have been accompanied by other unfortunate steps taken to discourage the presence of Korean refugees. The PRC has, for example, deported DPRK women who have married Chinese or ethnic Koreans living legitimately in border areas.

Until recently, North Korean border guards were under shoot-to- kill orders with respect to escapees, but in recent months there have been reports that those harsh measures have been relaxed somewhat. Surprisingly, with border controls as strict as they are, thousands of North Koreans manage to slip unobtrusively back and forth across the border, either to trade goods for food or to obtain work illegally.

The issue of North Korean refugees has two dimensions to it. Firstly, there is the famine exacerbated by the near collapse of North Korea's economy. Secondly, there is the long-term issue of what will happen if there is a sudden upheaval in North Korea which might cause millions of refugees to leave North Korea, seeking refuge in either South Korea or in the People's Republic of China. Both countries are seriously concerned about the issue, but due to the lack of adequate resources might not be able to cope with such a catastrophe .••

Dynamics of International Human Rights in Japan

Kohki Abe

Abstract

Starting with a preliminary evaluation of Canadian human rights practices, the author critically traces the development of international human rights in Japan. While the country has been affected favourably by the newly-emerging international human rights regime, judicial reluctance to acknowledge the relevance of human dignity leads the author to conclude that there is still a long way to go in achieving the desired situation. The article ends with a call for the acceptance of treaty-based individual petition procedures, which in his view may effectively induce the judiciary to open up to the universal norms for the protection of human rights.

Précis

Amorçant son exposé par une évaluation préliminaire des pratiques canadiennes en matière de droits humains, l'auteur procède ensuite à un tracé critique du développement des droits humains internationaux au Japon. Alors que ce pays a subit les effets favorables du régime international des droits humains de récente émergence, on observe un certain nombre de résistances juridiques à reconnaître la pertinence de la dignité humaine. Ceci amène l'auteur du présent article à conclure qu'il y a encore un long chemin à parcourir avant d'atteindre une situation acceptable dans ce dossier. L'article se conclut sur une invitation à l'acceptation des procédures d'appel individuelles fondées sur des traités internationaux. Selon l'auteur, une telle invitation devrait encourager le secteur juridique à s'ouvrir aux normes universelles en matière de protection des droits humains.

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Some Reflections on Canadian Practice

I am inclined to associate the phrase "international human rights" with Canada. If you ask me to name a few people who encouraged me to go into the field of international human rights, without hesitation I would name the late Canadian Justice Walter Tarnopolsky first. I met him in 1984 at a summer session organized by the International Institute of Human Rights in Strasbourg, France. It was virtually the first time that I had ever been exposed to international human rights issues presented in such a systematic manner. At that time, there was literally no acknowledgment of that particular field of law in the legal profession in Japan.

In the middle of the session, the institute hosted a party to welcome guest speakers and participants. During the party, I approached Justice Tarnopolsky and thanked him for a marvellous deliberation on the human rights covenants. By word of praise, I said to him, "How I wish we could have a judge like you in my country who is so versed in international human rights." Apparently pleased, he replied: "Well, why don't you encourage national judges by writing and getting involved in litigations?" I remember saying very naively, "Yes, I will."

It has been close to 15 years since that encounter. I do not think I have betrayed my promise. I have actually written, and got involved, in a number of human rights litigations. The promise, however, is only half-fulfilled. The other side of the pledge is yet to be made good. We have not yet succeeded in bringing up judges in our judiciary who may be qualified to fill the shoes of the late Justice Tarnopolsky, an unfortunate testimony that international human rights still have a long way to go in my country.

Having said that, I do not intend to overly "flatter" Canada. When I set foot on Canadian soil, somebody warned me that Canada is full of inconsistencies. I am not in a position to judge whether the word "inconsistency" best describes this country. Nevertheless, having spent the last few months in Toronto, I have come to recognize that yes, indeed, this country is loaded with inconsistencies, particularly in my major field of concern, international human rights.

Let us look at the brighter side first. On the international level, Canada stands out foremost in setting and leading important humanitarian agendas. Recent outstanding endeavours include the adoption of such epoch-making documents as the Anti-Personnel Land Mine Treaty and the Statute of the International Criminal Court. Concerning international human rights, there are very few countries, if any, that can beat Canada in their commitment to create and develop an international human rights regime. Canada has already ratified six core human rights treaties as well as the first Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), the Refugee Convention, the Genocide Convention, etc. What impressed me is not the ratification record *per se*, but the speed with which Canada proceeded to be bound by many of those documents.

Canada has submitted many reports to the human rights treaty bodies. Contrary to the widespread practice, as of February 1998, only three Canadian reports were overdue. To the pleasure of the international human rights community, moreover, when the initial report was reviewed by the Human Rights Committee in March 1980, the Canadian representative told the Committee that

> in his country's opinion, the Committee's questions and comments, whether in the context of the Covenant or of its Optional Protocol, could have a significant impact and help to increase the understanding of

> the States parties of their obligations under the Covenant. The dialogue between the Committee and States parties was potentially one of the most important factors in the long-term development of international protection of human rights. (United Nations 1980)

It seems to me that Canada has been duly faced with the challenges posed by the first Optional Protocol to the ICCPR as well. Individual petitions filed against the Canadian government have accounted for a substantial percentage of the Human Rights Committee's caseload. Only Jamaica has had more petitions filed against it. It is by no means an indication that Canada's human rights record is far below the international standard. On the contrary, it may signify that the Canadian public has a higher level of awareness of the ICCPR and the Optional Protocol than most other countries. Most of the cases submitted to the Committee have been declared inadmissible or discontinued. Canada was found in violation of the relevant articles of the ICCPR in seven cases. Significantly, Canada reacted to some of those non-binding "views" of the Committee by amending domestic legislation.

On the domestic front, in addition to the Immigration and Refugee Board's (IRB) human rights and gender-sensitive asylum procedures, world's attention has been attracted by the dynamic jurisprudence demonstrated by the Supreme Court. In the words of Maxwell Cohen and Anne Bayefsky (1983, 265 and 268), the Canadian Charter of Rights and Freedoms of 1982 served as a "bridge" between municipal law and international law. The most prominent architect of that "bridge" has been none other than the Supreme Court. In spite of built-in constitutional restrictions against the direct application of treaties, a significant number of human rights treaties have been passionately invoked—at least until recently—by the top court to reinforce its rulings. It is as if binding treaties were part of Canadian law.

As is well known, one of the most active advocates and promoters of international human rights in the judiciary was Chief Justice Brian Dickson, whose obituary caught my eye when I opened the morning paper on October 18 last year. As the title of a eulogy by Osgoode Hall Law School professor Allan Hutchinson (1998) properly indicates, Dickson was the "right choice at the right time" for international human rights law in Canada. Among many of his legacies is the "Dickson Doctrine" which finds clear expression in his dissenting opinion in *Re Public Service Employee Relations Act*. The most relevant part reads:

> I believe that the Charter should generally be presumed to provide protection at least as great as that afforded by similar provisions in international human rights documents which Canada has ratified. ([1987] 1S.C.R.313,350).

Under his influence, the Supreme Court, putting aside the prior "ambiguity test" applied to international treaties, vigorously explored new frontiers of international human rights norms whose activism found resonance in some like-minded lower courts including Tarnopolsky's Ontario Court of Appeal. This "Canadian judicial activism toward international human rights" is something you rarely witness in my country, where the judiciary is truly adamant in rejecting the permeation of international human rights into its own "sphere of influence."

However, there are some indelible blemishes or scandals which tarnish Canadian international human rights record. What instantly comes to mind is the flagrant disregard of the request from the Human Rights Committee for a stay of extradition to the United States where the death penalty was waiting for the author of the communication. Canada seems curiously insensitive to death penalty issues. I just want to know why the champion of human rights that has already abolished capital punishment at peace-time, is yet to accede to the Second Optional Protocol to the ICCPR aimed at abolishing the death penalty. In two extradition cases which finally went to the Human Rights Committee, even the Supreme Court showed insensitivity in not taking heed of international human rights arguments against extraditing someone to a place where that person could face execution.

Beyond the Supreme Court and a handful of other like-minded courts, a general judicial picture of international human rights is very dim (see Schabas 1996). Few intellectual resources have been mobilized to acknowledge and develop international human rights standards. My sense is that international law is not yet part of daily life in the Canadian judiciary in general. The "judicial activism" referred to above is not ubiquitous in the Canadian judicial scenery.

Appallingly scandalous on the domestic level is systematic negation of "the other half" of international human rights: economic, social, and cultural rights. The statement that Chief Justice Antonio Lamer addressed to the International Bar Association conference in Vancouver on September 14, 1998, was quite indicative of the local situation regarding that category of rights: "This clear statement, in an international instrument [International Covenant on Economic, Social and Cultural Rights], is not matched by a correspondingly clear provision in our domestic law." This was manifest confession by the highest legal authority that Canadian domestic law is not on par with international human rights standards.

What I find shocking in this context is that the Canadian common ethics of sharing is increasingly imperilled by a sharp, widening gap between the rich and the poor. Not a single day passes by in Toronto without visual evidence that this country is taking a path to social crisis. An increasing number of homeless people, the grave level of child poverty, and recent doubling in the use of food banks, all happen in this affluent country. Importantly, they are not brought about by accident, nor are they an inevitable outcome of economic globalization gone wild. They are the result of deliberately executed policies. Everyone knows that drastic welfare cuts and the withdrawal of both federal and provincial authorities from funding new housing projects are behind the current

crisis. What people are not aware of, however, is that these measures are deemed to be a serious violation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Canada has been a State party for more than 20 years. Therefore, for Canada, a commitment to welfare and housing is definitely a matter of international legal obligation, not a mere matter of charity or economic policy. It is unfortunate that Canada has not responded to concerns expressed by the monitoring body of the ICESCR, which examined the Canadian situations five years ago. It was almost a forgone conclusion that similar concerns were once again formulated in stronger terms by the same body in December 1998, when the new report was reviewed (United Nations 1998a).

