

“THE NEED TO ENERGIZE CIVIL SOCIETY”

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I begin by expressing my deep gratitude for the invitation to address you so as to share some of my thoughts on this important subject. I have, both while I was abroad and following my return to Sri Lanka a few years ago, observed the activities of the Citizen’s Movement for Good Governance (CIMOOGG), with admiration for your courage and your consistency. I have also been associated with your energetic President, Dr.A.C.Viswalingam, for many years and have more recently been together with him in a like-minded forum.

The subject we have agreed on arises out of a desire not to yield to the widespread despair as to what civil society can do in the present state of the affairs of our country. It seeks to resist the fatalism of the “kaata kiyannada?” syndrome that is all too easily adopted as an escapist mode. As we made the transition from a feudal society under our own kings into a

colonial polity under Western rule which held sway in major parts of our country for four and a half centuries, a culture of acquiescence was inculcated among the people. There were of course notable exceptions such as the resistance of the Kandyan Kingdom till 1815; the rebellions of 1818 and 1848 and the Buddhist Renaissance of the late 19th century.

Civil society is a modern concept although its origins can be traced in history to early times. There will always be disputes about any definition of what civil society is. In a series devoted to the subject some years ago the BBC proposed this – “*A civil society is a public space between the state, the market and the ordinary household, in which people can debate and tackle action*”. The World Bank has adopted a definition of civil society developed by a number of leading research centers as referring to, and I quote,

the wide array of non-governmental and not-for-profit organizations that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide array of organizations: community groups, non-governmental organizations (NGOs), labor

unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.

In the 63 years since we regained our independence the concept of a civil society in a democratic nation has barely had time to mature and take root. It has also been enmeshed in the many contradictions and controversies of the nation-building process in our multi-ethnic and multi-religious country. There can therefore be no comparison with the role of civil society in older democracies in the West or with India where a fiercely independent civil society was born out of the freedom struggle and Mahatma Gandhi's non-violent satyagraha. It is estimated, for example, that there are 1.5 million non-profit, voluntary citizens' groups in India while the register of our National Secretariat for NGOs states that we have 1350. Nevertheless a number of Sri Lankan civil society organizations played a significant role in the protection of human rights before and after the advent of LTTE terrorism and they included the Civil Rights Movement led by the late Bishop Lakshman Wickremesinghe.

Civil society encompasses the general public of our country outside of the Government and its public service apparatus. NGOs are specific not-for-

profit bodies established for specific purposes. NGOs are therefore a part of civil society but are not necessarily representative of it. There is a great diversity among NGOs in Sri Lanka and elsewhere and to conflate NGOs with civil society is misleading. The distinction is an important one and I will return to it. There has unquestionably been an expansion of the space for civil society after the defeat of the LTTE terrorism. In a post-conflict period where reconstruction, rehabilitation and reconciliation are part of the healing and nation rebuilding process, civil society can assist the Government in diverse ways.

Looking around the Global South today we must count our blessings. We are still a participatory democracy with fundamental rights that are justiciable under the Constitution and the right to change our Government through the use of the ballot; we still have free expression through the media, whether mass or social, despite the dead hand of self-censorship, the attacks on media offices and the harassment of journalists; we still have universal access to free education from primary to tertiary level and to good health care and we enjoy the economic benefits of a middle income country. Moreover, based on key indicators such as life expectancy, we enjoy a Human Development Index of 0.658 and are ranked 91 among 169 countries

listed in the UNDP's Human Development Report of 2010. We are thus neither at the top nor the bottom of the class but, as the school report cards used to say, we can do better.

The fact that we may be young as a civil society does not mean we are not a caring society. A news report last month of a poll, by the well-known public opinion research agency Gallup on civic engagement, may even have surprised some of us Sri Lankans. We were ranked 8th among 130 countries on the likelihood of individuals volunteering their time and assistance to others. The US was ranked 1st with a score of 60% while we scored 51% and led all of South Asia. The conclusion drawn was that (and I quote from the report) *“people with high civic engagement are positive about the communities where they live and actively give back to them.”*

We have traditionally been a closely integrated society with inbuilt social security systems that help our less fortunate relatives and friends. A bereavement in a neighbour's family, the financial distress of a friend or accommodation for a poor or elderly relative meets with spontaneously generous responses even among the poorest. Our society's responses to the tsunami and now to the floods have been exemplary. Likewise the concept

of shramadana and voluntary work in public projects has been a traditional feature embedded in our culture for centuries. It is but a step from this charitable concern for our fellow citizens and constructive community action to civic, non-partisan involvement in issues that impact on the welfare of our society as a whole and our rights as citizens.

