



Faculty of Law

Lund University

Master of International & Human Rights Law

Master thesis

By

Shirani Rajapakse

“The Human Right to Education of the  
Vanniyala-etto Community (the Forest-  
dwellers) in Sri Lanka as an  
Empowerment Right”

Supervisor :

Gudmundur Alfredsson

Field :

International & Human Rights Law

Spring 2006

# Contents

<b>Acknowledgment</b>	<b>3</b>
<b>SUMMARY</b>	<b>4</b>
<b>ABBREVIATIONS</b>	<b>5</b>
<b>1. INTRODUCTION</b>	<b>7</b>
1.1 Rationale	8
1.2 Disposition	8
1.3 Delimitation	8
<b>2. THE ROOTS OF THE VANNIYALA-ETTO COMMUNITY OR "THE FOREST-DWELLERS"</b>	<b>9</b>
2.1 What Constitutes Indigenous People under Human Rights Law?	13
2.2 What Constitutes Minorities under Human Rights Law?	15
2.3 What Constitutes a Relationship between the Indigenous People and Minorities under the Human Rights Law?	18
2.4 A Comparative Analysis of the Sri Lankan Situation re Recognition of the Vanniyala-etto as Indigenous People in Sri Lanka	21
<b>3. WHAT IS "THE RIGHT TO EDUCATION" UNDER HUMAN RIGHTS LAW?</b>	<b>24</b>
<b>4. RIGHT TO EDUCATION OF THE VANNIYALA-ETTO COMMUNITY AS AN EMPOWERMENT RIGHT</b>	<b>29</b>
4.1 Political Structure	29
4.2 Economy	34
4.3 Culture	38
4.3.1 Religious Beliefs	40
4.4 Education	41
4.4.1 Non-discrimination in Education	43
4.4.2 Schools	48
4.4.3 Language	51
4.4.4 Curricula / Syllabus	57
4.4.6 Teachers	61
<b>5. CONCLUSIONS AND RECOMMENDATIONS</b>	<b>63</b>
5.1 Conclusions	63
5.2 Recommendations	65
<b>SUPPLEMENT "A"</b>	<b>69</b>
<b>BIBLIOGRAPHY</b>	<b>751</b>

# Acknowledgment

“Humankind has not woven the web of life. We are but one thread within it. Whatever we do to the web, we do to ourselves. All things are bound together. All things connect.”<sup>1</sup>

*Chief Seattle*

It’s always hard to begin with vote of thanks since there are lots of people who should be given priority. My first vote of thanks goes to the Mother land of Sweden for giving me this wonderful opportunity to learn the real life’s experience. The Roaul Wallenberg Institute, for the scholarship awarded and the Juridicum for selecting me as a Masters student. I will not forget the dearest taxpayer who would have frowned when paying his tax, but I wanted to do you justice too.

My special vote of thanks goes to Professor. Gudmundur Alfredsson and all the academics helped me in Lund. To all the dearest friends, who’ve supported me immensely in every other way, and who had faith in me. To my friend Maren Enders for agreeing to be my opponent and Dan Moran for proof reading. How can I thank you enough Thomas Wehlin for being a true friend.

In Sri Lanka, my thanks to Dr. Radhika Coomaraswamy, the Chairperson, HRCSL, Dr. Deepika Udagama and Mr. N. Selvakkumaran, the Commissioners, and the staff of the HRCSL. To Professor J.B. Dissanayake and Professor K.N.O. Dharmadasa, the Vanniyala-etto Chieftain in Dambana, Gunawardhana, Nirosha pushpa Kumari and Karunaratne from the Vanniyala-etto community, Mr.Jayasekera providing accommodation and with vital information, also to all the government officials in various government departments and all the friends and well wishers.

Lastly, I thank both my parents who taught the value of education as a child and as a grown-up.

---

<sup>1</sup> ‘[Indigenous peoples](http://cyberschoolbus.un.org/indigenous/index.asp) (UN Cyberschoolbus)’, <<http://cyberschoolbus.un.org/indigenous/index.asp>>, visited 9 February 2006.



# Summary

Sri Lanka is a small island in the Indian Ocean with a population of 19.5 million.<sup>2</sup> History witnesseth of the Yakka & Naga tribes ('Gothras') and the Nittevo<sup>3</sup> populations lived in Sri Lanka. At present, majority being the Sinhalese (low country and Kandyan), there is a minority population comprised with Tamils (Jaffna and up-country, Maleiyaha), Colombo Chetties, Burghers (Eurasians), Malay – 'Ja', Gypsies, Rodi, Ceylon Jews, Chinese, Portuguese descendents, and an African population. This shows of the diversified ethnic, religious, cultural groups and people with different social origin.<sup>4</sup>

For lack of time and unforeseen reasons my research was a very brief one. Nevertheless, according to the present Vanniyala-etto Chieftain the government officials are reluctant to make an effort to solve their problems and are very discriminatory at times. Giving up their ancestral lands for development purposes, mixing up with other communities have made them loose their land, places of worship and their cultural identity. Sharing power with the local authorities has made the Vanniyala-etto Chieftain a marionette. Their desire is not to become showpieces to the world. Their silent effort is to preserve "our" heritage to the mankind. The literature, interviews with people who were directly involved with the Vanniyala-etto community helped for a better picture of the situation prevailed and existing.

Outlined the back ground, it will be discussed of the international norms and standards on recognition of the indigenous people and the right to education, and their applicability to the Vanniyala-etto community.

Sweden being a developed and Sri Lanka a developing country, an effort was made to reason the 'Sámi' population in Sweden, how their rights have been recognized to discuss the Sri Lankan situation concerning the Vanniyala-etto community.

---

<sup>2</sup> UN (2005), <[http://news.bbc.co.uk/2/hi/south\\_asia/country\\_profiles/1168427.stm](http://news.bbc.co.uk/2/hi/south_asia/country_profiles/1168427.stm)>, visited on 13<sup>th</sup> December 2005.

<sup>3</sup> The Nittevo are said to have been a dwarfish race of men who lived in the Mahalenama region now within the Yala East Intermediate Zone and the Tamankaduva area. These folk are believed to have been exterminated by the Veddass about 250 years ago, [www.lankalibrary.com/cul.html](http://www.lankalibrary.com/cul.html), visited 10 December 2005.

<sup>4</sup> 'Sri Lanka – People and Ethnic Groups', <H:\The Constitution of the Republic of Sri Lanka Bill\_files\WWW Virtual Library Sri Lanka - Sri Lankan People, Ethnic Groups and Casts.htm>, visited 25 January 2006.

# Abbreviations

UDHR	-	The Universal Declaration of Human Rights
UNC	-	United Nations Charter
ICCPR	-	The International Covenant on Civil and Political Rights
O.P.	-	The 1 <sup>st</sup> Optional Protocol to the ICCPR
ICESCR	-	The International Covenant on Economic, Social and Cultural Rights
ESC	-	Economic and Social Council
ILO	-	The International Labour Organization
UNO	-	The United Nations Organization
C107	-	ILO Convention 107
C169	-	ILO Convention 169
UN	-	United Nations
UNDM	-	The United Nations Declaration on the Rights of Persons Belonging to Minorities
ICRC	-	The International Convention on the Rights of the Child
CRC	-	The Committee on the Rights of the Child
EChR	-	European Court of Human Rights
ECHR	-	The European Convention on Human Rights
ACHR	-	The American Convention on Human Rights
OAS	-	Organization of American States
EC	-	The European Council
OSCE	-	Organization for Security and Co-operation in Europe
CESCR	-	Economic, Social and Cultural Rights
CERD	-	The Committee on Racial Discrimination

GC	-	General Comment
ICEDAW	-	The Convention on the Elimination of All Forms of Discrimination against Women
SC	-	The Supreme Court of Sri Lanka
HRCSL	-	The Human Rights Commission of Sri Lanka
MDG	-	The Millennium Development Goals
SG	-	Secretary General

# 1. Introduction

“Education is for life”, as the saying goes. Perhaps what a rich country could achieve may be an illusion for the under-developed or a developing country with the priorities and limited resources in hand. However, “Universal primary education” is to be achieved for all the children in the world as set out in the Millennium Goals 2015.<sup>5</sup> The Committee on Economic, Social and Cultural Rights interprets the right to education both as a human right as well as an empowerment right that assists the economically and socially marginalized to realize other human rights.<sup>6</sup>

In the general sense, pluralism is the affirmation and acceptance of diversity. There are millions of people living in the world belonging to different cultures. Indigenous people are one such diversified-cultured group in the human society.

Confirming Article 1 of the UDHR, Article I (20) of the Vienna Declaration and Programme of Action recognizes the

“...[i]nherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development...the full and free participation of indigenous people in all aspects of society, in particular in matters concern to them...respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization”.<sup>7</sup>

---

<sup>5</sup> “To ensure that, by the same date, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling and that girls and boys will have equal access to all levels of education”, para. 19, ‘resolution adopted by the GA, United Nations’, *United Nations Millennium Declaration*, [www.un.org/millennium/declaration/ares552e](http://www.un.org/millennium/declaration/ares552e). Visited 5 November 2005.

<sup>6</sup> ‘Article 13 of the ICESCR - implementation of the International Covenant on Economic, Social and Cultural Rights - General Comment No. 13 - the Right to Education’, <<http://www.ohchr.org/english/bodies/cescr/comments.htm>>, visited 9 February 2006.

<sup>7</sup> ‘The Vienna Declaration and Programme of Action, declared at the 1993 World Conference on Human Rights in Austria, has a provision for indigenous people’, <

[www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)>, visited 9 February 2006.



## **1.1 Rationale**

In the above context, the learning is to see whether there is a distinct cultural identity and a value for the Vanniyala-etto or the “forest-dwellers” Sri Lanka can be acknowledged in the true sense by recognizing their right to education as an empowerment right.