Politics of Human Rights in Post-War Japan

In contrast to Canada, where there has been keen interest among policy-makers in human rights as a politically useful tool to unify the otherwise splitting nation, Japan felt almost no need to incorporate into its policy the idea of human rights. In fact, it was not human rights but a dream of economic development that actually united the entire state. The unifying factor was reinforced effectively by two myths: the myth of government impeccability and the myth of one ethnic nation. The former implies that the government never makes a mistake, while the latter implies that Japan is composed of only one ethnic group: Japanese. Both are none other than myths that did not correspond to reality. Our governments did make mountains of mistakes. There were, and are, significant numbers of non-Japanese (not in terms of legal nationality) living in Japan. The largest ethnic minority in our country are the Koreans. Japanese live with such indigenous peoples as Ainus and Okinawans as well. All these undeniable facts were put aside to a dark corner for political convenience. The end result was that people were led to unite as Japanese and follow the "impeccable" instructions granted by our government. Please let it be noted that when I say "government" in the context of Japan, I do not mean cabinet ministers and other politicians. By "government," I mean elite bureaucrats and the unbeatable bureaucratic institution. They have been the real policy-makers, and that is where all the political power is concentrated.

As a living witness born and brought up in Japan, I can say confidently that the predominant values controlling post-war Japanese society have been the "spirit of harmony" and "economic efficiency." On innumerable occasions, I have heard people say that "harmony" is an indispensable part of Japanese culture and "efficiency" is our supreme value without which our tiny "islands-nation" would never survive in a competitive world. These views are held without persuasive grounds. Yet, for policy-makers of a country which was totally devastated and even bombed with weapons of ultimate destruction during the Second World War, it was not necessarily unreasonable to set economic development as the primary national goal to be achieved. For that purpose, the policy-makers had to mobilize citizens as quickly and effectively as possible. It was in such a context that the value of "harmony" was repeatedly beatified and emphasized. I recall vividly that our school reports up to high school always carried a "degree of harmony" measurement among a few check-list items to assess students' behaviour, although how I scored has now slipped out of my memory.

The words "harmony "and "efficiency" may sound agreeable. Yet when they are promoted (sometimes as culture) from above, you cannot take them at face value. The problem was that they, indeed, served to justify the suppression of what should have been the supreme value of human beings: human dignity. Human dignity played second fiddle and always took a back seat to economic development. Thus, human dignity, even human lives, were often sacrificed for the sake of state construction and economic prosperity. It was stressed that respect for human dignity was something luxurious that might be obtained only after the national goal was achieved.

I should say that the conspicuous economic development of post-war Japan, which garnered the world's eyes and was often called a "miracle," was for a long time plagued with consistent and reliably attested pattern of gross violations of human rights that fit the requirements of the confidential 1503 procedures established by the UN human rights mechanism. These human rights violations did not necessarily take a blood-tainted, high profile form like the mass killings in Cambodia or enforced disappearances in Argentina. They were "quiet." Yet, they were the inevitable result of systematic and widespread state policy. The whole state structure was mobilized to pursue state policy, therefore disregarding human rights. The most advanced Constitution of Japan—enacted in 1946—which declared nobly the principle of human rights with as many as 30 articles allocated to embody the principle was virtually paralyzed, not only by the hands of the government but by those of the judiciary as well. Any reasonable person would be surprised to learn that in more than 95 percent of administrative litigations filed against the government, citizen-plaintiffs have lost their cases. There is no way to win against the government. It is no exaggeration to say that the judiciary protected the interests of the ruling elites, not those of citizens.

What made things worse was the international political context of the Cold War, during which any serious criticism of the government was regarded as anti-governmental, thus pro-communist. That particular political atmosphere worked enormously against human rights advocates. After all, in the eyes of the government and, to a great extent, in the eyes of the general public, there were no non-governmental organizations (NGOs) in Japan. There were only either Anti-Governmental Organizations (AGOs) or the so-called Governmental NGOs (GONGOs). For "impeccable" policy-makers, critical NGOs were simply unnecessary. If you needed a citizens' movement, it should serve as an instru-

ment to help the government implement its policies. Only GONGOs could do this. Other NGOs were regarded as simply fads or dangerous elements, obstructing the smooth economic development.

Article 34 of the century-old Civil Code provides that no civil organization may gain legal status (i.e., public interest corporation status) without a permit from a supervising bureaucratic agency. There may be little wonder that only a few human rights NGOs have ever been granted legal status in Japan. Even Amnesty International Japan does not have legal status, thus it does not exist legally in our society. I could hardly believe my ears when I heard an official of the Ministry of Foreign Affairs—the ministry that would be the supervising agency—once say, "as long as the mandate of Amnesty includes the abolition of capital punishment it is difficult to give legal status. No movement against capital punishment may be officially acknowledged, since it is not in conformity with our Penal Code legislating capital punishment." The treatment of human rights NGOs is in stark contrast to that of the uncountable number of GONGOs, which enjoy automatic legal status and tax receipts from donations.

In retrospect, the entire citizenry was literally taken hostage for economic development. Women were given a fixed role of taking care of household affairs in addition to giving birth and rearing children. Manifest discrimination predominated workplaces in employment, wage, promotion and retirement policies. There was no institutional support for female workers to keep on working once they got married and had children, which helped sustain "indirect discrimination." Gender discrimination inculcated at school and in society colluded with the sheer lack of institutional support to effectively discourage women from remaining in the public domain. That women remained home was considered *sine qua non* for men to work around the clock as "company warriors." Equality clauses of the Constitution were interpreted to allow for different treatment between men and women in accordance with their "natural peculiarities." Constitutional protection and the criminal code rarely entered domestic spheres and reinforced the unequal power balance between the two sexes.

Children were treated as objects or the property of parents, not bearers of human rights. At school the "spirit of harmony" was indoctrinated through pseudo-militaristic methods, including occasional outdoor group marches. We were not taught the value of human dignity, nor the importance of individual liberty, but were encouraged to sacrifice ourselves for the sake of the group to which we belong, to become loyal workers for companies that were the driving force of economic development. Do not be critical of authority, do not ask questions. Be compliant. That was the basic message given to the would-be labour work force at school. The mentally and physically challenged were segregated institutionally from the efficiency-oriented school and society. They were out of sight, therefore out of mind.

Two of the most "invisible" minorities in Japan are resident Koreans and indigenous Ainu. Under the prevailing circumstances, these "heterogeneous" elements turned easily into targets of elimination simply because they were alleged to disturb harmony and inhibit smooth economic development. After the Korean Peninsula was liberated from Japan's occupation in 1945, a large number of Koreans went back to their homeland. For some reason, however, a significant number of Koreans remained. They would shape the greatest majority of the alien population in post-war Japan. The basic policy of our government was to control and eject them. The Immigration Control Order Act and the Alien Registration Act, both introduced in the immediate post-war period, were the two legislative instruments created to justify this policy. Under these laws, aliens (namely Korean residents) were forced, with harsh criminal sanctions, to carry alien registration cards at all times. They had to renew their registration at certain intervals by being fingerprinted, a practice imposed otherwise only on criminals. Renewal was not within their rights but was at administrative discretion. Equally important, no social welfare was given to aliens with the understanding that they were not members of our society. Governmental inaction was supported by constitutional arguments that social security should be guaranteed to aliens by countries of their national origin and not by the country of residence. In fact, it was only a mere theoretical possibility that resident Koreans could ever receive social security benefits from their governments. Thus, they were left in legal limbo.

The Ainu used to live mainly in the northern part of Japan, which is now called Hokkaido, a territory annexed forcibly toward the end of the 19th century by the-then Japanese government. The Ainu's distinct culture and tradition were regarded as "uncivilized," hence strong institutional pressure was exercised to "civilize" them. It was more than a process of assimilation. To use a more contemporary term, it was a process of ethnocide and culturcide that we witnessed.

The entire society viewed Korean and Ainu cultures as something to be eradicated or at least altered. It was no coincidence that a great majority of Korean students, fearing to be identified as such, did not disclose their real names in Japanese schools. People of Ainu descent had to face the same unwelcome fate. Policy-making elites did not induce the society to acknowledge multiracial realities. Japanese society had to be viewed as monoracial, not for the benefit of individual citizens but for the maximization of state and macro-economic advancement.

International Human Rights Opening Up in Japan

Modern Japan was initiated with the Meiji Restoration in 1868, which was a direct response to the gun-boat diplomacy of Western powers, particularly the United States. Commodore M. C. Perry came to Japan in armed black ships and forced secluded Japan to open up its seaports for foreign vessels. His arrival was so threatening that it was described as the "Attack of Black

Ships." If you call that incident the first "Attack of Black Ships," then the second "Attack of Black Ships" came in the latter half of the 1970s. This time, boats were equipped not with guns but refugees. Indeed, the latter half of the 1970s saw a massive flow of people from Indochina following the contemporary political changeovers. East Asia was in turmoil.

As a country which frantically maintained the fiction of being a "one-ethnic nation," Japan was not ready or willing to accept non-Japanese refugees from abroad. Even temporary landing was rejected without a guarantee of living expenses from UNHCR and a guarantee of admission from a foreign country. It was odd, however, that as the second largest economic power in the world, Japan remained so callous to refugee problems in her own region. Strong diplomatic pressure was exercised by Western allies, again particularly the United States, to open up Japan's soil to those in need of help. For geopolitical reasons cloaked in a humanitarian coat, ruling elites finally made up their mind to accept Indochinese refugees. It was proudly announced that in 1978, Japan accepted refugees from Vietnam for resettlement. Surely it was an epoch-making incident for a country that never failed to show hostile attitudes to asylum-seekers. Yet, I must hasten to say that equally epoch-making was the total number of Vietnamese the country accepted in that year: it amounted to as many as **three!**

The dramatic policy change to accept boat people from Indochina was a clear message that the Japanese government would work hand-in-hand with its Western allies in solving refugee problems, which were feared to spread the "virus" of communism throughout South East Asia. In that particular political context, Japan felt further pressed to join the Western-made Refugee Convention regime. It was in 1981—30 years after the adoption of the document—that Japan acceded to the Convention Relating to the Status of Refugees together with its 1967 Protocol. It was originally intended to be a hollow diplomatic gesture. As a matter of fact, the Japanese government immediately and honestly announced that the country had no intention of opening wide its doors to asylum-seekers. Indochinese refugees, who numbered 10,000 in 1994 when the special program to accept them was terminated, were dealt with a different policy framework. Simply put, they were permitted to stay in Japan due to administrative discretion but not given the rights-based Convention refugee status. Gaining Convention refugee status is as difficult as threading a needle in the dark (The Forum on Refugee Studies 1996). Within the last five years, the Japanese government recognized only one asylum-seeker as a Convention refugee each year as opposed to more than 10,000 a year by Canada. The year of 1998 was an exceptional one, with more than ten asylum-seekers being granted refugee status in Japan.