Why have we not taken that step so that civil society can be more effective in the good governance of our country in partnership with Government? I suspect the reason lies firstly, in the confusion between non-governmental-organizations or NGOs and civil society. Secondly, there is the conviction that civil society and NGOs are both concepts imported from the West and financed by foreign sources which invariably work against the sovereignty of our country and our national interest. This was especially so since many NGOs advocated a peaceful resolution of the conflict with the LTTE.

The fact that successive Governments have received aid from foreign governments and had conducted peace talks with the LTTE or that several NGOs have indigenous roots and guiding philosophies in tune with our culture has not altered this perception. And, thirdly, there has been such a heavy politicization of our society in over six decades of the practice of

partisan politics that every participant in public life and every opinion expressed is viewed through the prism of party politics. We no longer appreciate the fact that honest men and women can disagree and that dissent is a necessary feature in democratic society. Successive governments have adopted the posture that “If you are not for us; you are against us”. These trends existed when the country faced the serious threat of terrorism aimed at the division of the country but have continued even after the successful defeat of that threat. No wonder then that civil society has not been able to flourish as effectively as in other countries.

The highly respected Judge Christopher Weeramantry published a book on “A Call for National Reawakening” in 2006 in which he frankly examined our national strengths and weaknesses. Underlying his recommendations is his confidence in the people of our country when he writes,

I am convinced that there are large numbers of Sri Lankans of the utmost integrity and deepest dedication to the national interest who serve in every department of Sri Lankan life. It so happens that a climate of disregard of standards has grown up so severely in practically every walk of life that the patriotically and

altruistically inclined are submerged under the weight of contrary practice and culture too strong for them to prevail against.

That can and must change through a fundamental transformation of attitudes on the part of civil society and the pooling of its efforts towards common causes that protect and enlarge our democratic rights.

Our Constitution refers to both fundamental rights as well as to duties and obligations that all of us have as citizens. Thus Article 28 says, and I quote, “The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly it is the duty of every person in Sri Lanka -

- (a) to uphold and defend the Constitution and the law ;
- (b) to further the national interest and to foster national unity ;
- (c) to work conscientiously in his chosen occupation ;
- (d) to preserve and protect public property, and to combat misuse and waste of public property ;
- (e) to respect the rights and freedoms of others ; and

(f) to protect nature and conserve its riches. “

While this article is not, as Article 29 says, justiciable it must obviously be considered when other articles are interpreted providing as it does a Constitutional basis for civil society action. To support such actions then the long awaited Right to Information Bill must be enacted into law, with whistleblower protection. Civil society action must therefore be in consonance with the duties and obligations of the citizen which includes upholding the rule of law and litigating in the public interest.

Energizing civil society is not a recipe for revolution. It is not even anti-government since civil society has the enormous potential of helping government in its complex task of translating its popular mandate into practice while resisting the pressures of vested interests. Let us begin with civil society using the mechanisms available to it. There are numerous opportunities ranging from the “Letters to the Editor” columns of the daily newspapers, representations to your local M.P. and so on but I will confine myself to three processes which in my view civil society in Sri Lanka does not make adequate use of. They are(1) The office of the Parliamentary

Commissioner for Administration (Ombudsman) (2) The Parliamentary Committee on High Posts and (3) Public Interest Litigation.

The old office of “Dukganna Rala” under our kings is today known as the Ombudsman associated in modern times with Scandinavian countries where it has been an effective safety valve for maladministration and other abuses. In Sri Lanka this office is described as the Parliamentary Commissioner for Administration and since 1978 is provided for under Article 156 of our Constitution which states – “156. (1) Parliament shall by law provide for the establishment of the office of the Parliamentary Commissioner for Administration (Ombudsman) charged with the duty of investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local authorities and other like institutions, in accordance with and subject to the provisions of such law.”