## **1.2 Disposition**

To recognize the right to education as an empowerment right different constituents were taken into consideration. Chapter two is on the lost identity or the disappearance of the indigenous people in the world and on the roots of the Vanniyala-etto. Chapter two sections one and two are on the international norms and standard setting on the constitution of the indigenous people and minorities. And in Chapter two section three, the relationship of indigenous people and minorities is discussed as a guide to converse on the national minorities under the European system, since rights of Sámi community in Sweden is compared to a certain extent with the standard setting. In Chapter three, the human right to education under human rights law is discussed as the foundation for the main Chapter in the thesis. Chapter four is on the right to education of the indigenous people as an empowerment right. At this juncture, different prerequisites will be considered to discuss the impact on the Vanniyala-etto. The final Chapter is divided between the conclusions (to the questions the thesis is going to be restricted to) and the recommendations.

## **1.3 Delimitation**

The enquiry will be, whether what constitutes a relationship between the indigenous people and the minorities could be applicable to the Vanniyala-etto under Sri Lankan law and comparatively, whether Sweden has protected Sámi rights? On the other hand, whether the right to education as an empowerment right has an extensive value that cover the human person’s role in right to development? Does this give a meaning to accept diversity in a pluralistic society in its general sense? At the end, coming back to the main question to be asked; in the true sense, has Sri Lanka secured the right to education of the Vanniyala-etto as an empowerment right?

## 2. The Roots of the Vanniyala-etto or “The Forest-dwellers”?

There are over 300 million indigenous people in the world; 7.5% per cent of the world’s population. They speak around 4000 languages.<sup>8</sup>

N. Wijesekera in his ‘The Future of the Veddas’ states that the different races lived in the past have either vanished or have been absorbed by the surviving races of to day: “The ancient people of Iberia have lost their racial identity and linguistic inheritance; The people of Egypt have suffered a loss of ethnic and linguistic identity; The last of the Tasmanians died in 1856; The Maoris have practically been absorbed in New Zealand. Some of the Southeast Islands have been depopulated; The Black Fellows of Australia are fast disappearing; The Red Indians are declining in number; The pygmies in Africa survive as a mere handful, these are the known examples of declining numbers in racial groups and the Vanniyala-etto in Sri Lanka are faced with the same problem of losing their identity and their numbers...”<sup>9</sup>

Reasons for the disappearance of civilizations differ from country to country. Some races are eliminated wilfully; e.g., the Aborigines in Australia. But the Vanniyala-etto in Sri Lanka are declining for civilizing influences: The Census of 1901 states that the Vanniyala-etto declined for four main civilizing influences: absorption into (i) Sinhalese / (ii) Tamil groups, (iii) agricultural occupation and (iv) missionary activity.<sup>10</sup>

To a larger extent their traditional Vanniyala-etto characteristics have disappeared by assimilating into the Sinhalese or Tamil community.<sup>11</sup> But the absorption sometimes took place due to misconduct of the authorities, when the

---

<sup>8</sup> ‘Education as an indigenous Right’, [www.aare.edu.au/99pap/sco99698.htm](http://www.aare.edu.au/99pap/sco99698.htm), visited 11 February 2006.

<sup>9</sup> N.Wijesekera, ‘The Future of the Veddas’, in N.Wijesekera (ed.), *Veddas in Transition*, pp.166, 167.

<sup>10</sup> *Ibid.*, p.174.

<sup>11</sup> K.N.O. Dharmadasa, ‘The Veddas’ Struggle for Survival: Problems, Policies and Responses’, in K.N.O. Dharmadasa & S.W.R. de A. Samarasinghe (eds.), *The Vanishing Aborigines – Sri Lanka’s Veddas in Transition*, (in association with NORAD and Vikas Publishing House (Pvt) Ltd.) p.149.

national censuses were carried out, the Village Headman or the Census Officer named the Vanniyala-etto as Sinhalese or Tamil. This led to the gradual reduction in numbers among the Vanniyala-etto community. And at times, because of Vanniyala-etto's ignorance; depending on the language spoken, the Vanniyala-etto opt to call themselves as Sinhalese or Tamils, which led to loosing their distinctiveness. Sometimes the Vanniyala-etto had disappeared for unknown reasons and the number had further declined due to high racial mortality and morbidity, high infant mortality rates.<sup>12</sup>

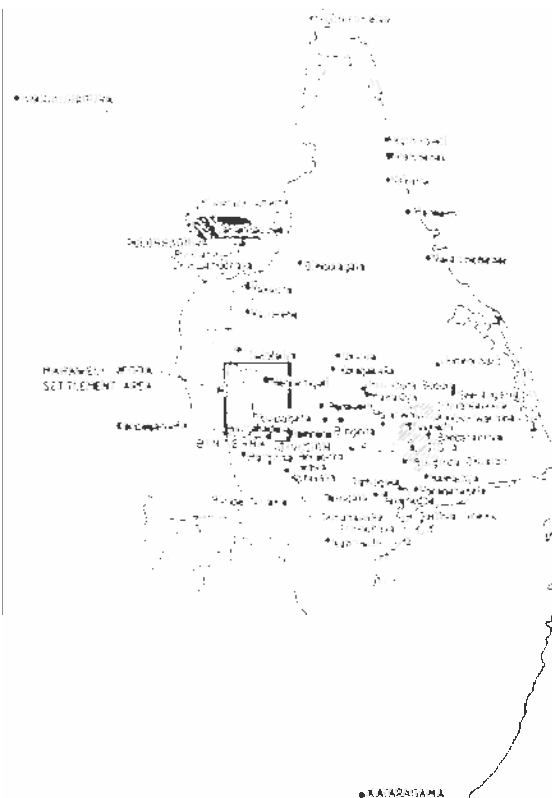
Around 1838 several serious attempts made by the Wesleyan Mission to induce the Vanniyala-etto to abandon their wandering habits had failed.<sup>13</sup> One of the reasons for the failure had been the Vanniyala-etto's habit of roaming in the forests, their belief in *nä-yakku* the ancestors who have died, and not being ready to give up their life style as food gatherers for a settled cultivators life.

Up to date the most important reason of the four on declining of Vanniyala-etto would be the agricultural occupation.

Interestingly there are different views about their origin. Therefore, before concentrating on their rights, it is important knowing who Vanniyala-etto or commonly known as "Veddas" are:

According to the *Mahawamsa*, a historical chronicle 'Vanniyala-etto' are the descendents of Prince Vijaya and an indigenous demon Princess Kuweni.<sup>14</sup> It is said that the origins of the Sinhala race commenced with the arrival of Prince Vijaya. The Vanniyala-etto today refer to her as their 'great great grandmother...'<sup>15</sup>

"The Veddas of Sri Lanka are a near extinct aboriginal community confined



<sup>12</sup> *Supra* Note 9, pp.169, 171,173, 174.

<sup>13</sup> *Ibid.*, P.180.

<sup>14</sup> *Supra* Note 11, p.155.

<sup>15</sup> M.W. Sugathapala de Silva, 'Introduction', in M.W.Sugathapala de Silva, *Vedda Language in Ceylon* (R.Kitzinger, Munchen, 1972), p.2.

at the moment to a narrow strip of forest in the areas east of the central hill country". This concept of the Vedda as an aboriginal hunter has influenced those who designed the census of 1911. According to that census, a person was defined as a Vedda if he had, "knowledge of his *waruge* (ancestry/origin), knowledge of Vedda religion combined with hunting as an occupation". Though this criteria was not strictly applied, the census of 1911 computed the Veddas...at a total of 5,342 in the whole island".<sup>16</sup>

Interestingly, according to some scholars, the origins of the Sinhala race goes beyond the arrival of Prince Vijaya in 543 BC, and is believed traced beyond the King Rawana era, due to the existence of 'Helaya'- four tribes of people known as 'Yaksha', 'Raksha', 'Naga' and 'Deva', later became to be known as "Sivu-Helaya" which later, when Sri Lanka was invaded by foreign traders and powers, was known as "Sinhale". And the Vanniyala-etto community's great great grandmother happened to be the princess Kuweni of the 'Yaksha'/demon tribe.<sup>17</sup>

Nandadeva Wijesekera in his *Veddas in Transition* states that:

"...There is no reasonable doubt that the Veddas are identical with the Yakkas of the *Mahawamsa* and other chronicles...that they belonged to different races became obvious in the course of recent studies. The organization of clans on an exogamous basis was not a common feature among them although such a feature was found among the Dravidian tribes of South India...[i]t is now well established that language is no criterion of race. The Veddas could have easily adopted the language of the newcomers, while retaining their ancient customs, beliefs and way of life...they belonged to the same stock as the jungle Dravidian tribes of South India."<sup>18</sup>

But some researchers identified language as another criterion to identify the Vanniyala-etto:

"...There had been many items not known to Sinhalese people and not identifiable as Indic words. Words specifically associated with forest life, such as words for axe/ galrakki/, various types of bees and wasps/kandaarni, kandapalli, potti/... are not traceable to Sanskrit..."<sup>19</sup>

This would confirm as seen in the following words of the then Vanniyala-etto Chieftain Tisahamy:

"/meeattanne belipojja mandokarala miyambata dammuvay hurraa huralage hingila baasapojja meeattanne katapojjata mandokaranna koduy/ 'you may cut my throat, but you may not thrust Sinhalese down my throat'.<sup>20</sup>

---

<sup>16</sup>*Supra* Note 11, p. 142.

<sup>17</sup> 'Origins of the Sinhala Race', <[en.wikipedia.org/wiki/Sinhale](http://en.wikipedia.org/wiki/Sinhale)>, visited 9 February 2006.

<sup>18</sup>*Supra* Note 9, pp. 42, 43.

<sup>19</sup>*Supra* Note 15, p.6.

<sup>20</sup>*Ibid*, p.12.