Nevertheless, accession to the Convention would turn out to have a significant impact on our society. For the first time in history, a procedure to determine refugee status was set in motion. More importantly, in accordance with the obligations imposed by the Convention, the government had to change relevant welfare regulations so as to eliminate the infamous nationality clauses. Resident Koreans were no longer left alone outside the national welfare scheme. They finally found their place in it, although still insufficient. The fingerprinting requirement was later eradicated as inhuman and unnecessary. Prior and subsequent to the accession to the Refugee Convention, Japan ratified two Human Rights Covenants and the Women's Convention. The latter Convention brought forth Equal Opportunity legislation to eliminate rampant discrimination against women in employment, although this legislation was without teeth. Clearly, human rights treaty regimes ignited long-awaited institutional changes.

More dynamic waves of influence, however, came from UN Human Rights machineries: the Commission on Human Rights; and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities. A young Japanese UN human rights officer, Yoh Kubota, helped "shrink" dramatically the distance between Geneva and Tokyo. Mr. Kubota, who died in 1989 while on a mission to newly-independent Namibia, encouraged Japanese human rights defenders to utilize UN human rights mechanisms such as the 1503 procedure and the non-confidential 1235 procedure to review human rights situations in any part of the world. His practical and strategic advice was welcomed enthusiastically by activists and lawyers based in Japan, who, without exception, had been suffocated by stiff judicial inaction. The UN enjoys a special significant political status in Japan for historical reasons. Indeed, three pillars of our foreign policy have been alliance with the United States, co-operation with neighbouring Asian countries, and contribution to the United Nations. NGOs in Japan instantly turned to human rights treaties and the UN mechanisms to carve out "legitimacy" in their otherwise "anti-governmental" activities.

The first result was obtained in the middle of the 1980s when the representative of Japan promised the Sub-Commission that the government would revise legislation to segregate the mentally ill. A barrage of criticism had been waged against the Japanese government in the Sub-Commission regarding that notorious law and ensuing inhuman practices. It can be recalled, incidentally, that when Japan made her debut in the UN Commission on Human Rights in 1982, there was no particular bureau in the Ministry of Foreign Affairs in charge of international human rights issues. Mme Sadako Ogata led the Japanese delegation in the 1982 UN Commission. It was the first and last time that a non-diplomat led the delegation; it was the first and last time that a female representative led the delegation. Since the Ministry of Foreign Affairs established the Human Rights and Refugee Division in the middle of the 1980s, there has been no space for non-diplomat intervention in the human rights policy-making process.

After a short hiatus, increasing and extensive attention began to be paid to

war-time reparation issues. Particularly significant was an issue of "comfort women"—former military sex slaves—a precursor to similar outrageous practices witnessed in the former Yugoslavia and in Rwanda toward the end of this century. The original stance taken by our government was to keep aloof from the "comfort" women issue. The government repeatedly said that "comfort" stations (i.e., brothels) were run by the private sector and had nothing to do with the government. When a document was unearthed establishing that the military was involved in the management of brothels, the government changed the official stance and admitted its involvement. What the government did not accept was legal responsibility. The gist of the government's argument is that all issues arising from World War II were resolved by peace treaties concluded with relevant countries. Moreover, Japan committed no international wrongs to be legally blamed for (Government of Japan 1996).

The government now faces more than 50 lawsuits from people who were physically, mentally, and sexually abused by the former Japanese Imperial Army. Since 1992, incessant pressure has been mobilized in the United Nations to encourage the Japanese government to assume legal responsibility. In 1996, the UN Human Rights Commission's Special Rapporteur on Violence against Women made public a special report on Japanese "comfort women" issues (United Nations 1996) after a similar fact-finding report was released by the International Commission on Jurists (International Commission of Jurists 1996). The UN Sub-Commission's Special Rapporteur to study sexual slavery under armed conflicts reinforced, in her 1998 report, the conclusions shown in prior reports (United Nations 1998b). They all express in one voice that what Japan did was against international law applicable at the time the inhumane acts were committed. Invoked are international treaties to suppress white slavery, the International Labour Organization Convention on Forced Labour, customary international law to prohibit slavery, and regulations on land warfare. To the dismay of the victims, the Japanese government does not heed these internationally-expressed views. Nevertheless, one should not overlook the effect of UN mechanisms, which give undeniable legitimacy to the activities pursued by citizens in Japan while gradually deligitimizing the government's argument. Without the help of an international human rights mechanism, this process would not happen (Abe 1996). Similarly, voices of the indigenous Ainu are increasingly heard in the society with the help of the Sub-Commission and its pre-sessional Working Group on Indigenous Populations.

Concurrent with war-time reparation issues, the treatment of aliens in detention is getting some attention. Institutional reform brought about by the Refugee Convention benefited, though insufficiently, "old-comer" aliens such as resident Koreans. It came, however, with the formation of a new hierarchy among aliens. While observing the social advancement of "old-comers," "new-comer" aliens who landed in Japan in the 1980s and 1990s seeking employment or protection are now in social and legal limbo. Found illegal under immigration regulations, they are in constant fear of detention and deportation. What is really astonishing is the treatment of those aliens in detention centres. International human rights NGOs such as Amnesty International, Human Rights Watch, and the Penal Reform International all agree with Japanese human rights lawyers that the condition in immigration and criminal detention centres is truly inhuman and deviates from international human rights standards. There are volumes of documents corroborating the statement that systematic physical and mental abuses have taken place in detention centres (Amnesty International 1997). These allegations are gradually brought up in the UN mechanisms with a view to holding the authorities accountable for their misdeeds.

The battlefields have been stretched from the UN bodies to human rights treaty bodies. The conclusion of human rights treaties has indeed given rise to institutional changes. Yet they were just a tip of the iceberg and definitely more reform should be undertaken to live up to treaty standards. Unfortunately and absolutely incorrectly, when Japan finally joined the Child Convention regime in 1994, the government refused to revise any domestic laws, an attitude inadvertently repeated the following year when the country acceded to the 30-year-old Racial Convention. An array of domestic legislation should have been revised to observe international obligations faithfully. With regard to the Child Convention, NGOs passionately compiled three "alternative" reports and submitted these to members of the treaty body prior to the review of the government's report. They succeeded in drawing out appropriate conclusions from the Committee on the Rights of the Child in June in 1998, in which the body firmly confirmed that children are bearers of human rights (United Nations 1998c). The committee recommended that the government devise and implement a comprehensive action plan to tackle abuses of children, including sexual exploitation, a step the government should and could have undertaken at the time of ratification.

The review of state reports is a never-ending process. I can safely say that NGOs are gaining expertise as they review one report after another. It is increasingly difficult to exclude NGOs' expertise from report-preparation processes. The social status of NGOs has advanced incredibly in the meantime, which is testified most eloquently by the enactment in March 1998 of new legislation ensuring legal status to any non-profit civil organization satisfying certain conditions. It overrides substantially the above mentioned, century-old feudalistic provision of the Civil Code. Among the most important factors contributing to the advancement of NGOs' social status is the highly-organized and innovative activity they demonstrated in the process leading up to the 1993 World Conference on Human Rights and similar international conferences. The collapse of the age-old government "impeccability" myth also

elevated the position of NGOs. Manifest failure of the ruling bureaucrats to overcome current economic crisis made their reputation plummet. The "one ethnic nation" myth has been already put behind by the institutional acknowledgement of different ethnic groups. We suddenly find ourselves with no more myths to reinforce the government-set national goal of economic development. More than anything, economic development itself can no more be pursued as a national goal in the present financial situation. It is inevitable that the entire system constructed for that particular purpose is to be shaken. It poses an unprecedented political and economic crisis in Japan; however, it is a wonderful opportunity to rebuild state structure so as to be more human-sensitive or human-friendly and in line with legitimate Constitutional and international human rights standards.

Fortified Judiciary

Legitimated by international human rights movements, once segregated social groups are increasingly gaining ground in society, which echoes in academic institutions. International human rights law is gradually but steadfastly permeating into university curricula as well. According to one study conducted by an academic society in 1994, a significant number of Japanese universities and colleges—at least more than 30—already had special courses on international human rights, a fact truly impressive given the absolute paucity of interest encountered a decade ago. In 1988, interested academics went as far as joining together to establish the Japanese Association of International Human Rights Law. Optimistic notes, however, fade away at the staunch gates of the judiciary. International human rights law is being increasingly acknowledged in Japan, yet it still has a long way to go mainly because it has not gained firm recognition in the conservative judiciary.

The Constitution of Japan provides in Article 98 (2) that "Treaties concluded by Japan and established laws of nations shall be faithfully observed." This provision is widely recognized to mean that binding international law, either treaty or customary law, is part of Japanese law, an interpretation shared not only by most academics but by the government and judiciary. International law is understood to be generally and automatically incorporated into the law of Japan. You do not need any process of transformation as is required, with regard to treaties, in Canada. The rank of international law in the domestic legal order is high enough to nullify any conflicting statutory provisions. International law is inferior only to the Constitution. This "warm" reception of international law by our Constitutional system was driven by deep repentance for the Second World War. The preamble of the Constitution goes:

> We, the Japanese people ... resolved that never again shall we be visited with the horrors of war ... do firmly establish this Constitution. We ... desire peace for all time ... and we have determined to preserve our security and existence, trusting in the justice and faith of the peace-loving peoples of the world. We desire to occupy an honoured place in an international society striving for the preservation of peace.

The spirit of international cooperation, clearly expressed there, finds specific expression in Article 98(2) and has invited the high status of international law in Japan's legal system.

International human rights litigations started budding in the early 1980s, immediately after the entry into force of the Human Rights Covenants with respect to Japan. Noted human rights lawyer Kazuo Ito (1990) reported in the first issue of *Kokusai Jinken (Human Rights International)*, an annual report published by the Japanese Association of International Human Rights Law, that among 57 international human rights litigations pursued in the 1980s, the ICCPR was invoked in favour of the plaintiffs in only one case. He confessed his impression correctly that the Japanese judiciary maintained a very negative attitude toward international human rights, which was further amplified by the sheer lack of knowledge of the law. Indeed, there is no lack of cases in which Article 26 of the ICCPR on equality was literally subsumed in a similar domestic equality clause without going into any meaningful interpretation of the article. In an extradition case (1990), the Tokyo High Court irresponsibly "passed the buck" to the executive branch by saying that the court is not a human rights court capable of examining a risk of human rights violations that might take place after extradition. In another widely publicized case (1994), the Tokyo District Court abandoned its basic mandate of judicial scrutiny of administrative decisions by incorrectly declaring that the determination of refugeehood is a highly political act outside judicial review.