The salary and tenure of the Parliamentary Commissioner is determined by Parliament. Originally the Parliamentary Commissioner was confined to hearing cases referred to him by the Public Petitions Committee of Parliament and originating from a M.P. However a 1991 amendment of the

Parliamentary Commissioner for Administration Act permits any person subject to a violation of fundamental rights of injustice at the hands of a public officer to make a complaint directly to the Parliamentary Commissioner. Now my point is, how many civil society bodies in fact make use of this mechanism? How many in fact organize themselves to help average citizens to make such direct complaints and follow them up until redress is achieved?

Next is the Parliamentary Committee on High Posts. We frequently hear of unsuitable appointments being made to the public service and strong public criticism of it. We have seldom heard of public petitions against such appointments when they are announced by the High Posts Committee which is required to examine the suitability of persons appointed or nominated as Secretaries to Cabinet Minister; Heads of Sri Lanka missions abroad and Chairmen of Boards, Corporations and other state institutions. The general public is informed of such nominations through advertisements in the media and petitions are called for if there are any objections. At an early stage there were objections filed and one nomination for the Chairmanship of a state corporation was successfully aborted because of charges of fraud that were proven before the Committee. Civil society in general and professional

organizations in particular can scarcely complain if they do not petition the Committee and substantiate their objections to the appointment of unqualified political favourites and/or relatives to high posts. The Committee or the Government may not act on petitions even if they are valid but if sufficient publicity is given to the petition and its hearing in the Committee, public opinion will be influenced. Petitions should of course not be made through personal animus but on professional grounds in the public interest. I am convinced that if civil society bodies spend some time and effort on such petitions we will be able to curb if not eliminate the nepotism and the corrupt “jobs for the boys and girls” mentality.

Finally, public interest litigation. While Articles 10-15 of our Constitution guarantees fundamental rights Article 126 enables the Supreme Court to hear cases alleging “infringement or imminent infringement” of fundamental rights. Public interest litigation is best known to be practised in the USA and India. It has led to charges of judicial activism and interference in the separation of powers in governance. In Sri Lanka the main cases of public interest litigation have been about the protection of state assets, transparency and the prevention of fraud. Not being a lawyer I will not enter into the complexities of such litigation and the expansion of interpreting the standing

of litigants so that group rights can be pursued. The Eppawala case represents a major achievement for civil society while Mr.Nihal Amerasekera has on his own taken up a number of cases illustrating how an individual member of civil society can effectively use this process. CIMOGG is well aware of the importance of public interest litigation and your website has an article calling on Parliament to pass legislation and on the Supreme Court to simplify its practices and rules in this regard. Of course the questions of the costs of litigation and the law's delays will be cited as reasons for citizens not to use this route of civil society action. I believe a campaign to organize a panel of lawyers ready to appear pro bono in such cases will help to facilitate matters.

It is important to stress once again that while civil society is the broader entity representing the general public of a country outside the apparatus of government, NGOs are specific bodies or narrower entities established for particular purposes. NGOs have their own responsibilities towards governments and civil society and must guard against arrogance and self-righteous attitudes. They must themselves be subject to the criteria of transparency, incorruptibility and integrity that they demand of the elected representatives in government.

The concept of the ruler governing in harmony with the people is an ancient one. Transparency, inclusiveness and good governance were not invented by Western democracies. The Buddha's "Dasa Raja Dhamma" or "Ten Duties of a King", the mandate from Heaven for the Chinese Emperors, the balanced world order in Tudor England and Jean Jacques Rousseau's "Social Contract" were all predicated on a harmonious relationship between the ruler and his subjects. Gandhi's civil disobedience campaign that forced the British Raj to quit India, the Filipino people's power that toppled the Marcos regime and what we have seen in Tahrir Square in Cairo is civil society in action when that harmony is out of joint. In democracies people do not abdicate their role between elections. Governments do not have a monopoly over the interpretation and implementation of the aspirations of the people and the national interest. Engaging with civil society is not an option for Governments. It is a necessity.

My former boss in the UN Kofi Annan once said – *“A strong civil society promotes responsible citizenship and makes democratic forms of government work. A weak civil society supports authoritarian rule, which keeps society weak.”*

I wish CIMOGG all success in revitalizing our civil society so that the institutions of democratic governance in our country are protected and strengthened.