“... Tisahamy did not speak any Sinhalese. He swore that he did not understand any Sinhalese...He was not keen to see the Sinhalese language being forced into his children...”<sup>21</sup>

Spittel states that:

“To understand origin, how the Veddas came to Ceylon we must go back to a time when the island formed part of the great Indo-African-Australian continent. The primitive races of the world today are the Australian aboriginal and the Negro. There is evidence to show that the Veddas derive from both these strains”<sup>22</sup>

Seligmann goes on to state that the Vanniyala-etto are the descendants, in culture and physique, of the early Dravidians who lived before the Aryans arrived in the Island. Compare the affinity the Veddas bear to the jungle tribes of South India.<sup>23</sup>

Other than the above different views on their origin, scholars have used different criteria to identify Vanniyala-etto; at certain times when censuses were carried out, they were documented depending on how a person recognized them:

N.D.Wijesekera writing in 1964 enumerated the physical anthropological characteristics of the typical Vedda.<sup>24</sup> The Seligmanns thus looked for “pure blooded” Veddas. James Brow, in his recent book reports that:

“...the difference in the data is naturally due to a difference in the answer to the question “who is a Vedda?” to James Brow, as to many modern anthropologists, a Vedda is simply one who identifies himself as a Vedda and is accepted by others as such...”<sup>25</sup>

K.N.O. Dharmadasa further states that academics as well as others, who have written on the Vanniyala-etto, have focussed on the...their economic, social and cultural peculiarities<sup>26</sup>:

- (a) The isolation of their settlement in the jungles of Sri Lanka;
- (b) Their ‘primitive’ means of livelihood, i.e., hunting and food gathering;
- (c) Differences in culture, i.e., religion, language, customs etc., from the dominant Sinhalese and Tamil groups;

---

<sup>21</sup>*Ibid.*, p.14.

<sup>22</sup> R.L.Spittel, ‘About the Veddas, Vanished Tribes’, (Oxford University Press, 1961), p.xi.

<sup>23</sup>*Supra* Note 9, pp.42, 43.

<sup>24</sup>*Ibid.*, p.143.

<sup>25</sup> *Ibid.*, pp. 24, 25.

<sup>26</sup>*Ibid.*, pp. 24, 25.

- (c) Their social organization into *varuges* (clans) with their own system of leadership;
- (e) Their self-identification as Veddas.

## 2.1 What Constitutes Indigenous People under Human Rights Law?

The Vienna Declaration and Programme of Action recognizing the value and diversity of indigenous peoples distinct identities, cultures and social organization, declares that the States should take positive steps to ensure their human rights and fundamental freedoms.<sup>27</sup>

Since its creation in 1919, ILO has defended the social and economic rights of groups whose customs, traditions, institutions or language set them apart from other sections of national communities. In 1953, ILO published a study on indigenous peoples and in 1957 adopted C107 and Recommendation No.104 on the Protection and Integration of Indigenous and Tribal Populations. These were the first international legal instruments specifically created to protect the rights of peoples whose ways of life and existence were – then, as now – threatened by dominating cultures.<sup>28</sup>

Only indigenous people or their representatives can assert the rights in C169 and not by members of non-indigenous minorities.<sup>29</sup> It provides internationally recognized criteria to define the indigenous and tribal people.<sup>30</sup> Article 1 of the Convention states that C169 applies to:

- (a) “Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

---

<sup>27</sup> ‘Indigenous Issues – E/CN.4/2002/97’, *Report by the Special Rapporteur*, p.26.

<sup>28</sup> ‘The United Nations System’, *Working paper on the Relationship and Distinction Between The Rights of Persons Belonging to Minorities and Those of Indigenous Peoples*, <[daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237](http://daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237)>, visited 23 December 2005.

<sup>29</sup> *Ibid.*

<sup>30</sup> Pamphlet No.10, ‘minorities and the international labour organization’, *UN Guide for Minorities \_files*, <[www.ohchr.org/english/about/publications/docs/minorpam10.doc](http://www.ohchr.org/english/about/publications/docs/minorpam10.doc)>, visited 8 November, 2005.

- (b) Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region, to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”

Yet, according to the WB, there is no universally accepted definition of indigenous people. It recognizes the indigenous people’s contribution to the sustainable development and fully respects the dignity, human rights, economies, and cultures of indigenous people. Different countries use different names to refer indigenous people. Therefore, for the WB’s purposes, the term “indigenous people” is used in a general sense and to refer to distinct, vulnerable, social and cultural groups that possess:

- (a) “Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
- (b) Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
- (c) Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
- (d) An indigenous language, often different from the official language of the country or region”.<sup>31</sup>

ILO was the first international body to take action on indigenous issues. It is said that the rights concern the ILO goes beyond labour and reaches out to many aspects of discrimination and injustice. The aims of the ILO are set out in the Declaration which states that “all human beings, without discrimination on grounds stated in the Declaration, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security, and equal opportunity”. And attaining the said shall be the central aim of national and international policy’.<sup>32</sup>

C169 and the draft Indigenous Declaration recognize the foundation of individual human rights. Article 1 of the draft Indigenous Declaration states that indigenous people have the right to full and effective enjoyment of all human rights and fundamental freedoms recognized in the UNC, the UDHR and international human rights law. Corresponding provisions can be found in the Preamble and Article 3 of the Convention.<sup>33</sup>

---

<sup>31</sup> ‘Operational Policies – Indigenous People’, *the World Bank Operational Manual*, <file:///C:/Documents%20and%20Settings/I%20love%20IIIEE/Desktop/WB%20directive.htm>, visited 15 December 2005.

<sup>32</sup> P.Thonberry, ‘ILO Standards I’, in P.Thonberry (ed.), *Indigenous Peoples and Human Rights*, (Juris Publishing), p.323.

<sup>33</sup> *Supra* note 28, para. 7.

Other important document is the proposed American Declaration on indigenous people, which is more elaborated than the other instruments. E.g., Article XVI (1) States that indigenous law shall be recognized as a part of States' legal system and of the framework in which the social and economic development of the States takes place.<sup>34</sup>

Furthermore, there is a distinction between minorities and indigenous people as well:

## 2.2 What Constitutes Minorities under Human Rights Law?

In any branch of a population, according to different social elements children, women, disabled, un-employed or any other collective can be identified as a 'minority group'. However, under human rights law, the international and regional instruments identify "minorities" differently.

"After the World War I there had been post-war treaties between nations...Modeen comments that the treaties 'grant to no minority any rights comparable with those prevailing under the post world war agreements'.<sup>35</sup>

The UNO or other regional systems did not adopt definitions on minorities. The UN Sub Commission on the Prevention of Discrimination and Protection of Minorities for the Sub-Commission's purposes stated that:

"The term minorities shall include only those non-dominant groups in a population which possess and wish to preserve ethnic, religious or linguistic traditions or characteristics markedly different from those of the rest of the population."<sup>36</sup>

Other definitions by the special rapporteurs, Capotorti and Deschenes are not with a binding force<sup>37</sup>.

---

<sup>34</sup> Pamphlet No.5, 'Protection of minority rights in the Inter-American human rights system', *UN Guide for Minorities \_ files*, [www.ohchr.org/english/issues/minorities/guide.htm](http://www.ohchr.org/english/issues/minorities/guide.htm), 7 November, 2005.

<sup>35</sup> 'The United Nations Charter and the Treaties of Peace: The Issue of Minorities', in Patrick Thornberry (ed.), *International Law and the Rights of Minorities*, (Clarendon press. Oxford, 1991) p.119.

<sup>36</sup> Malcolm N. Shaw, 'The definition of Minorities in International Law', in Yoram Dinstein and Mala Tabory (Eds.), *The Protection of Minorities and Human Rights*, (Martinnus Nijhoff Publishers), p. 10.

<sup>37</sup> *Ibid.*, p.12.



The concept of minorities is also based on the principles of equality and non-discrimination as reflected in Articles 1(2) and 55 of the...UNC even though the Charter does not contain a provision on 'minorities'.<sup>38</sup>

“The achievement of human rights on a non-discriminatory basis is one of the principal aims of the UNO as the multiple references demonstrate. The UNC set the pattern for development of the principle of non-discrimination. The Preamble refers to the determination of the peoples of the UN ‘to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and respect for human rights and fundamental freedoms for all ‘without distinction as to race, sex, language, or religion’. The latter phrase, coupled with references to human rights, is repeated in Article 13 on the functions of the General Assembly (GA) in assisting the realization of human rights; in Article 55 on international economic and social cooperation; and in Article 76 on the objectives of the trusteeship system.”<sup>39</sup>

The key texts of minority rights include, Article 27 of the ICCPR<sup>40</sup>, the UNDM which re-affirms equality and non-discrimination, Article 30 of the ICRC<sup>41</sup>, and the Council of Europe’s Framework Convention for the Protection of National Minorities.<sup>42</sup> Moreover, neither the Covenant nor the Declaration provides a definition on minorities leaving without a binding definition on “minorities”.

Interestingly, the regional instruments are more far reaching, based on the same principles of equality and non-discrimination:

The African Charter on Human and Peoples’ Rights also called the Banjul Charter...covers a wider range of rights than either the ECHR or the ACHR. As its title indicates, it includes both individual and collective rights.<sup>43</sup>

There is no direct way for members of minority groups to claim minority rights before the EchR. The ECHR contains no minority rights provision akin to Article 27 of the ICCPR.<sup>44</sup>

---

<sup>38</sup> *Supra* Note 37, p.5.

<sup>39</sup> *Supra* note 36, p.121.

<sup>40</sup> ICCPR - Article 27, “in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

<sup>41</sup> which is a special provision on children belonging to minorities and indigenous people.

<sup>42</sup> P.Thornberry (ed.), *Indigenous Peoples and Human Rights*, (Manchester University Press), p.34.

<sup>43</sup> Pamphlet 6, summary on – “*minority rights under the African charter on human and peoples’ rights*”, [www.unhchr.ch/minorities/publications.htm](http://www.unhchr.ch/minorities/publications.htm), visited 7 November 2005.

Article 14 of the ECHR states that:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”<sup>45</sup>

Except, this article is not a freestanding right to non-discrimination; it may be raised only in connection with the alleged violation of another Convention right.<sup>46</sup>

Nevertheless, a number of rights guaranteed by the ECHR are relevant to minorities. The ECHR also has expertise on minority rights based on the application of the ECHR.<sup>47</sup>

Under the European system there are only national minorities. Although “national minority” is undefined, it is contrary to the ECHR to treat “any person, non-governmental organization or group of individuals” in a discriminatory fashion with respect to one of the listed grounds without reasonable and objective justification.

