

THE INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM

State Responsibility to Protect Human Rights Defenders
Sunila Abeysekera Commemoration

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We as individual human rights activists, as well as the human rights community as a whole greatly miss Sunila today. As we struggle to grapple with myriads of contemporary challenges we miss her indomitable character, and energy. As we gather today to celebrate her life and work since she left us so suddenly - exactly a year ago, her memories still remain fresh in my mind. As I stated in my speech made in the first South Asian Sunila memorial lecture held in Dhaka organised last year by Sangat the South Asian Feminist, we will continue to remain in conversation with you Sunila.

Sunila led a beautiful life. But she also undertook many hazardous journeys. Her work and life was this journey. She took difficult and daring options in this journey. I am well aware that many persons looking at Sunila from afar would not have understood this woman. Many images some negative and some positive have been woven around this character Sunila. There were some who detested her for her political views and life choices. May be some people even hated her for her courage and forthright way of speaking. But knowing Sunila and borrowing a page from her thinking we must count all the facets in some one's life and work in the midst of varying reactions and relationships.

Actually, the key note of her life was 'relationships'. Sunila did nothing without this emotional undertone. She did not relate to ideas without a bond. She did not pursue ideas and activities technically, as an "expert" to harness or as a project to be fulfilled within a given time period. She kept true to the era and history that created her. She came nurtured by the progressive thinking in the late seventies and was immersed in the political ideology of the JVP in the late seventies. The 'class-struggle' in Sri Lanka was challenged to encompass and expand its definitions by being inclusive - integrating feminist ideology and women's liberation, right of self-determination of the Tamil speaking people, non-discrimination of those with different sexual orientation. Even though the present day media and our critiques attack us, human rights activists as those promoting neo-liberal policies of the west, they deliberately ignore the historical circumstances which gave birth to characters like Sunila and the human rights community in Sri Lanka, which is unfortunate.

We can introduce Sunila in many ways, a feminist, and a human rights defender, a person

who was in the art and film world. The list is long. My reflections will be based on what she was deeply committed to towards primarily protecting and promoting: human rights born out of her experiences from the JVP struggle. This expanded into new vistas as socio-economic and political processes in Sri Lanka evolved in the globalisation era and the post 9/11 scenario culminated in the increase of state repression against all dissent as 'work against sovereign countries' 'engagement with terrorists' and 'work of traitors paid by imperialists'. You are all familiar with the scenario which is propagated against human rights defenders. Sunila was subjected to this same repression.

We both met in our activism related to pioneering the first radical women's rights forum in the early eighties. Though she and I were students at Bishop's College we struck a friendship only after we left the college as collaborators of the Women's Action Committee formed in 1980. Known as WAC the first women's network tried to develop solidarity among plantation and free trade zone workers, rural women, women writers and peace activists which helped us in deepening our analysis of feminism.

The repression and the emergence of fascist and right wing Deshapremi Chinthanaya in 1989 changed the trajectories of our movement and propelled us to the work in the area of human rights. In my personal conversation with her we often 'regretted this phase' since to some extent our women's involvement had to be detoured. With the mass scale disappearances in the South and as the threat of disappearances loomed over progressive and left activists with whom we were involved new solidarities had to be formed. She became fully involved in her fight against disappearances and was involved with the Mothers Front in the South. I am sure His Excellency Mahinda Rajapakse will have many memories of Sunila during this period as he was also a champion against disappearances and claimed that 'He will even go to the Devil's mother to find justice for the families of the disappeared'. While the young Mahinda changed course our dear Sunila remained on course till her last breath left her body.

The story can be long but Sunila's efforts to give visibility to human rights violations as well strengthening local initiatives is much known. Forming the INFORM Documentation Centre she provided strength to the work in developing skills related to information gathering, documentation including empowering communities and giving confidence to victims to speak out. As experienced human rights defender she gave much prominence to work related to protecting human rights defenders as she herself had to leave the country in the late eighties due to death threats. The work of human rights defenders have assumed greater recognition and is acclaimed mainly due to work done by people like Sunila and others all over the world. She was not alone in this struggle. She received several international awards in recognition of her commitment and contribution made towards this end.