As an increasing number of litigations got in the dock, the government advanced an argument to bifurcate international law between self-executing and non-self-executing norms, the former deemed to be directly applicable in court and the latter not. This blunt American-born categorization, though widely supported by international lawyers, has no sound legal basis in our system. Just like Constitutional and statutory provisions, international norms that have domestic effects can be the basis of judicial judgments as long as the procedural requirements set by either the Code of Civil Procedures or the Code of Criminal Procedures are met. We have never categorized domestic laws by referring to self-executing or non-self-executing nature in our judicial process. International law as a law of Japan is entitled to receive exactly the same judicial treatment as other domestic laws. Therefore, the judiciary, faced with international law, should not be disturbed by ambiguous "self-executing" and "non-self-executing" distinctions. Unfortunately, however, American influence seems too strong to reject off-hand.

One political function fulfilled by the bifurcation theory is that the international standard is blocked from getting into the domestic sphere. The elite bureaucrats of the Justice Ministry, supported by mainstream conservative academics, cling to the idea that even the ICCPR cannot be invoked directly in

court. They argue that the ICCPR as a whole is designed to be non-self-executing as Article 2(2) requires State parties to take "legislative" measures. In fact, our Constitutional system does not necessarily require supplemental legislative measures to implement the ICCPR. The government's exceptionally "defensive" argument to keep international human rights norms at bay is not accepted by the judiciary. The ICCPR is judicially determined to be self-executing, though it has been rare that the document is directly applied or interpreted in favour of the plaintiff. On the other hand, the ICESCR is repeatedly given the judicial cold shoulder. In 1989, the Supreme Court denied a concrete right arising from the ICESCR relying on Article 2 (1) of the document, a view rejected by the subsequently formulated General Comment No. 3 of the Committee on Economic, Social and Cultural Rights.

As we approach the end of the century, however, we were blessed with a few wonderful judicial outcomes (see Japan Federation of Bar Associations 1997, 368–98). The Tokyo High Court directly applied the ICCPR for the first time in 1993. The right to have the free assistance of an interpreter was recognized directly based on Article 14(f). The Code of Criminal Procedure does not guarantee such a right. In 1997, another High Court, confirming that any national legislation is null and void when conflicting with international law, interpreted prison rules so as to conform with the ICCPR as informed by relevant UN standards and principles. In the same year, the Sapporo District Court recognized the Ainu as an indigenous people of Japan—the first time ever that an official organ did this—and applied Article 27 of the ICCPR in a case where the legality of the expropriation of Ainu sacred land was at issue. Behind that success were systematic endeavours by bar associations to acquaint lawyers with international human rights standards. With the Osaka Bar Association taking the lead, the Japan Federation of Bar Associations, a national umbrella organization for practising lawyers, hosted a variety of training programs and lectures, delivered by nationally and internationally renowned scholars. A model application form for international human rights litigations is on hand and is widely circulated.

In spite of some signs of change, the judiciary in general still remains overly cautious of international human rights law. After all, there are only a handful of cases in which international human rights law played a meaningful role in judgments and only in one or two cases was it directly applied, betraying the original Constitutional arrangement. The judiciary seems all the more cautious as it is currently inundated with highly complex war reparation suits. Here again, the government hangs on to the bifurcation theory. In the Siberian internment case, the government's incredibly narrow criteria for the application of self-executing customary international rule was accepted by the Tokyo High Court, which stated in its 1993 judgment that

> if a customary international rule is not minutely detailed as to the substantive conditions on the creation, existence and termination of a right, the procedural conditions on the exercise of the right, and moreover, the harmony of the rule with the existing various systems within the domestic sphere, and so forth, its domestic applicability cannot but be denied.

This was a formula to exclude international customary rules from Japanese courts effectively (Iwasawa 1993, 362).

Likewise, in the "comfort women" case and other related litigations in which I have been involved, the government argues that all issues arising from the last war have been legally resolved by peace treaties and that no international law rule invoked by plaintiffs is categorized as "self-executing." The government insists that no cause for action arises from relevant international law. One controversial issue in the Nanking Massacre case is the direct applicability of Article 3 of the Hague Convention of 1907 on Land Warfare. Attorneys representing the victims eagerly sought legal assistance from abroad and obtained three expert opinions from reputed professors of international humanitarian law—Frits Kalshoven of the Netherlands, Christopher Greenwood of Britain and Eric David of Belgium—all claiming that the article is intended to give an individual victim the right to seek monetary compensation. I agree. The ordinary meaning of the words employed, its preparatory work and the subsequent practice, all suggest that Article 3 is of such a nature. In addition, what I had strongly emphasized as an expert witness on international law in the Tokyo District Court in July 1998, is that Japan's Constitution urges the judiciary to play an active role to avoid Japan trampling on international obligations (Abe 1998, 260–91).

Contemporary Japan is a continuation of pre-war Imperial Japan. There have been no serious endeavours made to set the past record straight like what occurred in Germany and South Africa. War criminals have been at large in mainstream society, having been granted national honours as well as significant yearly pensions. The "past" is not yet passed in various sectors of the society, including the bureaucracy, legislature, medical circles, and more importantly the judiciary. Admitting legal responsibilities for war-time deeds inevitably shakes the very foundations of the establishment. Its impact is tremendous. This is why I feel like restraining myself from drawing an optimistic picture regarding the outcome of the war reparation suits.

New Frontiers

Special circumstances covering war reparation issues aside, one wonders why the Japanese judiciary is so cautious about international human rights law. One simple answer is that the judges do not know much about it. Moreover, there is a strong institutional sentiment to avoid uncertainties. There appears to be less tolerance inside the judiciary for a "brave" judge jumping into a yet unknown body of international human rights law. In Japan, the general citizenry has been systematically induced to resist change. In a "harmonious" society, there was little acceptance of dissidents; deviance was

seen as threatening. An atmosphere of empiricism never prevailed (see van Reenen 1997, 483–91). Judges are super-elites of such a "conservative" society. Even now, when citizens are getting rid of institutionally-imposed "cultural" behaviours, the socially-segregated judiciary seems to be faithful in maintaining the *status quo*. Their conservative attitude is further reinforced by a lack of knowledge about international human rights law which is in the forefront of social change.

One more important factor is the unwelcome "isolation" of the Japanese judiciary. To put it bluntly, the judiciary is too much "inward looking." Least felt in their judgments is the sense that Japan is part of the international community and that national law should be resonant with international standards. The Supreme Court, or to be more specific its General Secretariat, dominates the entire judicial institution by wielding power to decide the promotion and allocation of judges. There is no questioning of it as there is no higher authority to supervise the General Secretariat. One suggestion to redirect this overly inward-looking tendency is to secure an institutional mechanism to review the Supreme Court's rulings. That opportunity will come with the ratification of the First Optional Protocol to the ICCPR.

Japan has not yet accepted any treaty-based procedures to handle individual petitions. No one can submit to the Human Rights Committee a claim against the Japanese government alleging violations of human rights under the first Optional Protocol to the ICCPR, which is yet to be ratified. The Racial Convention's similar procedure has not been accepted by the government. The ratification of the Torture Convention is soon to be realized with no commitment to its individual complaint procedure. Various reasons have been presented to justify the government's inaction. Interestingly, there once was an argument that the Western-invented, rights-based, quasi-judicial system may not fit Asians who naturally prefer non-judicial, conciliatory types of conflict management. No human rights defenders agree. It looks like the government has thrown away this manifest "subterfuge."

Currently, the government propounds two arguments for its inaction. One is the risk that the procedure will be abused. What the government tries to protect by this argument is not the integrity of the international procedure, but the interests of the national judiciary. During a seminar on the first Optional Protocol organized in Tokyo in summer of 1997, a director of the Human Rights and Refugee Division of the Ministry of Foreign Affairs revealed that his division was concerned about the flawed practice of the Human Rights Committee in handling individual communications. We were told that his team came up with "precedents" in which individual communications were incorrectly found admissible despite non-exhaustion of local remedies. If a communication is inappropriately processed in the Committee in contravention of its procedural rules while still pending before national courts, it would inevitably impair the fair administration of justice. This logic is directly related to the second argument, which says that the international petition procedure may threaten the independence of the judiciary, an argument never heard of in any one of the State parties to the first Optional Protocol. So idiosyncratic and hairsplitting, I am afraid the government's arguments may sooner or later get trapped in a blind alley.

Clearly the government's arguments are subterfuge. There is no reasonable ground in government's argument against the individual petition regime. Equally clear is the government's apprehension of possible impacts upon the judiciary which has been secluded from international trends. Yet one should know that the protection of human rights in Japan will never be institutionally complete without an assurance that final rulings of the high-handed, "inward-looking" top court are subject to international scrutiny. It does not matter that the "view" of the Human Rights Committee lacks formal binding force. What counts is an institutional assurance for international scrutiny. It will surely motivate judges to redirect their thinking to the abundant international standards as were witnessed, though limitedly, in such countries as Australia and New Zealand (Mason 1997, 13).

Strong voices are increasingly heard in the society calling for ratification of the first Optional Protocol. Virtually all concerned NGOs, including the Japan Federation of Bar Associations, Amnesty International, the Japan Civil Liberties Union, and academics joining the Association of International Human Rights Law, are pushing the hesitant government to take action. International pressure to encourage policy changes is constantly coming from the UN human rights machineries and various human rights treaty bodies. Thus, it seems almost inevitable for the government to recognize that the first Optional Protocol is in existence not to shield elites' interests but to protect the dignity of individual citizens. No one can precisely predict when, but this is surely going to happen. Only then can we expect a truly dynamic and meaningful normative interplay between national and international human rights law in Japan. ■

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Cultural Interpretation for Refugee Children: The Multicultural Liaison Program, Ottawa, Canada

Claudia Maria Vargas

Abstract

Cultural differences may pose as many challenges as linguistic difficulties for refugee children and their families in the school setting. This article explores the contributions of the Multicultural Liaison Program (MLD) created by the Ottawa Board of Education and the Ottawa-Carleton Immigration Services Organization (OCISO). Through cultural mediation, the MLO Program builds partnerships that support the efforts of schools and the refugee communities they serve. Anchored in a systemic approach that considers the child, parents, the ethnocultural community, teachers, and school officials, the MLOs—or cultural interpreters—facilitate the learning and teaching processes.