OSCE instruments also speak of “persons belonging to national minorities”. In the context of the Helsinki process, the term “national minority” is generally understood to mean a non-dominant population that is a numerical minority within a State but that share the same nationality / ethnicity as the population constituting a numerical majority in another, often neighbouring or “kin”, State”. Paragraph 4 of Principle VII of the Final Act of the Conference on Security and Co-operation in Europe, 1975, the Helsinki Declaration, states “the participating States on whose territory national minorities exist to respect their equality before the law...”<sup>48</sup>

The Framework Convention for the Protection of National Minorities is the most comprehensive of the Council of Europe instruments touching on minority rights. The explanatory report to the Convention pronounces the Convention as the first ever legally binding multilateral instrument devoted to the protection of national minorities in general...<sup>49</sup>

---

<sup>44</sup> Pamphlet 7, ‘Rights under the European Convention on Human Rights’, “*Minority rights under the European Convention on Human Rights*”, 19 July 2000, [www.unhchr.ch/minorities/publications.htm](http://www.unhchr.ch/minorities/publications.htm), visited 6 November, 2005.

<sup>45</sup> *Ibid.* 45.

<sup>46</sup> *Supra* Note 37, p. 21.

<sup>47</sup> *Ibid.*, 44.

<sup>48</sup> *Supra* Note 37, p. 21.

<sup>49</sup> ‘The Framework Convention for the Protection of National Minorities’, *Minority Rights in Europe* check the f.n. in Patrick Thornberry and Maria Amor Martin Estebanez (eds.), (Council of Europe publishing 2004), p. 89.

“...Article 5(1) of the Convention states that the parties undertake to promote the conditions necessary for persons belonging to minorities “to maintain and develop their culture, and to preserve the essential elements of their identity: their religion, language, traditions and cultural heritage”.<sup>50</sup> The reference to “essential elements of their identity” appears to be a narrower formulation than that in the UNDM, which speaks simply of “identity”.<sup>51</sup> The OSCE Copenhagen Document also uses “identity”, and decries a right to maintain and develop culture in all its aspects.<sup>52</sup>

In addition, Appendix II to the Vienna Declaration of the Council of Europe<sup>53</sup> assays a number of observations on minority rights. National minorities, the summit agreed, “should be protected and respected so that they can contribute to stability and peace”. The challenge for Europe is to assure “the protection of the rights of persons belonging to national minorities within the rule of law, respecting the territorial integrity and the national sovereignty of states”. States should:

“Create the conditions necessary for persons belonging to national minorities to develop their culture, while preserving their religion, traditions and customs. These persons must be able to use it, under certain conditions, in their relations with the public authorities”.<sup>54</sup>

## **2.3 What Constitutes a Relationship between the Indigenous People and Minorities?**

If the effort is to bring about a solution to a group that has both characteristics of indigenous people and minorities, and when identifying “indigenous people”, the helpful approach would be to attempt not to characterize indigenous people and minorities with a sharp conceptual boundary between the two groups.<sup>55</sup>

---

<sup>50</sup> *Ibid.* p. 102.

<sup>51</sup> Article 1(1), The Framework Convention for the Protection of National Minorities.

<sup>52</sup> Copenhagen document, para.32.

<sup>53</sup> ‘The Vienna Declaration of the Council of Europe’, < [http://www.age-of-the-sage.org/vienna\\_declaration.html](http://www.age-of-the-sage.org/vienna_declaration.html)>, visited 31 January 2006.

<sup>54</sup> *Supra* Note 49, pp. 89, 90.

<sup>55</sup> ‘Working paper on the Relationship and Distinction Between The Rights of Persons Belonging to Minorities and Those of Indigenous Peoples’, para. 47.

<[daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237](http://daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237)>, visited 23 December 2005.

According to the working paper on the Relationship and Distinction Between the Rights of Persons Belonging to Minorities and those of Indigenous Peoples, general human rights have a distinctly integrative function. Minority rights are formulated as the rights of individuals to preserve and develop their separate group identity within the process of integration. Persons belonging to minorities often have several identities and participate actively in the common domain. Indigenous rights, on the other hand, tend to consolidate and strengthen the separateness of these peoples from other groups in society. The underlying assumption is that persons belonging to indigenous peoples have a predominantly indigenous identity and participate less in the common domain.<sup>56</sup> The word minorities do not cover indigenous people. But certain definitions given to minorities may include indigenous groups as well.

It is evident from the above that a dual track has emerged in UN standard setting regarding minorities and indigenous people.<sup>57</sup>

‘Minority rights’ being a controversial issue, the UNO opts not to insert a clause in the UDHR when it was formulated in 1948.<sup>58</sup> Nevertheless, the UDHR and other international treaties elaborate individual human rights (the right to integrity of the person, freedom of action, due process rights, political rights, and economic, and social and cultural rights. Their major function is to ensure social integration under conditions of equal dignity) that can be demanded by everyone, including persons belonging to minorities, indigenous peoples and other peoples. They constitute the foundation of the human rights system based on the two basic principles set out in the Universal Declaration: Article 1 (that everyone is born free and equal in dignity and rights) and Article 2 (that everyone is entitled to all the rights and freedoms set forth in the Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status).<sup>59</sup>

The grounds on which discrimination is prohibited in the key international and regional instruments on indigenous and minorities differ from one instrument to another. But the repeated references to race, colour, language, religion, national or social origin, birth and other status cover traditional minority situations”.<sup>60</sup>

---

<sup>56</sup>*Ibid.*

<sup>57</sup> *Ibid.*, para. 22.

<sup>58</sup> GA resolution 217C (III), non-inclusion of a clause regarding minority rights.

<sup>59</sup> Economic and Social Council document on ‘*prevention of discrimination against and the protection of minorities*’, para. 3, 19 July 2000, <unhchr.ch/Huridocda/Huridoca.nsf/...?Open Document>, visited 6 November 2005.

<sup>60</sup> The ICCPR<sup>60</sup>, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>60</sup>, the International Convention on Racial Discrimination (ICERD)<sup>60</sup>, the ICRC<sup>60</sup>, ILO-C111, UNESCO Convention against Discrimination in Education, Regional human rights Conventions and the concluding documents adopted by the Organization for Security and

Articles 2(1), 3 and 26 of the ICCPR states of non-discrimination: Article 26 reflects of both equality and non-discrimination: Protection against discriminatory legislative standards (equal protection of the law) and the discriminatory application of legislation (equality before the law). The Covenant prohibits direct and indirect discrimination. Equality and non-discrimination guaranteed does not confined to rights enumerated in the Covenant, they extend into the fields of economic, social and cultural rights as well.<sup>61</sup>

The ICESCR does not contain a specific article on indigenous people. But all the rights contained are relevant to them.<sup>62</sup> Article 2 of the Covenant is the non-discrimination clause, is similar to Article 2 of the ICCPR. The Committee on economic, social and cultural rights in its State reporting guidelines declares that affirmative action is needed by states parties towards indigenous people, e.g., Guatemala.<sup>63</sup>

Furthermore, Article 8(2) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities morefully elaborating the concepts of equality and non-discrimination states that minorities and indigenous people should enjoy human rights in an equal footing with the other members of the society:<sup>64</sup>

“The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.”<sup>65</sup>

Article 1(1) of the ICERD details what “racial discrimination” means. The ICERD specifically does not mention indigenous people. However the broad range of human groups that comes under Article 1(1) clearly includes indigenous people.<sup>66</sup> Various General Recommendations issued by the CERD relating to State parties, also have indicated about indigenous people:<sup>67</sup>

---

Cooperation in Europe (OSCE)’, - Anne-Chrustine Bloch, ‘chapter 20’, in Anne-Chrustine Bloch (ed.), *Minorities and Indigenous Peoples*, p.376.

<sup>61</sup> *Supra* Note 32, pp.116, 130,131.

<sup>62</sup> *Ibid*, pp.182, 184, 186.

<sup>63</sup> *Ibid*.p.186.

<sup>64</sup> ‘Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities’, < [http://www.unhchr.ch/html/menu3/b/d\\_minori.htm](http://www.unhchr.ch/html/menu3/b/d_minori.htm)>, visited 29 January 2006.

<sup>65</sup> Economic and Social Council document on ‘*prevention of discrimination against and the protection of minorities*’, para. 4, 19 July 2000, <unhchr.ch/Huridocda/Huridoca.nsf/...?Open Document>, visited 6 November 2005.

<sup>66</sup> *Supra* Note. 32, p.209.

<sup>67</sup> *Supra* Note. 32, p.210.

In its General Recommendation XXIII<sup>68</sup> the Committee stresses that the States parties have to ensure that members of indigenous people are free and equal in dignity and rights and free from any discrimination, in particular based on indigenous origin or identity. The Committee indicates that when States parties submit periodic reports, it is essential to providing information on the indigenous people within their territories.

When examining States reports under Article 9, the Committee had always given its close attention and affirm that discrimination against indigenous people falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.

The ICRC is a motivating treaty. The Convention incorporates three specific references: Articles 17 - on the mass media and child, 29 - on purposes of education and Article 30 - on minority and indigenous rights in culture, language and religion. All Convention rights apply to indigenous children.<sup>69</sup>

“In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language”.

## **2.4 A Comparative Analysis of the Sri Lankan Situation re Recognition of the Vanniyala-etto as Indigenous People in Sri Lanka**

The anthropological analysis stated on ‘self-identification’ of the Vanniyala-etto computes to many UN treaties and specialized agencies’ recognition of the rights of indigenous people (see chapter 2).

Article 1(2) of the C169 states that “self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups” to which the provisions of C169 apply.<sup>70</sup>

The General Recommendation No.VIII by the CERD, regarding States reports, declares that, when informing about the identification of individuals belonging to a particular racial or ethnic group or groups, such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned.<sup>71</sup>

---

<sup>68</sup> Article 1 of the General Recommendation by the CERD.