The Declaration on Human Rights Defenders

It is this kind of involvement of human rights activists that lead to the emergence of a new declaration at the UN level which spoke about the need to protect human Rights defenders. Elaboration of the Declaration on human rights defenders began in 1984 and ended with the adoption of the text by the General Assembly in 1998, on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights. A collective effort by a number of human rights non-governmental organizations and some State delegations helped to ensure that the final result was a strong, very useful and pragmatic text. Perhaps most importantly, the Declaration is addressed not just to States and to human rights defenders, but to everyone. It tells us that we all have a role to fulfil as human rights defenders and emphasizes that there is a global human rights movement that involves us all. The Declaration's full name is the **"Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms"**. This longer title is frequently abbreviated to **"The Declaration on human rights defenders"**. In adopting the special Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and respect Universally Recognised Human Rights and Fundamental Freedoms the United Nations has taken a great leap forward. It is clear that the UN gives great importance to the work carried out by human rights defenders. It is clear that the primary responsibility for the protection of human rights defenders lies with Government, as set out in this declaration. We have to work together to get all government globally and especially GOSL to take seriously their obligations in this regard and take effective measures to ensure protection of human rights defenders.

Legal character

The Declaration is not, in itself, a legally binding instrument. However, it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding – such as the International Covenant on Civil and Political Rights. Moreover, the Declaration was adopted by consensus by the General Assembly and therefore represents a very strong commitment by States to its implementation. States are increasingly considering adopting the Declaration as binding national legislation. For example African and European Union has developed special policy documents in this regard.

The Declaration's provisions

The Declaration outlines some specific duties of States and the responsibilities to protect human rights defenders. There is an obligation under the Declaration to conduct peaceful activities.

What does the right to be protected entail?

States bear the primary responsibility for protecting individuals, including defenders, under their jurisdiction, regardless of the status of the alleged perpetrators (A/HRC/13/22 para. 42). For instance in 2012 the statement made publicly by a Cabinet Minister that 'limbs and hands of Nimalka Fernando and Sunanda Deshapriya will be broken' has been today recorded in the report of the Secretary General of the United Nation on Reprisals Against those collaborating with the UN System. Up to date the UN notes that GOSL has failed to take action against the perpetrators of such intimidation against human rights defenders. Is this an intrusion into our sovereignty? Why is the UN taking such incidents seriously? It is due to the protection provided by the Declaration.

The State's duty to protect the rights of defenders from violations committed by States and non-State actors is derived from each State's primary responsibility and duty to protect all human rights, as enshrined in article 2 of the International Covenant on Civil and Political Rights, which establishes the obligation of States to guarantee to all individuals within their territories and subject to their jurisdiction the rights recognized in the Covenant without discrimination (A/65/223 para 30).

On the other hand, States are also called upon to act with due diligence to prevent, investigate and punish any violation of the rights enshrined in the Declaration. In other words, States have a primary responsibility to prevent violations of the rights of defenders under their jurisdiction by taking legal, judicial, administrative and all other measures to ensure the full enjoyment by defenders of their rights; investigating alleged violations; prosecuting alleged perpetrators; and providing defenders with remedies and reparation (A/65/223 para 34).

Examples of actions or omissions which contravene the State's duty of due diligence include the failure to provide effective protection to defenders at risk who have documented attacks and threats by non-State actors or who have been granted interim protection measures by regional human rights mechanisms (A/65/223 para 35). The obligation on States to protect includes both negative and positive aspects.

For example the disruption of our meeting on 4th August by a group led by some in yellow robes is construed as an act by a group of non-state actors and the government has a moral obligation to inquire into this incident and take action against the perpetrators for attacking a peaceful assembly and threatening our right of association.

On the other hand The Declaration also speaks of the necessity of the duty of the State to safeguard human rights. The Declaration on human rights defenders contains a series of principles and rights that are based on human rights standards enshrined in other legally binding international instruments, such as the International Covenant on Civil and Political Rights. The State's duty to protect all human rights includes the protection of the rights of human rights defenders. Thus, for instance, the right to life, the right to privacy, and the rights to freedom of association and expression should be protected from violations not only by State agents, but also by private persons or entities. The Declaration firmly affirms that this duty should be applied at all times (A/65/223 para. 31)

The Declaration reaffirms rights that are instrumental to the defense of human rights, including, inter alia, freedom of association, freedom of peaceful assembly, freedom of opinion and expression, and the right to gain access to information, to provide legal aid and to develop and discuss new ideas in the area of human rights. Implementing the Declaration is a precondition for the creation of an environment that enables human rights defenders to carry out their work (A/63/288 Annex para 2). Read within the framework of this section it was the correct position we as human rights defenders community took in rejecting the letter which was addressed to NGOs by the Secretary of the NGO Secretariat on 31st July 2014 which was an attempt to restrict our right to work freely and peacefully.