Précis

*Les différences culturelles sont susceptibles de poser autant de problèmes que les difficultés linguistiques pour les enfants réfugiés et leur famille dans l'environnement scolaire. Le présent article examine les contributions du Programme de Liaison Multiculturelle (*Multicultural Liaison Program: MLD*) créé par le conseil scolaire d'Ottawa et l'Organisation des Services à l'Immigration de la région Ottawa-Carleton. Via la médiation culturelle, le programme MLO établit des partenariats qui épaulent les efforts des institutions scolaires et des communautés de réfugiés qu'elles desservent. S'appuyant sur une approche systémique qui prend en compte l'enfant, les parents, la communauté ethno-culturelle, les enseignants et les administrateurs scolaires, l'interprète culturel-MLO s'efforce de faciliter les processus d'apprentissage et d'enseignement.*

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Introduction

Host nations respond to increasing refugee populations in various ways. Some provide macro-level, comprehensive, government-funded service programs while others may do little to accommodate the refugees' complex needs and instead rely on micro-level programs provided by non-governmental organizations (NGOs). Canada and Nordic countries use a hybrid approach, making resources such as housing, health insurance, and cultural interpretation available to children and their families through both governmental and NGO operations. However, in other countries, refugee children may not even get second language instruction, much less cultural interpretation to ease their adjustment to a host society.

Unfortunately, linguistic and cultural misunderstandings have academic or educational consequences for children: "research has shown that children are the most vulnerable group, besides the elderly, to the stresses of migration" (Tam and Spigelblatt 1993). Miscommunication may occur among refugee children, teachers, school administrators, parents, and the community at large, leading to a loss of trust, a sense of alienation, and intensification of the sense of helplessness experienced by refugee children and their parents. Despite the well-understood reality that women and children need more assistance, they frequently receive inadequate help particularly in matters related to cultural interpretation and mediation (Camus-Jacques 1990; Martin 1995; Brown et al. 1996).

Refugee service providers buffer "cultural shock" to facilitate the experience of a new community in a novel way. It is clear that schools are a key point where refugee issues, children, women, men and ethnocultural communities meet. Although the literature (Suarez-Orozco 1989; Delgado-Gaitan and Trueba 1991; Boothby 1994; Farias 1994; Camino et al. 1994; Igoa 1995; Cummings 1996; Hyman et al. 1996; Yau 1996; Zhou and Bankston III 1998) recognizes that resolving cultural issues is critical to success for refugees in their new homes, the question remains: how can one design and implement an effective cultural mediation program that takes advantage of the special place and needs of school? This article examines a cultural mediation model, the Multicultural Liaison Program (MLO), which was born out of the need to address the cultural gap and takes advantage of the unique opportunities afforded in the school setting. The MLO Program, currently in operation in Ottawa, Canada, was developed to meet the needs of refugee children "to ease the transition for newcomer parents and children as well as teachers" (Tam and Spiegelblatt 1993, 3–4; see also Stambouli 1990).

A qualitative research approach consisting of semi-structured interviews of service providers, school principals, teachers, and multicultural liaison officers was used. School and classroom visits and attendance at parent and community meetings as a participant-observer supplemented the interviews. The research presented is part of a larger comparative study on refugee service delivery in various countries and several cities in the United States.

This article discusses and seeks to understand what has made the MLO Program so successful. More specifically, it suggests some of the key ways in which the program has used the school context as a base from which to build bridges that support both the efforts of the schools and the refugee communi-

ties they serve. After such an examination, it becomes clear that cultural interpretation (sometimes called cultural mediation) is central to the effective adjustment of refugee children to the school context and school expectations of the host country. It further suggests that cultural interpretation services need to be based on a systemic approach that considers the child, the parents, community, teachers, and school officials. Such services can contribute to the well-being of all involved while facilitating learning and teaching processes.

The essay is organized in two parts. First, it describes the inception of the MLO Program and its various components. Second, it examines the impact of cultural interpretation on immigrant and refugee children, their parents, the community and on the school community.

The Multicultural Liaison Program: Addressing Cultural Interpretation

The Multicultural Liaison Program started as a project to meet the needs of refugee students identified by the Ottawa-Carleton Board of Education. In January 1991, the Board approached an NGO, the Ottawa-Carleton Immigration Services Organization (OCISO), to request help in dealing with issues that were emerging in schools with high numbers of immigrant and refugee children.[1] Financing was shared equally. The project sought to engage joint efforts and capabilities of government and NGOs. The Board and OCISO worked together to create a pilot project that was launched in September 1991. Continued success led to the expansion of the project into an on-going program that grew from the initial three schools to a much larger effort currently covering two jurisdictions—the Ottawa-Carleton English Public Board and the French Public Board. While the MLO Program is based at 38 schools, it provides crisis intervention services to the entire Ottawa-Carleton school system, sometimes even to schools outside those jurisdictions.

The MLO Program and Its Goals

Initially, the project targeted three elementary schools and involved three full-time staff known as Multicultural Liaison Officers (MLOs). The MLO Program had one objective in mind: to improve "communication between the schools and home."[2] Simple but effective efforts were implemented to bridge the gap between the refugee parents and school officials, including "making phone calls to the parents, translating notes for parents and teachers where there was a need for better communication between the two."[3] The decision to employ a low-profile approach served two purposes: a) to establish MLO credibility with teachers, parents, students, and the community; and b) to build trust among all involved. Both goals were achieved.

The initial group of MLOs understood several cultures and languages and could communicate effectively to share basic knowledge. The key was that, every MLO had linguistic and cultural knowledge of some countries. Together, they had a great deal more, as exemplified by the MLOs' competence in 30 languages. By communicating with each other frequently, the MLOs could either provide the particular cultural competence required in a given situation or locate it through the effective network they had developed.

Although the project designers knew that MLOs could not remain "glorified messengers," this initial step was essential. Once trust and respect were established, the MLOs proceeded to address other objectives. Among these were efforts to: a) "assist immigrant students to adapt to their new environment and to benefit fully from the educational system; b) facilitate the involvement of parents in their children's education; and c) provide cross-cultural sensitization training to the school staff" (Tam and Spigelblatt 1993). While these goals were articulated clearly, many of the school administrators and teachers involved truly did not know what to expect. Those interviewed reported uniformly that, although they initially had difficulty understanding what MLOs really were and what they would do, they now not only understand them very well but cannot understand how their schools functioned before MLOs came on board.

The MLOs work continually to find ways of fostering understanding of the school system and encouraging cross-cultural sensitization for educators and students. It is a proactive rather than a reactive program. While much of MLOs' work comes in response to calls for help from school staff, parents, and other MLOs, they also initiate projects and programs that seek to build understanding and avert problems before they manifest themselves. This is partly accomplished by helping Canadian students learn about diverse cultures and, in turn, help new arrivals learn about the host country's school system. Even so, the MLOs are often called to help resolve misunderstandings arising among students and parents due to differences in the school systems, i.e., that of the Canadian system and of the country of origin. In such situations, two major issues frequently emerge. First, how does the Canadian school system operate compared to that of the student's country of origin? Second, how do MLOs help students, parents, and teachers understand the cultural perceptions of teachers, parents, and women among the various ethnocultural groups represented?

For example, the Somalis, like people from a number of cultures, view teachers as authority figures and hold them in high regard. Somali mothers who are Muslim generally do not intervene in the education of their children, a role generally taken by males.[4] However, the situation may become more awkward when Somali single or widowed mothers are faced with the need to deal with the schools on behalf of their children. This is an issue because "refugee families may break down within two years of arrival in the host country" or women were widowed as a result of civil strife in their homeland, as commonly occurred to Somali women.[5] It is also an issue because Canadian culture seeks to enhance women's capability to play an equal and active role in society. Un-

knowingly, teachers may question whether these mothers care about their children's education, a common misperception of refugee and immigrant parents, given their "reticence" to become involved (Nieto 1996; Hernandez 1997). On the other hand, Somali mothers may experience frustration at not being heard by school officials. In the end, the ones who really suffer are the children, who may find themselves with no one to mediate for their needs.

In such circumstances, MLOs have played a significant role. Thus, when it became known that Somali mothers were frustrated by a persistent problem with teachers of English as a second language (ESL), an MLO convened a meeting for Somali parents. She explained the process of communicating concerns to school officials. Concrete action was taken as the group worked together, with the facilitation of the MLO, to draft a letter to school officials. The most important outcome was not so much the letter but the empowerment experienced by the parents. The MLO had initiated a process of trust-building and communications enhancement through a discussion of common concerns identified by the parents as well as helping to lay foundations for constructive relationships between parents and educators in the Canadian context. Moreover, these mothers learned that it is acceptable for women to participate on an equal footing in school issues, and acquired some of the skills needed to do so effectively.

Improving Communication: An Essential Step

This activity fits nicely into a key set of MLO priorities. That first task, to improve "communication between the school and the families of immigrant students" (Tam and Spigelblatt 1993, 4), requires time and effort. It demands a continuing investment of effort with an understanding that it may require some time before the fruits of that investment are evident. In order to do this, the director explained that MLOs "find excuses to get to know each other as persons."[6] Establishing bridges of mutual trust and respect is always at the centre of the MLO work.

Reaching Out to Parents

The second priority was developing effective ways to reach out to parents, especially women, who may be alienated or intimidated by the school system. When parents come to school to pick up a child, MLOs are quick to tap the opportunity to chat. "I invite them for a cup of tea to my office. There was a Somali grandmother who just stood outside the school in the cold. Since we could not communicate [linguistically], I brought her a chair for her to sit inside, an offer she accepted."[7] Other ways of integrating parents into the school community were to "translate notices of meetings and important workshops," and "to contact families by phone, using the team of MLOs as interpreters."[8]

The toy library—another program originated by an MLO to help children as well as to attract parents to the school—operates with toys donated by children themselves. Those who want to borrow a toy can do so overnight. However, the project needed staffing. In this case, the contributions of the refugee community is exemplified by a "72-year-old librarian who was afraid to come out of her house but now handles a toy library." This kind of reciprocity between the schools and the community enhances acceptance of diversity in societies maximizing the cultural and intellectual resources available among new arrivals: "exiled individuals and communities have contributed greatly to the cultural diversity and the intellectual vitality of their adopted countries" (UNHCR 1995, 17).