<sup>69</sup> *Ibid* 68, p.228.

<sup>70</sup> ILO – C169, [www.unhcr.ch/html/menu3/b/62.htm](http://www.unhcr.ch/html/menu3/b/62.htm), visited February 16 2006.

<sup>71</sup> *Supra* Note. 32, p.463.

There is *de facto* recognition of the Vanniyala-etto community in Sri Lanka.

In many reported cases, customs of the Vanniyala-etto were accepted and respected by the Sri Lankan Courts.

In several incidences the Sri Lankan courts had not disputed or rather have recognized the Vanniyala-etto as the indigenous people in Sri Lanka and had given due respect to them. E.g., In a Magistrate's Court Case<sup>72</sup>, the Officer In Charge (OIC) of a Police Station had kept a Vanniyala-etto in police custody for 6 ½ hours infringing his freedom of movement. It was due to refusal of the Vanniyala-etto to talk in Sinhalese. What can be gathered from the outcome of the case is that, even if there can be discrepancies in the system itself, Vanniyala-etto were respected by the Courts in Sri Lanka, by accepting the request of the Vanniyala-etto to hear the case in the closest Magistrate's Court to the Vanniyala-etto and holding not to allow the OIC to hear any further cases regarding Vanniyala-etto but by the Assistant Superintendent of Police.

Besides, there is a reported incident where the Immigration and Emigration Department of Sri Lanka had refused to issue passports to the Vanniyala-etto stating<sup>73</sup> that they were "not real Sri Lankans".<sup>74</sup> However, subsequently the Vanniyala-etto represented international conferences and were recognized as the indigenous people of Sri Lanka.

In 1992 the ILO had conducted a field study on the Vanniyala-etto community and the existing development policy in Sri Lanka.<sup>75</sup> Here also the ILO recognized Vanniyala-etto as indigenous people.

The above explains that there is *recognition*. There is no specific policy or legislation other than the Sri Lankan Constitution on *de jure recognition* of the Vanniyala-etto as indigenous people in Sri Lanka.

Sri Lanka has ratified international treaties that enumerates of human rights. As a result Chapter III of the Sri Lankan Constitution was formulated on fundamental rights. However, the Constitution does not recognize indigenous people or minorities *per se*. The Constitution guarantees fundamental rights itemised in the Constitution to all the "citizens" without any discrimination of any kind.

Articles 12 (1) and (2) of the Sri Lankan Constitution states of equality and non-discrimination respectively:

---

<sup>72</sup> Magistrate's Court Mahiyanganaya Case No.19989, and Supreme Court Case No. SC Spl. 40/2004.

<sup>73</sup> Among other things...

<sup>74</sup> 'Wanniyal-aeto Human Rights', < <http://vedda.org/8-rights.htm>>, visited on 31<sup>st</sup> January 2006.

<sup>75</sup> 'International Labour Organization 1992 Study', <http://vedda.org/4-tomei.htm>, visited 4 January 2006.

“All persons are equal before the law and are entitled to the equal protection of the law”,

“No citizen shall be discriminated against on the ground of race, religion, language, sex, political opinion, place of birth or any one of such grounds”.

Sri Lanka has not ratified C169; therefore, other than the applicability of Articles 12(1) and (2) of the Constitution, there is no recognition on the Vanniyala-etto community under Sri Lankan legislations.

In comparison, Norway and Sweden have taken measures for the *de jure* and *de facto* recognition of their indigenous people, Sámi communities.

Norway had first refused to ratify C107 with the view that Sámi population cannot be recognized as indigenous people. Later on changed its attitude and ratified C169 and accepted them as indigenous people.

Sweden has not ratified C169, yet accepts Sámi community as indigenous people. They are recognized as part of Sweden’s cultural heritage.

Under the European system there are only national minorities (chapter 2.3 is re-iterated, pp.18, 19 and 20). To carry out the national minorities policy, the Swedish government ratified the Council of Europe Framework Convention for the Protection of National Minorities and the European Charter for Regional and Minority Languages.

Section II, Article 23 of the Swedish Constitution states that no Act of Law or other provision may be adopted, which contravenes Sweden’s undertakings under the ECHR.<sup>76</sup> The Swedish Constitution does not recognize Sámi status as in Norway and Finland. But the Swedish National Minority Bill of 1998/99:143 set the national minorities policy.<sup>77</sup> All the national minorities in Sweden including the Sámi community are embraced by Swedish minorities policy. The objective of the policy is to protect national minorities; to strengthen and provide the support needed to keep their language alive; to promote their participation in community affairs; public decision making and help keep historical minority languages alive.<sup>78</sup>

To create the necessary conditions and to fulfil the government’s obligations, the Swedish government established a number of criteria that must be fulfilled for a group to be recognized as a national minority:

---

<sup>76</sup> ‘Swedish Constitution’, [www.riksdagen.se/templates/R\\_PageExtended\\_6319.aspx](http://www.riksdagen.se/templates/R_PageExtended_6319.aspx), visited 8 2006.

<sup>77</sup> < H:\SWEDEN\_SE - National Anthem\_files\swedish minorities\National Minorities\_files\National Minorities.htm>, visited 25 February 2006.

<sup>78</sup> ‘National Minorities’, ‘Fact sheet, Ministry Of Justice’, Sweden, June 2003, <H:\swedish minorities\National Minorities\_files\National Minorities.htm>, visited 1 January 2006.



- Groups with a distinct affinity, which in terms of number and in relation to the rest of the population, do not have a dominant position in society;
- Groups with a religious, traditional and / or cultural affinity;

Just one of these characteristics is sufficient.

- Self-identification. Both the individual and the group should have a desire and an aim to maintain their identity;
- The group should have historical or long-established ties with Sweden;

The only minority groups that are considered to fulfil this last criterion are those that have been established in Sweden since before the turn of the 19<sup>th</sup> century.<sup>79</sup>

### 3. What is “The Right to Education” under Human Rights Law?

“Article 26 - 1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

---

<sup>79</sup> ‘A summary of the Swedish Government’s policy on national minorities’, *National minorities and minority languages*, <<http://www.sweden.gov.se/content/1/c6/01/62/46/4cf4b38c.pdf>>, visited 1 January 2005.

3. Parents have a prior right to choose the kind of education that shall be given to their children.<sup>80</sup>

Article 26 of the UDHR is reiterated in the context of treaty law; it is detailed in Article 13 and 14 of the ICESCR.<sup>81</sup> Para.4 of the GC No.13<sup>82</sup> states that when realizing the right to education, the States parties have to adhere to the normative objectives (whether education provided by State is formal / informal, private or public) identified in Article 13 and the principles and purposes stated in Articles 1 and 2 of the UNC.<sup>83</sup>

Article 13(1) of the ICESCR recognizes the right to education of everyone, which aims the full development of the human personality.<sup>84</sup>

“Article 13 - 1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace”.

Other international instruments further elaborating the objectives of the right to education stated in the ICESCR states that the States parties are required to ensure the right to education conforms to,<sup>85</sup> the aims and objectives identified in Article 13(1) of the ICESCR, as interpreted in the light of the World

---

<sup>80</sup> ‘Article 26(1) of the UDHR’, <<http://www.unhchr.ch/udhr/lang/eng.htm>>, Visited 4 February 2006.

<sup>81</sup> ‘Explanatory Note to the Hague Recommendations Regarding the Education Rights of National Minorities’, [www.unesco.org/most/ln2pol6.htm](http://www.unesco.org/most/ln2pol6.htm), visited 29 December 2005.

<sup>82</sup> The CESCR.

<sup>83</sup> Para.4, *The right to education* (Art. 13): 08/12/99. E/C.12/1999/10. (General Comments), <H:\University of Minnesota Human Rights Library files\ University of Minnesota Human Rights Library. Htm>, visited 23 December 2005.

<sup>84</sup> ICESCR, < [http://www.unhchr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhchr.ch/html/menu3/b/a_ceschr.htm)>, visited 3 February 2006.

<sup>85</sup> Para.5, *The right to education* (Art. 13): 08/12/99. E/C.12/1999/10. (General Comments), <H:\University of Minnesota Human Rights Library files\ University of Minnesota Human Rights Library. Htm>, visited 23 December 2005.

Declaration on Education for All<sup>86</sup>, the ICRC<sup>87</sup>, the Vienna Declaration and Programme of Action<sup>88</sup>, and the Plan of Action for the United Nations Decade for Human Rights Education.<sup>89</sup>

According to the World Declaration on Education for All interpretation, the purpose of education has an extensive value. Article 1(2) of the World Declaration states that satisfying the basic needs of education empowers *individuals* in any society, and confer upon them a responsibility to respect and build upon, to promote the education of others, to be tolerant towards social, political and religious systems which differ from their own, ensuring that commonly accepted humanistic values and human rights are upheld.<sup>90</sup>

Article 29 of the ICRC states that the education of the *child* shall be directed to the development of the child's personality, respect for human rights and fundamental freedoms, respect for his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own.<sup>91</sup>

Besides, the World Conference on Human Rights *condemns* “*gross and systematic violations*” that constitute serious obstacles to the full enjoyment of all human rights and states that human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights,<sup>92</sup> with the Plan of Action for the United Nations Decade for Human Rights Education stating that the objective of right to human rights education is to build up *a universal culture of human rights*.<sup>93</sup>

At the end, education must aim at building up the individual, directed towards development, starting at a young age. If there are any impediments to realizing the

---

<sup>86</sup> Article 1, Jomtien, Thailand.

<sup>87</sup> Article 29(1).

<sup>88</sup> Part I, para. 33 and Part II, para. 80.

<sup>89</sup> Para. 2.

<sup>90</sup> ‘World Declaration on Education for All: Meeting Basic Learning Needs Education for all: the purpose’, <  
[http://www.unesco.org/education/efa/ed\\_for\\_all/background/jomtien\\_declaration.shtml](http://www.unesco.org/education/efa/ed_for_all/background/jomtien_declaration.shtml)>, visited 3 February 2006.