Recent events inside Sri Lanka as well as in South Asia in general have generated conditions that pose greater challenges and risks for the human rights community and demand a stronger affirmation of the commitment to the respect for human rights and fundamental freedoms.

The Declaration on human rights defenders broadly acknowledges the value of the work of HRDs as well as the legitimacy of their action for the promotion and protection of human rights. The protection of defenders is central to the promotion of human rights, the development and strengthening of democracy and the respect for the rule of law. Unfortunately all these core principles have been grossly violated today in Sri Lanka as democracy is blatantly assassinated every hour every minute by those in governance. Where legitimate activities of the Civil Society is made 'unauthorised' by an authority that lacks legal standing like the so called NGO Secretariat which is the kept tool of the Defense Secretariat. The protection of defenders therefore takes a gigantic proportion.

The United Nations system not only provided a declaration but also equipped the international community with an effective mechanism, with the appointment of a Special Representative on Human Rights Defenders in the year 2000. This was a measure on one hand to monitor the situation of the HRDs and on the other hand to seek the

implementation of the Declaration in a manner that eliminates the risk to which defenders are exposed.

State's responsibility for the acts of non-State actors

In the context of human rights violations by third parties, the obligation to protect, first, involves ensuring that defenders do not suffer from violations of their rights by non-State actors. Like the Bodu Bala Sena or Ravana Balaya. Failure to protect could, in particular circumstances, engage the State's responsibility (A/65/223 para. 29). For instance, acts and omissions committed by non-State actors under the instructions, control or direction of the State can, under certain circumstances, give rise to State responsibility.

One example of a situation might be where a State creates or equips armed groups, such as paramilitaries or armed bands, and instructs them to attack human rights defenders. In this instance, the paramilitaries could be considered de facto State organs, and the commission of acts in breach of international law against defenders could be attributed to the State (A/65/223 para 41. Failure by States to prosecute and punish such perpetrators is a clear violation of article 12 of the Declaration on Human Rights Defenders. Addressing the issue of impunity is a key step to ensuring a safe environment for defenders (A/HRC/13/22 para. 42). The rights enshrined in the International Covenant on Civil and Political Rights, including the right to life and freedom of association and expression, should be protected from violations not only by State agents, but also private persons or entities (A/HRC/13/22 para. 43).

This aspect assumes great importance to us in Sri Lanka. Most of the incidents that have taken place in the North have been committed by unidentified persons including the *grease yakkas* who prowled around in the North and East harassing women. Similarly unidentified gangs attacked peaceful public demonstrations by the internally displaced persons in the North on several occasions.

Responsibility of non-State actors

Although States bear the primary responsibility for protecting human rights defenders, it is necessary to recall that the Declaration on Human Rights Defenders is addressed not only to States and human rights defenders, but to everyone. It is set forth in article 10 of the Declaration that, —no one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms (A/HRC/13/22 para. 44, A/65/223 para. 2).

In addition, the Declaration reaffirms the responsibility of everyone not to violate the rights of others, encompassing the responsibility of non-State actors to respect the rights of human rights defenders, in the preamble as well as in articles 11, 12.3 and 19 (A/65/223, para 22).

Accordingly, all non-State actors, including armed groups, the media, faith-based groups, communities, companies and individuals should refrain from taking any measures that would result in preventing defenders from exercising their rights. On the contrary, non-State actors can, and should, play a preventive role by promoting the Declaration as well as the rights and activities of human rights defenders (A/65/223 para. 22)

The Context in Sri Lanka

I am sure some of you would have thought I am sharing a Grimm's Fairy Tale Human Rights Defenders story. Unfortunately in our country nobody bothers about the international laws and policy frameworks. We continue to remain as a member of the United Nations and the Commonwealth flouting the very basic principles which forms the core spirits of these organisations.