Helping parents to meet their responsibilities with schools and other agencies through the MLOs, without the need to rely on their children, addressed another common problem in refugee families. When children become translators, they get into a dominant position relative to their parents, making parenting more difficult. Furthermore, ethical dilemmas are also avoided when MLOs, instead of students, translate for school officials and parents, thus averting possible violation of students' privacy (Haffner 1992; Vargas 1998). It also frees students' time and energy for participation in other school programs.

Connecting School Staff and Parents

Third, MLOs worked towards building closer contact between staff and parents of immigrant and refugee students. Explaining school regulations, in particular to single mothers with little or no literacy even in their native language (let alone English or French), was one way. "Parents are afraid even to talk to the secretary of the school. When their children are sick they are afraid to call the school to notify them of it," but with the efforts of MLOs, teachers "became more understanding" and learned "not to make assumptions, and instead to find out"[9] what was really taking place. In cases where the way of doing business did not recognize the parents' needs, school procedures were changed. For instance, "the process for parent teacher interviews [were modified] to allow time for interpretation and some flexibility in scheduling,"[10] as meetings with students and their families are now arranged by the MLOs.

Facilitating Access to Community Resources

A fourth objective of the project was "to connect the students and their families to other appropriate resources in the community" (Tam and Spigelblatt 1993, 4). MLOs call on other agencies to help parents with resettlement or housing arrangements and assist them in accessing crisis intervention services for run-away youths. "Information sessions on topics of interest" are provided by the MLOs themselves or by representatives from pertinent "agencies such as the YMCA, heritage language schools, United Way, or health centres."[11]

Maximizing School Resources

Another objective of the program is to use school resources more effectively. If MLOs can do the work needed to bridge the goals of teachers and parents for the children by mediating between the

school and the home, "teachers can focus on teaching according to the needs of students."[12] For example, report cards have been translated and simplified to accommodate the needs of parents. With the assistance of MLOs, parents can now communicate to teachers and school officials their "educational aspirations and expectations" for their children. This support has turned one of the most forbidding parental obligations, parent-teacher conferences, into positive experiences for many refugee families.

Educating about Specialized Services

Finally, "the MLOs link parents and students to appropriate services that may be required to facilitate learning" (Tam and Spigelblatt 1993, 4). Access to services becomes easier when the MLOs "precede referrals with phone calls," given that, for example, psychological interventions with refugees are more complex (Chester and Holtan 1992). This kind of communication among service providers, the schools, and the clients is possible due to the "close collaboration that MLOs maintain with other service providers."[13] In some cases, services may be necessary to help refugee children with health problems including Post-Traumatic Stress Disorder (PTSD),[14] which may go undetected by teachers but in fact seriously affects learning (Chester and Holtan 1992; Lavadenz 1994, Hyman et al. 1996). MLOs can easily intervene when PTSD issues are at stake or vaccinations are required.

Results to Date of MLO Efforts

The Multicultural Liaison Program has been rated very positively by teachers, principals, parents, and the community. Specific results include increased "participation in parent/teacher interviews, which went from almost nonexistent to at least 60 percent" (Tam and Spigelblatt 1993, 4). Parents who stayed away from schools either because of distrust of the schools or to language difficulties "have started to call the school and request meetings with teachers. This did not happen before, except in 'critical' circumstances."[15] As a Vietnamese MLO elaborated, "Parents still call me for help five or six years later, even after they have moved to other areas."[16] The interactions have changed as stakeholders, parents, students, and educators "collaborate in the decisions about the students' education." MLOs also maximize parents' visits to the schools "to do 'on the spot' needs assessments and referrals."[17]

The Multicultural Liaison Program's interventions for the immigrant children, their parents, the community, and school officials have resolved a great deal of the ambivalence and confusion because trust has erased past miscommunications. Essential cultural modulation allows teachers to get on with the business of teaching, helps children understand cultural differences so that they can focus on learning, and parents and the community communicate their care and concern to educators, critical to healthy integration of child refugees.

Breaking Down "Non-Academic Barriers" through Partnerships

Educators can learn a number of lessons from a study of this approach to serving the needs of refugee children. The lessons, affective and cognitive, include: (1) awareness of who the refugee service providers are; (2) enhanced understanding of the needs refugee children have in the educational setting; (3) a clearer recognition of the "non-academic barriers"[18] that must be addressed if the children are to progress; (4) heightened sensitivity to the importance of integrating parents and their community into the school community; and (5) greater sensitivity to the importance of decreasing racial and ethnic tensions that may be introduced to school by the children.

Who Becomes a Refugee Service Provider? What Does It Take?

Many refugee service providers are themselves former refugees or members of refugee families. They frequently operate in a pressure-filled, resource-poor environment, often with a high turnover and burnout rate, all characteristics common of educators. An indication of awareness of specific problems in their work is helpful to understand how MLOs foster respect and build trust (Vargas 1998). A female principal attributes the success of the MLOs to the various factors:

> Issues of heart are difficult to translate, if you have only knowledge of the language, but MLOs are able to convey deep thoughts; it's more than just translation. It is also intimidating to reach out to the community from the school office. Therefore, we have to do outreach through the MLOs.
>
> However, the rate of success of the MLO is determined by the personality and initiative of the MLO. Some MLOs have a "sit-and-wait" approach while others have a very proactive one, and have a great deal of initiative to begin new projects. Our current MLO knows exactly what you need. She also knows her colleagues very well and knows how to match the right individual to the situation, whether it is a gender issue, [or] a personality issue. In other words, it is not just a linguistic issue.
>
> The school also bears responsibility for the success of the MLOs. They need to have their own telephone lines and answering machines since families will latch on for a long time. MLOs need to feel part of the school staff, and this will depend on how well they are introduced to the staff. We connect them to the internal e-mail system.[19]

The MLOs build on their personal refugee experience to deepen understanding of, and empathy for, new arrivals. Their commitment to help refugees is both to ease cultural shock and to contribute to their host country, Canada. Although this implies more than a nine-to-five job, the MLOs draw on their painful and traumatic refugee past to extend themselves to others. In one of the interviews with female refugee service providers with whom the researcher had been working for a period of over four years, the women found themselves reliving the experience of flight as the long-repressed memories gushed out unexpectedly. One shared for the first time the story of her family's flight out of Vietnam and the boat jour-

ney they hoped would take them to a safe but unknown destination. Later, after arriving in Canada, she recalled the recurrent nightmare of being sea sick long after the ordeal and memories of the fear of sea pirates.

Experienced at building a network of cultural brokers, MLOs maximize talent and scarce resources:

> Even though not originally conceived as a role for the MLOs, they are now doing more and more counselling. The hope is that there will be an MLO at every school. The MLOs work closely with the guidance faculty and the vice-principal. In fact, the counselling office often refers cases to the MLOs, who then proceed to deal with situations. Since students discuss parental demands—or expressions of concern for the general welfare of their parents who may be out of work—with the counsellors, the MLO is called upon to follow up, because the MLO network can facilitate intervening with parents, or even helping parents find jobs.[20]

Thus, MLOs find ways to match the needs of the refugee child and family with resources: "the contact of the MLO is beyond the school, because of what kids say in counselling."[21] As MLOs themselves endured anomie, a dramatic change in status or loss of prestige, or a loss of professional opportunities upon their arrival, they now reach out to others.

The Needs of Refugee Children

The Multicultural Liaison Program has been regarded as highly successful by teachers, principals, school board members, and the communities it serves in its support of immigrant children. One of the lessons from the MLO Program concerns the fact that, because of developmental issues, refugee children and adolescents bring to school a different cognitive, affective, and psychological profile from other students. Furthermore, their school needs are dynamic depending on who the most recent refugee groups are. In this instance, the MLO Program continues to change in order to respond to the needs of new arrivals.

Another lesson concerns assessment. Assessment and proper placement conducted in the native language, as is done in Ottawa, has served the children well and has also made the teachers' job easier. This type of assessment is particularly important for children with learning or neurodevelopmental disabilities or children who have not had the opportunity to develop literacy and numeracy skills. However, assessment of children with special needs still poses additional challenges. Informal assessment is done with the help of the MLOs in the native language when IQ testing and possible referral to special education issues emerge.

Children with Special Needs

Cultural interventions become more critical when refugee children suffer from neurodevelopmental disorders, and may even lack a native language in which to communicate. In Ottawa, an MLO intervened in a case in which "the school officials were frustrated with a girl who was hearing impaired and was not advancing in her school work." She decided to visit the family at home. In meeting with them, family members assured her that in fact they were helping the daughter with school assignments. The experienced MLO then proceeded to ask the parents:

> When you show her an apple, what do you say?" The parents quickly responded with the proper word. However, they were using both Persian and a Kurdish dialect in helping the child. At this point, I told them that they needed to practice the lesson in English because this was creating confusion for the child at school.[22]

The lesson learned from this incident is that, although the parents were being supportive of school efforts, there was a misunderstanding.

In another case, a hearing impaired child was provided with an augmentative hearing device (AHD) at school. At home, the child became frustrated and anxious. Since the family spoke no English, the MLO got involved. Other professionals also got involved, thinking that the problems were medically related. However, after extensive testing, the professionals did not find anything wrong beyond the original diagnosis. The problem was one of communication in four areas. First, the parents were operating from the cultural premise that the teacher was the expert. Second, the teacher did not call the family because they did not speak English. Third, the parents were worried that if the child was becoming mentally ill, it was going to be advertised to the school and the ethnic community. Fourth, for some ethnic groups, the family doctor is the expert.[23] Thus, rather than request a referral to a specialist, they continue to take the child back to the family physician. In fact, they may not even understand the concept of "specialist" doctors. Even though the MLO's intervention identified the source of the problem—that the child was not allowed to take the AHD home, causing her great frustration—the school still did not provide for its use beyond school grounds. These cases indicate the need for a family-centred and culturally-sensitive approach advocated and modelled by the MLOs.

Another aspect of refugee children's psycho-social development is taken into consideration when cultural interpreters are available in Canada to avert possible traumatic experiences. For example, in some cases refugee children's games and style of playing has been interpreted by school officials as "too aggressive" or misinterpreted as "fighting." However, when a principal in a Canadian school called two boys who were assumed to be fighting, the children responded as they hugged each other, "We were not fighting! We are friends!"[24] In similar situations, the MLOs continue to sensitize school personnel. Unfortunately, ethnic conflicts are sometimes transplanted to host nations, creating dilemmas for teachers and school administrators.