<sup>91</sup> ‘Convention on the Rights of the Child’, <  
<http://www.unhcr.ch/html/menu2/6/crc/treaties/crc.htm>>, visited 4 February 2006.

<sup>92</sup> ‘Vienna declaration and programme of action’, <  
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)>, visited 4 February 2006.

<sup>93</sup> ‘The Plan of Action for the United Nations Decade for Human Rights Education’, <  
<http://daccessdds.un.org/doc/UNDOC/GEN/N05/253/74/PDF/N0525374.pdf?OpenElement>>, visited 11 February 2006.

goals, it is the governments concern that has to eradicate such obstacles. Building up a universal culture of human rights, respecting the cultural identity and values of the individuals, communities, countries, and of the different civilizations by individuals, communities, countries and different civilizations, is the universal plurality of right to education.

The States parties to the ICESCR guarantee to safeguard the rights stated therein to all, without any discrimination of any kind. Neither the progressive realization nor availability of resources can be brought to justify the States responsibility when realizing the right to education stated in the Covenant. Its application is full and immediate.<sup>94</sup>

The CESCR interprets Articles 2(2) and 3 in the light of the UNESCO Convention against Discrimination in Education, the relevant provisions of the ICEDAW, the ICERD, the ICRC and C169.<sup>95</sup>

Article 1 of the UNESCO Convention states that for the purposes of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education.<sup>96</sup>

Taking note of Articles 2 and 3(e) of the ICRC and the UNESCO Convention against Discrimination in Education, the CESCR states that the principle of non-discrimination extends to all persons of school age residing in a territory of a State party.<sup>97</sup>

---

<sup>94</sup>Para. 31 of the GC No.13 - Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights', < [www.ohchr.org/english/about/publications/docs/fs16.htm](http://www.ohchr.org/english/about/publications/docs/fs16.htm)>, visited 14 February 2006.

<sup>95</sup>Implementation of the International Covenant on Economic, Social and Cultural Rights - General Comment No. 13', < [http://www.bayefsky.com/general/cescr\\_gencomm\\_13.php](http://www.bayefsky.com/general/cescr_gencomm_13.php)>, visited 5 February 2006.

<sup>96</sup> The UNESCO Convention Against Discrimination in Education was adopted on 14 December 1960 and entered into force on 22 May 1962. [www.unesco.org/most/rr4educ.htm](http://www.unesco.org/most/rr4educ.htm), visited on 23<sup>rd</sup> December 2005.

<sup>97</sup> Para.34, *The right to education* (Art. 13): 08/12/99. E/C.12/1999/10. (General Comments), < H:\University of Minnesota Human Rights Library files\ University of Minnesota Human Rights Library. Htm>, visited 23 December 2005.

The indigenous peoples right to acquire an education on an equal footing with the national community is recognized by Article 26 of the C169.

The African [Banjul] Charter on Human and Peoples' Rights is more far reaching than the instruments available under the European system and Inter-American systems. Article 2 of the ECHR is formed in a negative manner; which states, “No person shall be denied the right to education”.

The American Declaration sets forth the right to an education, including free primary education.<sup>98</sup> There is no comparable right in the American Convention.<sup>99</sup> The San Salvador Protocol offers a similar provision to Articles 13 and 14 of the ICESCR. Article 13 of the Protocol states of the Right to Education. Only difference is that Article 13 of the Protocol is more extensive: Article 13 (3) (d) and (e) states respectively of the basic education for the people who did not receive or complete primary education and states of special education programmes for the handicapped.

Article 17 of the African [Banjul] Charter on Human and Peoples' Rights Charter not only states of the right to education of every individual, but talks of, individuals taking part in cultural life and significantly, of the duty of the State to promote and protect morals and traditional values recognized by the community.<sup>100</sup>

Apart from the Banjul Charter, there is an African Charter on the Rights and Welfare of the Child. Focal points of the Charter are stated in Article 11: right to education of every child; how the education should be directed preserving and strengthening positive African morals, traditions and values and culture; the obligation of the State to take appropriate measures in realizing the rights set in the Charter taking special measures to encourage regular school attendance and to reduce drop-out rates.

---

<sup>98</sup> Article 12, ACHR.

<sup>99</sup> *Supra* Note 34.

<sup>100</sup> African [Banjul] Charter on Human and Peoples' Rights', <http://www1.umn.edu/humanrts/africa/comision.html>, visited 29 December 2005.

## **4. Right to education of the Vanniyala-etto Community as an Empowerment Right**

Article 5 of the Vienna Declaration and Programme of Action states that:

“All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the

duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms”.<sup>101</sup>

The CESCR interprets the right to education as an empowerment right to realize human rights of economically and socially marginalized adults and children.<sup>102</sup> Further, the right to education helps for the full and effective realization of economic, social, and cultural as well as civil and political rights. When implementing the right to education, States must take into consideration the indivisibility interdependency and the universality of all human rights.<sup>103</sup>

Despite the above, a person’s beliefs, geographical location and other numerous factors including particular circumstances often determine how a person’s human rights are violated. Hence, the universality of human rights must be recognized in the context of the different circumstances that actually exist. Therefore, when realizing the human right to education of a cultural group, e.g., Vanniyala-etto community, not only their historical, cultural and religious background also of the development took place in the economic, social and cultural and especially in the political field in Sri Lanka cannot be isolated from the disruptions or changes made to the traditional life of the Vanniyala-etto since they are interconnected.

## 4.1 Political structure

Different governments work through different political settings. In any kind of political setting the economic, social and cultural rights have to be realized. Success or failure depends on the policies and the decision making of any government.<sup>104</sup> Para. 2 of the preamble to the Declaration on the Right to Development states that,

“Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting there from”<sup>105</sup>

---

<sup>101</sup>*Supra* Note. 92.

<sup>102</sup> GC No. 13 on Article 13 of the ICESCR, Implementation of the ICESCR, Para.1.

<sup>103</sup> GC No. 11 on Article 14 of the ICESCR, substantive issues arising in the implementation of the ICESCR, para.2.

<sup>104</sup> ‘The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights’, Para.6, <[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6b748989d76d2bb8c125699700500e17/\\$FILE/G0044704.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6b748989d76d2bb8c125699700500e17/$FILE/G0044704.pdf)>, visited 11 February 2006.

<sup>105</sup> ‘Preamble, para.2, - Declaration on the Right to Development’, [www.unhchr.ch/html/menu3/b/74.htm](http://www.unhchr.ch/html/menu3/b/74.htm), visited 3 March 2006.

The central subject, the active participant and the beneficiary of the right to development is the human person (Article 2(1) of the Declaration on the Right to Development).<sup>106</sup> Formulating development policies is the government's right and duty, which reflects the free, active and *meaningful participation* of the individuals, the constant improvement and the well-being of the society as a whole, and the fair distribution of results. Such development affects the individuals lives, beliefs, institutions and spiritual well being, land they use for their economic, social and cultural development (Article 2(3) of the Declaration on the Right to Development). Therefore, the *meaningful participation* of the individuals will be to participate in the formulation, implementation and evaluation of plans and programmes that affects them directly (Article 7(1) of the C169).<sup>107</sup> Further, the government is obliged to ensure carrying out studies when ever is proper on the planned development activities, the social, spiritual, cultural and environmental impact on the peoples.<sup>108</sup>

The said articles of the Declaration and the Convention aim the human person / individuals. When implementing the States obligation on economic, social and cultural rights, the resources available and the methods of implementation may differ from one country to another.

The CESCR providing guidelines on seven key objectives in its first General Comment to the States parties states that when implementing policies, States must monitor the actual situation prevailing in the country and set policies, administrative rules, procedures and practices targeting all segments of the State, and have public scrutiny of government policies.<sup>109</sup> The GC No.9 on the application of the ICCPR states that the implementation of standards stated in the Covenant has to be completed bearing the fundamental requirements of international human rights law in mind and using all means at the States party's disposal.<sup>110</sup> The international treaty bodies incorporate their work between

---

<sup>106</sup> <[www1.umn.edu/humanrts/instree/ainstls1.htm](http://www1.umn.edu/humanrts/instree/ainstls1.htm)>, visited 25 February 2006.

<sup>107</sup> <[www1.umn.edu/humanrts/instree/r1c1tp.htm](http://www1.umn.edu/humanrts/instree/r1c1tp.htm)>, visited 25 February 2006.

<sup>108</sup> 'Article 7(3)', <[www1.umn.edu/humanrts/instree/r1c1tp.htm](http://www1.umn.edu/humanrts/instree/r1c1tp.htm)>, visited 25 February 2006.

<sup>109</sup> 'Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights', <[www.ohchr.org/english/about/publications/docs/fs16.htm](http://www.ohchr.org/english/about/publications/docs/fs16.htm)>, visited 13 February 2006.

<sup>110</sup> 'General comment No. 9 - The domestic application of the Covenant', <[www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/4ceb75c5492497d9802566d500516036?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/4ceb75c5492497d9802566d500516036?Opendocument)>, visited 25 February 2006.



them. As stated in the first paragraph of this chapter all human rights are universal, indivisible, interdependent and interrelated.

The notion States parties have about C169 is that if the Convention is ratified the right to self-determination of the indigenous people has to be accepted. The States parties do not see the Convention's link to the right to development. The international human rights instruments only set basic standards. If any government wants to adopt domestic legislations, the standard settings stated in any international instrument could be adopted appropriately. E.g., the UDHR.

To give a different example, Sri Lanka has not ratified the Second Optional Protocol to the ICCPR, but the President has guaranteed the international community, not to impose the death penalty. In this context it is more or less a moral obligation towards the people. If the government really wants to safeguard peoples rights, there is no harm in adopting the standard settings stated above by the Sri Lankan government.