All regimes in Sri Lanka since the promulgation of the 1978 Constitution have used Executive powers to cripple dissent and movements for rights. We have reached the highest scale of this authoritarianism with the introduction of the 18th amendment to the Constitution. The President and the political leaders in the government including their kith and kin view human rights and human rights defenders as a threat to their very existence and power. I definitely will not deny this impact on them because this is precisely what we stand up for as a community of defenders. We stand up and shout against impunity and the assault against the rule of law and independence of judiciary since they are our bastions for justice. We meet the victims and support them in their struggle to seek redress at all levels as they go before the LLRC, ICRC and onto Geneva. When there is now relief at the local level based on the rights accorded to us as citizen's of a country which still remain as a member of the United Nation ICCPR provides us the right to go to Geneva.

I am often told by those supporting the government and those engaging with the government (actually I do not see the difference anyway) that we have to remain neutral and independent. We are independent but what we talk about, and criticize and challenge the processes related to governance and political ethos. This process also challenges us to be in dialogue and interaction with political parties who are in the opposition. In 1989 those working against disappearances linked up with the Sri Lanka Freedom Party. Today some of us are similarly working with oppositional forces in the

country in addressing the larger issue of a failed and dysfunctional state, a corrupt administration and a Judiciary dominated by the Executive.

This is the main reason why we are harassed and abused, exposed to be eliminated for being traitors in the media like what they do every day in the Independent Television Network in their prime time news bulletin. After conducting a live state radio programs where callers are encouraged to make comments about how to kill us, they inform us later that such `live broadcasts are not in our records'. Therefore even if we want to seek local remedies, with no evidence it becomes a tough task. We as human rights defenders are not merely seeking to apply the technicalities of the provisions.

Methods of targeting defenders are becoming more and more sophisticated and dangerous, just as the range of perpetrators of violations grows wider. The arrest and detention of Ruki Fernando and Fr Praveen illustrates the nature of this intimidation. They have been silenced with no charges filed against them.

The activities of armed groups, religious extremist's forces sponsored or tolerated by the states or acting independently, as well of those of military and other security groups have become a major threat to the security of human rights defenders in Sri Lanka, and are directly or indirectly undermining our work. A significant challenge facing us in Sri Lanka today is the impunity enjoyed by these forces to carry out their activities with blatant disregard to fundamental rights.

As the Commission of Inquiry is probing into the events under the UN Resolution which demands an investigation into war crimes allegations and serious violations of human rights and humanitarian laws during the war and continuing violations of human rights in Sri Lanka a third narrative has "appeared" while there is also an "engagement with the Defense Secretary". We should remain in dialogue only with a civil administrator and not with a retired Colonel. We have to be propelled not by logic for survival. We have to be motivated by the moral imagination a passion to search for the truth.

I wish to label therefore these efforts as `enterprising mechanisations' of the regime to lower and demean civil society stature. Further these actions bring disrespect to the agony of hundreds and thousands of victims of the war. These are ploys to divert the attention of the international community to the reality. To us, there is only one narrative we have, and that is of the victims. We shall carry their tears and pains as the one and only narrative before any commission. We will sacredly hold the hand of Nimala Ruben and Dilrokashan and give testimony to the fact that inside a Prison managed by the government their death took place. We will speak regarding the brutal violence faced by Isipriya on behalf of thousand others who cannot speak or are forced into silence. In the

indomitable style of Sunila we will go to Kabithigollawa and be with the community tendering to their needs as the government only make them pawns for their political gains and speak to them about the injustice of the war that divided our communities and spread hatred and violence.

There is a notion that the issue of accountability and truth seeking are alien to us, our soil and not the Asian way. We are being told that as inheritors of great civilisation we know how to respect human rights. Unfortunately in the ancient times rulers had the choice of becoming either Chandaasoka or Dharmasoka. If the ruler is good and is sincere they ruled the kingdom as dharma kings. But unfortunately these precepts were non-binding Dharmas. We have seen many wars fought with no sense of accountability. It was after the Second World War disaster and genocide of Hitler that the League of Nations vowed that such carnage should not happen in the world again. This gave birth to the Universal Declaration of human Rights which was endorsed and approved today by all the nations of the world including all the Asian States. Human rights, rooted in the United Nations Charter, to which all the countries on earth are signatories, is the only universal language we really have, to protect individuals and to fight for justice. Every Asian country in the United Nations voted for the Universal Declaration of Human Rights when it was adopted by the General Assembly.