Through the interventions of the MLOs, consideration has been given to the children's needs regarding religious practices. In the case of Muslim children who fast for Ramadan, school rules that required them to be in the cafeteria became very difficult. To accommodate their religious observance, some school administrators opened a game

room during lunch period. Thus, "Muslim children could engage in educational games that entertained them instead of dealing with the temptation of eating when fasting."[25] Other principals interviewed accommodated the needs of Muslim students who pray.

> The school found a room for them. The school requests a parent's note granting permission for their children to be excused from class for a half hour every Friday. Since the children have to do a thorough cleaning of their bodies before prayer, the MLO has helped to accommodate their needs.[26]

Adolescent refugees face another set of problems in an already difficult developmental stage which is intensified by the refugee experience. Cultural interpreters, who interact with schools, parents, social agencies, and even police on teenagers behalf, deflect a great deal of conflict for teenagers. The MLO Program clearly indicates that developmental tensions are significantly worse for adolescents, since refugee children are under additional stressors imposed by flight and, in some cases, torture and abuse.

Dating issues, so critical for teenagers, often create cultural conflict at home, in the schools, and with the community. Teenage refugees find in MLOs "a friend," someone in whom they can have trust and who will listen to them. "Students find it reassuring to know that there is someone who understands the problems they face."[27] Students have benefited from counselling provided by bicultural counsellors or an MLO appointed by the board of education as a mental health worker. For parents, cultural interpreters organize conflict resolution workshops, classes about the host culture, and Parent Discussion Groups.

With regard to education, refugee students have been empowered. In cultural interpreters they find a listening ear and a person who understands their culture but is there to mediate for them when academic problems emerge. Not only are cultural workers positive role models for them, they also help "students realize MLOs are willing to help them find solutions."[28] For example, curricular goals that conflict with gender roles and religious beliefs have been mediated by cultural interpreters. Muslim girls who cannot wear sports clothes because of religious restrictions have been allowed to substitute computer classes for physical education.[29]

Culturally-affirming programs such as the MLO Program serve dual functions. First, cultural mediation fills a gap between the students' private world and school expectations that can clear the way for academic achievement. "It instills students with confidence in the school system."[30] Second, possible disengagement due to "cultural discontinuity" is averted, when refugee students' energies are channelled into setting up cultural youth groups, participating in heritage schools or participating in the foreign language program in which immigrant and refugee children teach their Canadian peers their native languages and cultures (discussed later) (Olneck 1994, 325). These activities foster and strengthen cultural identity while having a positive impact on students' academic performance. The academic environment is thus enhanced when students and teachers, through mediation by the MLOs, understand each other's meanings and symbols mediated by the MLOs.

Breaking Down Non-Academic Barriers in the Schools

School officials and educators often have the best intentions at heart, but may lack knowledge of the cultural ramifications of applying normal school procedures and rules to refugee children. Even when language translation is available, the cultural dimension may be overlooked, creating unnecessary tensions. As an elementary school principal from the Ottawa area stated, "Translation of words isn't enough. MLOs understand both the cultures and the school system." Further, as MLOs have indicated, "we don't take sides. We listen to both school officials and the parents, and try to help them understand each other's concerns."[31] According to a school administrator, MLOs "are excellent not just with literal translation but with nuances of cultural differences,"[32] especially when curricular issues are at stake. In fact,

> some curricular expectations may pose a potential conflict with religious or cultural traditions. For example, Muslims are not allowed to dissect frogs, therefore we have accommodated by providing computer programs that have simulations of the same procedure. Or we make teachers aware of the demands of Ramadan on the children. Teachers can then be sensitive to the effects of fasting on the children who may be more tired or irritable.[33]

Interventions by cultural brokers lessen the stress on teachers while supporting "culturally responsive instruction" (Olneck 1994, 325). Since academic expectations or pedagogical appropriateness may need cultural mediation, school support of MLOs as equal partners in school endeavours is critical. Schools should give MLOs access to e-mail.

> E-mail makes it easy to consult with MLOs. For example, a teacher contacted an MLO for the following: "I will be teaching an unit next week, but a student says there is a feast and he can't participate." Or male Muslim students may object to working in co-ed groups in a science class, or ninth graders have objected to participating in mixed groups in physical education classes. The student makes the request, but we consult with the MLO. If the MLO endorses it, teachers respect it.[34]

When teachers are able to understand that gender makes a difference when dealing with Somali boys, and that an overgeneralization that all "Vietnamese refugee children come with excellent academic skills" is just that, they can move on to meet the individual needs of new arrivals. Let us consider this example:

> A teacher complained to me [to the MLO] about the unusual behaviour of some of the newly-arrived Vietnamese students who were doing poorly academically. In particular, a boy pushed to be first in line for everything. Although there were plenty of pencils and crayons on every desk, he would take them and hoard them

in his desk. He did not take them home. He also displayed other aggressive behaviours towards his classmates.[35]

The cultural interpreter was herself a Vietnamese refugee who had also worked through the United Nations in refugee camps in Hong Kong. She explained to the Canadian teachers that

> these children had to learn [in the camp] that in order to get food, they had to push their way around and be first in line, otherwise they went unfed for the rest of the day because of food shortages. Many had not had schooling because it was unavailable in the camps.[36]

In this case, the cultural interpreter helped teachers deal with other non-academic issues that may affect the classroom experience. Consider the case of a mother whose daughter wanted to marry outside her ethnic group.

> In one of the Parent Discussion Group meetings, the mother had shared that she had told her husband she would not tolerate his hitting her children anymore. On one occasion, the daughter asked us [school officials] to be excused from an exam because of stress; she even had a doctor's note. This story seemed fishy to us, so we checked her record of lates and absences, only to discover that she had forged her mother's signature in 28 notes. We called the mother to discuss this. It turned out that since she [the daughter] was not allowed to see the guy, she was doing it during school time. Had the mother not been to the discussion groups, where she could see us as her allies, this wouldn't have felt comfortable to approach. The situation had a happy resolution through the intervention of the MLO. The girl is now allowed to see the young man.[37]

Issues of confidentiality are resolved when cultural interpreters are available at schools. Previously, schools have had to rely on children, creating ethical problems. On the one hand, negative effects commonly encountered when children are used as translators include: a compromise of confidentiality; lying about grades by the children; and the inability of the children to handle difficult emotional and linguistic situations.[38] On the other hand, school volunteers from the ethnocommunities may present problems, too. Issues of confidentiality may emerge when schools rely on these volunteers since they may know the family involved (Vargas 1998).[39] However, cultural interpreters who have earned the trust of the community have played a crucial role in averting these ethical dilemmas. The role of the MLO was central in a thorny situation: "We had to notify a mother about the accident her son had been in. Instead of calling her on the phone, we sent the MLO to tell her in person. Because contact had been pre-established, this was much easier to handle."[40] Because a working relationship had been developed with the mother, it was easier to break the bad news. Calling on a student to translate for school officials would have been ethically problematic, because of family privacy issues and because it would have placed another child in an emotionally stressful situation.

In other cases, cultural interpreters help teachers learn about the importance of cultural traditions that children bring to schools. In this manner, teachers deal with cultural differences that may impede learning. Regardless of the specific situation, the work of cultural brokers represents major strides in the adjustment of refugee children in the schools. Teachers spend less time on non-educational problems, which according to a respondent, "Allows us to spend more time on the job we were trained to do."[41] Another educator commented, "we treat people better," resulting in improved relations with parents and the community.[42]

Bridging the Parents and the Community with the School Community

The MLO program has been successful at building bridges between parents and other community members and the school community. Furthermore, the participation of parents and community members has a positive effect on the students and the school community (Nieto 1996; Tam and Spigelblatt 1993; Gandara 1995). The task of including refugee groups in the broader community may be overwhelming due to cross-cultural barriers. The MLO Program uses a "reach-out" approach before engaging in actual community organizing. The positive effect of the reach-out approach of the Multicultural Program on the children, the parents, the community, the teachers, and other school officials has been multiple. Although a common occurrence, police presence in the schools can trigger fear among refugees. Through the Parent Discussion Groups, the perception of police presence in the schools has been turned around.

> One issue that came up was the police presence in the school, because we have a police resource officer assigned to each school. Given that refugees have endured persecution by authorities in their homeland, when the children see a police car parked outside the school, they become alarmed. However, the officers are here to deal with safety issues, places to avoid and to alert them to certain parts of town. Other subjects covered by the officers is drug awareness educational programs. Since the officers sometimes are in uniform, the children responded with fear. These sessions have helped the parents and the children understand the officers' role. Consequently, the children have learned that it is all right to approach the officers.[43]

The MLO Program has afforded parents with critical system skills and knowledge how the school system works in Canada. "When parents understand the grading system, they can take a more active role in the progress their children are making."[44] The Parent Discussion Groups, created by an MLO, have been instrumental is communicating with school officials these kinds of concerns. At these meetings,

> We explain the Canadian school system, the general and advanced components or the academic versus applied courses. We also discuss marking (grading) procedures. Since there is a 40-hour community service requirement, we explore with the parents appropriate placements for

their children. For example, we discuss the needs in their communities, and linguistic considerations. The parents will share with us information on the [ethnocultural] organizations to which they belong, and request that their children do the community service requirement at one of them. This is helpful, because the organizations are based in their own communities solving transportation problems for the students.[45]

As parents learn more about the educational process of the host country and find a space in the school community, "they feel comfortable about volunteering at school and about participating in advisory council meetings."