According to scholars, since independence various development schemes had been introduced in Sri Lanka. In 1951, the Cabinet had agreed to establish an Advisory Board for the development of backward communities including the Vanniyala-etto. The objective had been to "improve the economical conditions and to make them self-supporting communities".<sup>111</sup> The land utilization policy had made it obligatory for the government to clear large extents of land, including the ancestral homes of the Vanniyala-etto community, R.L. Spittel (1951).<sup>112</sup> From the government's point of view the prevailing situation was:

"...The government policy after independence...that these people should be assimilated into the mainstream of Sri Lankan society, this policy has undergone a drastic change in recent years...upon the Declaration of the International Year for the World's Indigenous People in 1993, a national committee under the Ministry of Environment...established, with Cabinet approval, to...enhance the knowledge and understanding of indigenous people in Sri Lanka...to assist them in preserving valuable aspects of their culture...programme of action...emphasized the raising of awareness among the public on the rights of indigenous people and research into various aspects of their culture...[o]n the Declaration of the International Decade of the World's Indigenous People, the Ministry decided to set up a permanent forum to deal with matters pertaining to indigenous people. A seminar and workshop organized by the Ministry in April 1996 brought together academics, researchers, and policy-planners to draw up an appropriate plan of action for the Decade...major concern of the permanent forum...preservation of the culture and lifestyle...the creation of awareness through the media on the rights of indigenous people in order to preserve their lifestyle...Government...continues to be vexed by the question of certain forestland which was declared a national park and which is claimed by a

---

<sup>111</sup>*Supra* Note. 9, p.18.

<sup>112</sup>*Supra* Note. 9, pp.174, 175.

group of indigenous people as their ancestral lands...[u]nder the Mahaweli Development Project, which was designed to meet the hydropower irrigation and agricultural needs of the country, an area of 198.72 square miles situated in Uva province was declared as the Maduru Oya National Park in 1983. The park was to serve the purpose of providing a habitat for wildlife displaced by activities undertaken by the Mahaweli Development Project and protect the catchments of the Maduru Oya and connected reservoirs, which are an integral part of the Mahaweli Development Project...the indigenous inhabitants of these lands were voluntarily relocated in a rehabilitation village and were given irrigated lands and assistance for housing, agriculture, etc. The park was deemed out of bounds...seven families who refused to leave the forest were allowed to occupy a patch of land on the periphery of the reserve. Of the 30 families who were resettled, some families have been content with their new life while others have been unsuccessful in adjusting and have expressed a wish to return to their customary habitat and lifestyle in the forest...[i]n response...in June 1990 Cabinet considered and approved the “establishment of a sanctuary in 1,500 acres of land within the Maduru Oya National Park for Uruvariage Tissahamy (Vedda chief) and the...clan to pursue their traditional way of life”. The Cabinet memorandum undertook- Demarcate an area of approximately 1,500 acres from the area gazetted as the Maduru Oya National Park, and declare this area as a sanctuary under the Fauna and Flora Protection Ordinance...take specific measures to protect and nurture Vedda culture and establish a trust or a board for this purpose under the chairmanship of the Director of Wildlife Conservation with representation from the Ministry of Cultural Affairs and other relevant State agencies and non-governmental organizations...the survey and demarcation of the land in the terms of the Cabinet decision was completed in 1992. The operation of the provisions of the Fauna and Flora Protection Ordinance in this area has since been suspended. The representatives...however, refused to accept this as a solution to their problem on the basis that the extent of land is inadequate...[i]n a further attempt to find an acceptable solution and following representations made by the Vanniyala-etto at the fourteenth session of the United Nations Working Group on Indigenous Populations, in September 1996, the Government appointed a committee comprising secretaries of relevant ministries to examine the issues faced by the Vanniyala-etto community through discussion with the elders of the community and to make recommendations based on solutions mutually agreed upon. The Committee’s deliberations are continuing...”

It is dubious whether their paths were met.

Countries like Sweden and Australia have already taken positive action towards guaranteeing non-discrimination. India also has taken steps towards protecting the tribal people by ratifying C107. Their rights are explicitly recognized and clauses are included to permit positive discrimination in their favour.<sup>113</sup>

On the contrary, Sweden has a Sámi policy. (See chapter 2.4) Acknowledging the Sámi community as the indigenous people in Sweden, the

---

<sup>113</sup> ‘[Land alienation and tribal people's rights : a case study of Mayurbhanj district in Orissa - Tribal Rights in India](#)’, < [www.dhdi.free.fr/recherches/environnement/articles/rout.htm](http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm)>, visited 5 February 2006.

Swedish Parliament passed a law to set up a governmental authority with the primary task of nurturing a living Sámi culture in Sweden.

The “Sámi parliament Law”, SFS 1992: 1433, Chapter I, 2§ defines a Sámi “as a person who saw himself as a Sámi...” They are the only eligible people to vote in the Sámi Parliament. By May 2005 almost 7200 people had been registered as Sámi with a right to vote.<sup>114</sup>

In 1993 the Sámi Parliament was established. One of the tasks of the Sámi Parliament in Sweden is to take part in society planning so that Sámi needs are considered, including the interests of the reindeer industry, the use of land and water and to inform about the Sámi and their conditions.<sup>115</sup>

*Kitok v. Sweden*<sup>116</sup> (will be discussed in a forthcoming chapter) relates to cultural rights of the Sámi community. It is said that section 12, para.2 of the Reindeer Husbandry Act of 1971 gives extensive rights over reindeer husbandry to the Sámi community. The County Administrative Board’s right to grant an appeal against a decision made by the Sámi community must be exercised restrictively.

It can be stated that the Sámi community enjoys restrictive but autonomous powers. Therefore, one could argue that the State courts must have the power to over rule the decisions made by the Sámi community, that otherwise, the Swedish government must be able to hold responsible since the said law or the limited autonomous powers were granted by a Swedish law.

On the other hand, it is said that in 1993 an unexpected situation occurred over hunting licenses and in 1994 on fishing, the Swedish government violating the human rights agreement, Agenda 21, the Rio Declaration, etc.<sup>117</sup>

The EC has criticized Sweden for violating human rights, and the international monitoring bodies, CERD, HRC and CESCR, for not recognising Sámi community’s right to land, water and natural resources.<sup>118</sup>

---

<sup>114</sup> [www.samer.se](http://www.samer.se), visited 1 March 2006.

<sup>115</sup> ‘sametinget - News’, < [www.sametinget.se/sametinget/view.cfm?oid=2000&sat=no](http://www.sametinget.se/sametinget/view.cfm?oid=2000&sat=no)>, visited 8 February 2006.

<sup>116</sup> ‘Communication No. 197/1985, CCPR/C/33/D/197/1985 (1988)’, < H:\SWEDEN\_SE - National Anthem\_files\swedish minorities\Sami history\_files\kitok\_files\kitok.htm>, visited 1 March 2006

<sup>117</sup> < H:\SWEDEN\_SE - National Anthem\_files\swedish minorities\Sami history\_files\Sami history.htm>, visited 28 February 2006.

<sup>118</sup> < [www.sametinget.se/sametinget/view.cfm?oid=1793&sat=no](http://www.sametinget.se/sametinget/view.cfm?oid=1793&sat=no)>, visited 26 February 2006.

Regardless of the criticisms, the Swedish government is trying its level best to bestow *de jure* and *de facto* recognition of the Sámi community.

In Sri Lanka settling in development schemes the government intended to make the Vanniyala-etto leave their traditional way of living and become civilized. Problem was, the government policies not aiming preserving their cultural rights. They lived in isolation in forests, away from the other communities. Even the ancient kings had not intervened with their lives.<sup>119</sup>

As the leader of a separate cultural community, powers enjoyed by the Vanniyala-etto Chieftain till 1931, were taken and vested on the government officials, making him a nominal person.<sup>120</sup> There are court cases where Vanniyala-etto Chieftain had given evidence on their customs and traditions and the courts have accepted his word when there are uncertainties regarding customs of the Vanniyala-etto community. He was accepted as a chief / leader. It is a sensitive situation to deal with, from both sides. But, it is the Vanniyala-etto community's rights that have been infringed.

“...As Jawaharlal Nehru put it with regard to India “I am not sure which, the modern or the tribal, is the better way of living. In some respects I am quite certain theirs is better”. At the same time, however, one can ask, like Professor Nirmal Kumar Bose “if we ourselves are changing fast towards socialism, where is the harm if we ask tribal people to keep company with us?” Historical purposes are such that changes will have to come sooner or later. The problem with regard to the tribals is that planned and organized change, as precipitated by developmental projects, has to be introduced with extreme caution in order to minimize the attendant shock and disruption.”<sup>121</sup>

## 4.2 Economy

“It is a common experience of indigenous peoples worldwide that a higher proportion ... live below the poverty line...have the shortest life expectancies (Aboriginal Australians are the only group other than the Russians who have a declining life expectancy) and the highest infant mortality, the poorest school retention and attainment rates; the highest unemployment rates; most live on overcrowded poor quality housing and suffer endemic environmental health problems as the result”.<sup>122</sup>

---

<sup>119</sup> ‘ Geographies of eviction, expulsion and marginalization: stories and coping capacities of the Veddass, Sri Lanka’, Ragnhild Lund, p.102.

<sup>120</sup> The Dambana Vanniyala-etto Chieftain, Dambana, 25/11/2005.

<sup>121</sup> K.N.O.Dharmadasa, ‘ The Veddass’ Struggle for Survival: Problems, Policies and Responses’, p.165.

<sup>122</sup> *Supra* Note 9.