Our Struggle

To Sunila and to us, it was, is and always will be important to identify individual perpetrators and hold them responsible and accountable for the violence and the war crimes they committed, it is important to make visible and dismantle those structures and institutions that have in fact generated and continue to legitimize such horrifying violations. We cannot allow our rulers in Sri Lanka and elsewhere in the region to make our struggle for justice especially gender justice become individualized, depoliticized and decontextualised.

SUNILA called us to join collectives of women all over the world to write another history, a history to counter hegemony, a history of the marginalized and of the margins, a story about a journey rather than that of a defined destination.

Like Sunila, as South Asian women, for years since 1992 we worked for the unity of our people. Like Sunila, we gathered across the region, like we are doing now calling to build on a vision that has long been held by South Asian activists for peace and democracy, that a “union of the states of South Asia would hold the promise of a dream fulfilled for all its peoples, a dream of prosperity, equality, justice, rights and dignity. Such a dream cannot be based on any idea of a union that is state – centric, a union that represents the

interests of our political and economic elites, a union that is imposed on the peoples of South Asia by force and driven by the greed for power.

Our region remains under tremendous geo-political pressures in re-aligning power relations among different countries within South Asia (eg. the India – US nuclear pact and the treaties with individual countries to fight the so-called War on Terror).

Nation-states have easily compromised their talk of sovereignty when reaching agreement on regional integration in the economic arena, through trade agreements, common practices in terms of customs barriers, usage of common currency and easier travel and visa regulations for the business community and state officials. Yet the poorest of us must face perilous and illegal journey through mountains, forests and even the deep blue sea just to ensure that our children have something to eat.

South Asian countries have shamelessly mortgaged our future, the future of our peoples in this era of globalization to enjoy the perks of international neo-liberal economic agenda. For instance, in Sri Lanka post-war development and growth is steered by the ideology of a one nation agenda and the nurturing of hegemonic rule.

As feminist activists opposing the neo-liberal model of economic development, and varied forms of political authoritarianism that religious fundamentalism assume, we have been an integral part of struggles all over the world. We do this, because like Sunila, we know that these structures have an adverse, if not retrograde impact on the lives of all women (see South Asian Feminist Declaration 2006).

As feminist activists, we would struggle to ensure that this framework is imbued with the principles of human rights, committed to equality and non-discrimination and focused on the achievement of human security and human dignity.

The challenges posed to our lives, livelihoods and environments by the forces of globalization, religious fundamentalism and militarization are making the lives of our people ever more difficult. The increasing growth of impoverishment among a majority of our people in our sub-continent is linked with the ever widening cycles of violence and intolerance. Identity-based politics and the growing politicization of religion, the manipulation of religion, ethnicity and culture for narrow political objectives increasing our levels of insecurity and exposing us to conflicts that are barbaric and inhuman. It threatens the underlying pluralism of our social fabric.

It is precisely to challenge these realities that we must explore the potential of a People's Union of South Asia, even if only as a dream, as a part of our struggle to restore our

humanity and expand our collective strength against the forces that are allied against us. We dare to dream, like Sunila dared to dream.

The Sri Lankan state has signed and ratified the UN Charter, the International Covenant on Civil and Political Rights, the International Covenant on Economic and Social Rights, the Convention Against Torture, the Geneva Conventions among others. We did so because we want to improve the quality of life of our people and to be part of the comity of nations. We cannot suddenly say when it is inconvenient and our impunity is threatened - that we now want 'Asian values'. 'Sri Lanka has a long tradition of respecting human rights'. We don't need to fake a fast unto death in front of the United Nations office in Colombo or elsewhere in denial of our obligations. We have ratified them so we have to behave as a respectable nation and universal principles related to human civilisation after the period of enlightenment are part and parcel of each countries sovereign obligation and imperative.

Let me end these few moments of talking with Sunila and all of you, remembering what she said to us when vilified, attacked and abused by the Sri Lanka authorities for demanding accountability, to uphold rule of law and yearning for reconciliation,

"As human rights defenders working to defeat impunity in Sri Lanka and to build a strong system of justice and accountability for human rights violations, whether committed in the past or in the present, we remain committed to our ideals and to our goals. For us, whether there is a Resolution on Sri Lanka at the UN Human rights Council or not, our work to defend human rights in Sri Lanka must, and will, go on."

Thank you all. Thank you SUNILA for allowing me ramble on. We miss you very much.

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