Towards a Multicultural Society: Decreasing Racial Tensions

The contribution of cultural interpreters in addressing racial tensions in the schools has been attested to be critical. In Canada, the Multicultural Law was instituted in 1988 (Elliot and Fleras 1992). Regardless of the approach, laws need to translate into specific programs. In this respect, the MLO Program has been instrumental in building bridges across various ethnic groups and across ethnic groups and Canadian students. Specifically, racial and "cultural teasing" has been addressed by MLOs while facilitating a healthy integration of refugees into society.[46]

In many instances, not only have cultural interpreters deflected possible escalating conflict, but they have worked towards creating racial tolerance. The principal of a high school acquiesced with the perception of other principals:

> There has been a definite difference in the school since the MLO joined the school. In fact, within three months of her arrival, we were racial-conflict free. We have not had a single incident since then [one-and-a-half years old]. She is very artful at working with the students and the teachers. My colleague, who took over a school that was most problematic, has been able to turn the school around completely with the help of the MLO.[47]

MLOs step in to diffuse conflict, even when racial tensions are caused by students dating outside of their own ethnic group, or when conflict is due to imported tribal feuds. Cooperative efforts, such as the foreign language program or the cultural celebration activities, have been established with Canadian students to ease racial strain provoked by attitudes towards refugee and immigrant students. Specifically, ethnic, racial, and "cultural teasing" have been channelled into increased cultural awareness and acceptance of diversity, although much remains to be done given a recent assault on a Muslim student.[48]

Foreign Language Program: Planting the Seed of Diversity

Responding to the need to entertain children at lunch time during the frigid winter, an MLO developed the foreign language program at an elementary school. It consists of children teaching their native languages in 20-minute periods during lunch for a 10-week session. The languages are non-Western or nontraditional, such as Farsi, Arabic, Somali, Polish, Turkish, and others. Children volunteer to be "teachers." These children come into class with their portfolios of prepared lessons. Not only do they teach oral skills, but they also work on writing skills. Most impressive yet, their lessons include a strong cultural component. When asked to say what they liked about the program, children's responses were: "I get to learn a new language;" "we can speak with other people;" we get to do fun things and have a good time;" "it's fun to learn different things from around the world;" "if new people come [to school] we can speak to them;" "we're learning how other people communicate;" "it's easier to learn a language from another student;" and "we don't get put down and we don't get laughed at when we make a mistake."[49]

Observations of these student-teachers indicated that they, intuitively, are doing what current research on second language acquisition recommends: respecting the silent period, asking questions to assess learning, lowering the affective filter or having "fun" ("It's like playing!"), integrating listening, speaking, reading, and writing skills, using mistakes as opportunities for learning ("If we make a mistake, he tells us to try again!"), and teaching language in context ("they tell stories") (Richard-Amato 1996; Omaggio 1993; Oller 1993; Krashen 1985; Krashen and Terrell 1993). One of the child-teachers indicated that, "If you make them feel it's OK to make mistakes, they try again." Visually-rich and contextualized teaching materials, are created by the child-teachers themselves. Some of the illustrations with writing, tell stories.[50] The success of the program was such that it has been introduced to 11 other schools. Among the many features of the MLO program, the foreign language classes stands out as one that truly builds bridges among Canadian, refugee and immigrant children.

Celebrating Cultures

Another significant activity of the MLO is organizing cultural celebrations. At a high school, an MLO organized a comparative religion session entitled, "Christianity, Islam, and Judaism: A Comparative Study," in which a rabbi, a pastor, and a representative of the Muslin religion discussed the pillars of each faith.[51] At another high school, a similar activity was conducted with student representatives of each religion. "After each student talked about his or her religion, we asked them about commonalities among all.[52]

Schools, the community, teachers and students have joined hands to celebrate cultural diversity. Celebration of multicultural week, and regular workshops for school personnel and for students have become part of the schools operation. The MLOs provide multicultural training for school personnel and organize the Multicultural Celebration Week Fairs for students and parents in which at least 16 cultures are introduced through 25-minute presentations by representatives of those cultures. Multicultural dinners renamed "International Dinner" in order to attract participation of Canadians have become a common practice at schools to bring schools and community members closer together.

Possible cultural collisions are certainly averted when refugees are allowed to retain their native language. The benefits of preserving ethnic groups at the local level are twofold. First, the ethnic group can evade harm from assimilation or "cultural discontinuity" (Olneck 1994, 325) in which the native culture is surrendered. Second, they enrich the communities where they resettle with their cultural, intellectual, and linguistic heritage, e.g., when refugee children teach their languages to Canadian children through the Foreign Language Program.

Conclusion

Cultural interpretation services based on a systemic approach that considers the child, the parents, community, teachers, and school officials contribute to the well-being of all involved. The lessons learned from this kind of study of a model of cultural mediation can contribute to the building of partnerships among the schools, the community, and other social service agencies who serve refugees. An essential ingredient of this program has been the consistent efforts of cultural interpreters towards building trust among students, parents, teachers, school administrators, and the community at large. This goal has been achieved through small efforts, from translating for Somali mothers with limited literacy to explaining school rules and regulations to children and parents, taking parents to doctor's appointments, mediating between teachers and students about possible misreading of academic objectives, developing foreign language programs taught by refugee children, etc. A principal stated that, it [the interventions of the MLO Program] leaves the door open for children to get on with their learning and teachers to focus on teaching." An MLO portrayed it as "a puzzle that comes together."[53]

The Multicultural Liaison Program offers hope in addressing these needs which can only occur when communities are committed to, and supportive of, pluralistic societies. Although this has been a solid program, it still faces pressures due to funding cuts to NGOs and schools. Although expansion has been a positive force, it also demands more effort to maintain the network and cohesion that promotes success. The complexity of changes in funding for both NGOs (Herman 1994) and schools may undermine the work of both, if ministers and local officials are not alert and sensitive. These threats need to be addressed in greater detail, since it is clear that the government/NGO partnerships are becoming more complex every day (Weisbrod 1997). Notwithstanding these concerns, the MLO program provides an important model for action. ■

Notes

1. Interviews with MLO Director, Ottawa, Canada, November 1993, February and April 1994; personal communications, January 1996; conversations, August and December 1996, April 1997, April 1998.
2. Interview with Multicultural Liaison Project Director on February 7, 1994, Ottawa, Canada.
3. Ibid.
4. Interview with MLO Director and two MLOs from Somalia, Ottawa, Canada, November 1993, February 1994, and April 1994.
5. OCISO Interviews with Community Development Workers, Social Workers, MLO Program Director, February 1994, Ottawa, Canada.
6. Interviews with the MLO Program Director, Ottawa, Canada.
7. Personal communication with MLO, April 1998.
8. Interview, MLO Director, April 1994, Ottawa, Canada.
9. Interview with MLO fluent in both Vietnamese and Chinese, February, 1994, Ottawa, Canada.
10. Interview, MLO Director, April 1994, Ottawa, Canada.
11. Ibid.
12. Interview with the principal of Elementary School No. 1, February 1994, Ottawa, Canada.
13. Interview with MLO Director, April 1994, Ottawa, Canada.
14. Physical, emotional, and cognitive manifestations of PTSD: loss of interest in age-appropriate activities, listlessness, concentration difficulties, daydreaming during class, aggressive or regressive behaviour (e.g., bedwetting), restlessness, detachment from others, intrusive images and flashbacks, bitterness, fear of particular noises [helicopters flying over], depression, and irritability.
15. Interview with MLO Director, April 1994, Ottawa, Canada.
16. Personal communication with MLO, October 1998.
17. Interviews with MLO Director and several MLOs, April 1994.
18. This is how the principal of High School No. 1 conceptualized the work of the MLOs, interview, April 1994, Ottawa, Canada.
19. Interview with the principal of High School No. 4, December 1998.
20. Interview with the principal of High School No. 4, December 1998.
21. Ibid.
22. Presentation by three MLOs, Vermont Interdisciplinary Leadership Education for Health Professionals Program (VT-ILEHP), University of Vermont, October 1998.
23. Ibid.
24. Interview with the principal and vice-principal of Elementary School No. 2 in the Ottawa-Carleton area, April 1994, Ottawa, Canada.
25. Interview of MLO, Ottawa, Canada, April 1994.
26. Interview with the principal of High School No. 4, December 1998.
27. Interview with MLO who speaks seven languages, April 1994.
28. Interview with Principal, High School No. 4, December 1998.
29. Interviews with the principal of High School No. 2, and Somali MLO assigned to it, Ottawa, Canada, April 1994.
30. Interview with the principal, High School No. 4, December 1998.
31. Personal conversation, three MLOs, October 1998.
32. According to the principal of Elementary School No. 1 which had 47–50 percent English as a Second Language students, February, 1994, Ottawa, Canada.
33. Interview with the principal of High School No. 4, December 1998.
34. Ibid.
35. Interview with MLO, Ottawa, Canada, April, 1994.
36. Ibid.
37. Interview with principal, High School No. 4, December 1998.
38. For an excellent discussion of a cross-cultural misunderstanding in the health arena and the importance of cultural brokers, see Anne Fadiman, *The Spirit Catches and You Fall Down: A Hmong Child, Her American Doctors, and the Collision of Two Cultures,*

(New York: Farrar, Straus and Giroux, 1997).

39. Telephone conversation with MLO Director, January and April, 1996.
40. Interview with the principal of High School No. 4, December 1998.
41. Interview with the principal of elementary school Elementary School No. 2, April, 1994, Ottawa, Canada.
42. Interview with the vice-principal of Elementary School No. 2, April 1994, Ottawa, Canada.
43. Interview with the principal of High School No. 4, December 1998.
44. Sonia Nieto discusses this at length in her book, *Affirming Diversity*. In the book's case studies, what becomes clear is that parents from diverse ethnic or racial or cultural background indeed care about the education of their children, even when they are not actively involved with the school, or when parents do not have any communication with school officials.
45. Interview with the principal of High School No. 4, December 1998.
46. Interviews with various MLOs, attendance of Multicultural Week Celebration, and interviews with school administrators, November 1993, February 1994, Ottawa, Canada.
47. Principal at High School No. 3, Ottawa, Canada, November 1998.
48. A Somali female high school student was assaulted by her classmates right after school and outside school after continuous racial teasing and singling out. She was the only Black student in the school. The assault was so severe that she is at risk of losing a kidney and other possible consequences, January 1998.
49. Classroom observations at elementary school Elementary School No. 2, Ottawa Canada, June 1997.
50. Ibid.
51. Meeting at High School No. 3, Ottawa, Canada, November 1998.
52. Interview with the principal of High School No. 4, December 1998.
53. An MLO from the Middle East, fluent in seven languages, described the role of the MLOs in this manner.

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REPORTS

- **Somali Refugees in Toronto: A Profile**

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- **Refugee Families and Children: A Directory for Service Providers in Metro Toronto**

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- Security in refugee camps in neighbouring countries;
- Implications for regional security;
- Implication for national security such as Kosovo;
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- Discussion of solutions such as safe zones;
- Discussion on repatriation options (or other permanent solutions), and under what circumstances; and
- Resettlement of Kosovar refugees in Canada.

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