Concepts like globalization or economic policies have had negative and positive impacts on the indigenous people around the world. According to 1991 census the Indian indigenous people or the tribals constitute 8.08% of the population.<sup>123</sup>

“...Tribal economy is influenced by the habitat in which they live. There is a unique relationship between the people and the land. Globalization and subsequent economic policy has not only displaced 30 million tribal communities and Dalits since independence, but is using the land in an unsustainable manner, stripping natural resources and destroying local habitat’.<sup>124</sup>

But the Indian government has taken positive action towards their well being as well:

“...[i]n India special action has been taken towards safeguarding the interests of the aborigines. The Constitution lays down certain provisions. The Government has set up a special organization, North-Eastern Frontier Administration, to look after the special needs of the tribal population. In other countries a protector of aboriginals has been appointed- Australia, New Guinea, are examples...”<sup>125</sup>

The traditional Vanniyala-etto life, their economy and culture always associated with the ancestral land. Because of development projects, the indigenous people not only lost their lands but had to undergo eviction, migration and re-settlement, depletion of resources necessary for physical and cultural survival, social and community disorganization, changes in economic activities, cultural transformation, socio-psychological conditions, harassment and violence as the special rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People has recognized in many countries he had visited.<sup>126</sup>

When “taking steps” to realize the economic, social and cultural rights the States parties must “take all appropriate steps”.<sup>127</sup> With the development schemes introduced, Sri Lanka had taken the appropriate action to develop the economy and to secure the economical well being of all the people. But, in the light of the ICESCR, this would not fall within “taking all appropriate means”.

---

<sup>123</sup> *Ibid.* p.184.

<sup>124</sup> ‘[TMC India - Seminar ‘Indigenous People ad their Land Rights’](http://india.indymedia.org/en/2004/01/208681.shtml), <http://india.indymedia.org/en/2004/01/208681.shtml> - visited on 13th January 2006.

<sup>125</sup> *Ibid.* 122, p.184.

<sup>126</sup> ‘Report by the Special Rapporteur – Executive summary - E/CN.4/2003/90’, p.2.

<sup>127</sup> *Supra* Note 109.

The government had an obligation to look into the historical, cultural background and the religious beliefs of the Vanniyala-etto community.<sup>128</sup>

The land allocated for development purposes were inhabited by the Vanniyala-etto for more than thousands of years. It is said that the Nilgala area which went under water when the Inginiyagala reservoir was built had been awarded to the Vanniyala-etto community by King Rajasinghe the second.<sup>129</sup> In 1977, under the Mahawali project a new reservoir had been planned at Maduru Oya with a forest and wild life reserve. This included several ancestry villages of the Vanniyala-etto including Dambana. In 1983, some of the Vanniyala-etto who were in Dambana were settled in a newly established colony in Hennanigala.<sup>130</sup> But some are still occupying and cultivating the ancestral properties in Dambana by force, waiting for the government to come out with a solution.<sup>131</sup> It is said that only a limited persons belonging to the Vanniyala-etto community were given an identity card to use the forest (Maduru Oya wild life reserve) in Dambana. They cannot even dig the earth to collect yams to make a living.<sup>132</sup>

When exercising the cultural rights protected under Article 27 of the ICCPR, the HRC observes, that the indigenous peoples culture and way of life always associates with land resources.<sup>133</sup>

In *Kitok v. Sweden* the HRC discussed about the economical right of the Sámi community in Sweden.

*Kitok* is a member of a Sámi family which had been involved in reindeer breeding for some 100 years. The allegation was that he had inherited rights to reindeer breeding in Sorkaitum Sámi village but was denied the exercise of the rights because of loss of membership of the village through the operation of Swedish law. The rights were lost if the individual concerned engaged in any other profession for a period of three years. The law effectively divided Sámi into two groups: the reindeer herders and the rest. *Kitok* claimed a violation of Article 27 of the ICCPR. The claim was to be admitted since 'the author had made a reasonable effort to substantiate his right to enjoy the same rights enjoyed by other members of the Sámi community. The HRC observed:

---

<sup>128</sup> See also the GC No.1 by the CESCR, on States reporting.

<sup>129</sup> Chandrasiri, Regional Coordinator, Ampara, HRCSL, 5<sup>th</sup> Dcember 2005.

<sup>130</sup> *Supra* Note 11, p.148.

<sup>131</sup> 'Sri Lanka's Veddas or Wanniyalaeto', *Mahaweli Development Scheme*, <vedda.org/6-mahaweli.htm>, visited 17 January 2006.

<sup>132</sup> Jayasekera, Future is in our hand, Dambana, 25/11/2005.

<sup>133</sup> 'General Comment No. 23: The rights of minorities (Art. 27): 08/04/94 - CCPR/C/21/Rev.1/Add.5', para. 7, <[http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument)>, visited 11 February 2006.

“The regulation of an economic activity is normally a matter for the State alone. However, where that activity is an essential element in the culture of an ethnic community, its application to an individual may fall under Article 27.”<sup>134</sup>

According to Article 2(4) of Protocol No.4 to the ECHR, freedom of residence may even be used to prohibit settlement in an area where it would be in conflict with the protection of the natural environment.<sup>135</sup>

The Sámi community also lost their lands due to development plans carried out in Sweden. But, the Swedish government have, to a certain extent, protected their rights by introducing various laws. Could the same theory be applied for the inheritants like Vanniyala-etto?

Defining Article 27 of the ICCPR, the HRC states that cultural rights of indigenous peoples manifests in different forms, including a particular way of life that link with lands, which may include fishing, hunting or the right to live in reserves protected by enacting positive legislations and taking other measures.<sup>136</sup>

A UN agency like the WB can be taken as an agency that can be decisive in the political and economical development of, specially a developing or an under-developed country. Human rights activists, environmentalists and indigenous organizations lobbied to change the attitude of the WB towards funding financing development projects. Now the WB’s operational directives aim to ensure that the indigenous people will not suffer from adverse effects by specially WB financed projects. The Asian Development Bank is another development agency that approved its policy on indigenous people.<sup>137</sup> If financial institutions like WB can have a positive attitude towards indigenous communities, why cannot the States, who are the ultimate protectors of peoples, cannot have a positive attitude towards protecting their own cultural heritage?

---

<sup>134</sup> *Supra* Note 32, pp.158, 159.

<sup>135</sup> A.G.Madsen, G.Mekabder and R.Ring, ‘Freedom of movement and Residence’, in G.Alfredsson and A.Eide (eds.), *The UDHR, A Common Standard of Achievement*, (Martinus Nijhoff Publishers), p.272.

<sup>136</sup> ‘Human Rights Committee, General Comment 23, Article 27, HRI\GEN\1\Rev.1’, <http://www1.umn.edu/humanrts/gencomm/hrcom23.htm>, visited 16 February 2006.

<sup>137</sup> ‘Indigenous Issues – report of the Special Rapporteur’, E/CN.4/2002/97, pp.11, 12.

## 4.3 Culture

There is a landmark case by the Inter-American Court of Human Rights, in favour of an indigenous community in Nicaragua. Court reiterated of the value of customary laws, and customs of the indigenous communities.<sup>138</sup>

Each individual community has its own ‘cultural identity’ as UNESCO proclaimed at the World Conference on Cultural Policies, *inter alia*, that:<sup>139</sup>

1. Every culture represents a unique and irreplaceable body of values since each people’s traditions and forms of expression are its most effective means of demonstrating its presence in the world.
2. The assertion of cultural identity therefore contributes to the liberation of peoples. Conversely, any form of domination constitutes a denial or an impairment of that identity’. World Conference on Cultural Policies: Final Report, 1982. Furthermore, the Algiers Declaration (Article 2) refers to the right to respect of cultural identity, and the right of a people not to have an alien culture imposed on it (Article 15)’.

The Vanniyala-etto cultural identity is as ‘forest dwellers’. Their lifestyle is gathering, hunting and fishing some times in a peculiar manner, using poisonous milk from leaves to kill fish. Their religious belief is worshiping ‘*ne-yakku*’ - dead ancestors. They believe that failure to perform rituals to their ancestors made them ill. They try to avoid other community members and live in isolation, in the forests. They live without expectations. Living the moment is one of the features of their culture. It is still visible in their way of living; their reluctance to get absorbed into the larger society is, to a certain degree because of their cultural identity. This, the decision makers have to understand, that some of the genetical features they have inherited in them cannot get rid easily.<sup>140</sup>

Article 16(1) of the ICEDAW does not give a marriageable age but talks of equal rights of men and women to enter into marriage. In most primitive societies women were rarely recognized on an equal footing. But, a striking difference in Vanniyala-etto is not apparent between the two sexes states N.Wijesekera in his “Veddas in Transition”.

---

<sup>138</sup> *Ibid.* 137, p.15.

<sup>139</sup> ‘UNESCO proclaimed at the World Conference on Cultural Policies in 1982 (f.n.5 – the Mexico City Declaration on Cultural Policies)’, Rodolfo Stavenhagen, ‘Cultural Rights: a social science perspective’, *The Right to Education*, in A.Eide, C.Krause and A.Rosas (eds.), *Economic Social and Cultural Rights*, (Martinus Nijhoff Publishers), p.86.

<sup>140</sup> Dambane Gunawardhana, ‘*ovnsfuka ovnsug* - Hunting Grounds’, Dambane Gunawardhana (ed.).



The principle of non-discrimination is still in practice among Vanniyala-etto community. Women were well respected and looked after. They never came to greet outsiders till they are properly identified.<sup>141</sup> There are females who have still not gone to the nearest town. People who belong to the larger society may think it is their backwardness, but it is part of their culture.<sup>142</sup>

Article 15 (1) (a) of the ICESCR recognizes of the right of everyone to take part in cultural life. Article 1 of the ICRC states that unless attained age under any particular law, any person under 18 is a child.

Because the life expectancy is lower, for natural and other reasons, marriages as early as 12 years was and is common between the Vanniyala-etto. Even if some of them are absorbed into the larger society, the Sri Lankan courts have accepted this practice as a part of the Vanniyala-etto culture. Regrettably, the age limit is only exercised on females. Before introducing the common law, early marriages were ordinary among other Sri Lankans as well. But now, under the common law as well as under some special laws any person under 18 is a child. Such customs may be a hindrance to the same communities when exercising other human rights. E.g., education. Vanniyala-etto community has different customs, which are important to them. And this custom can be taken as a hindrance in realizing the right to education.<sup>143</sup>

The right to develop a culture and the right to equal enjoyment of the common heritage of mankind is also recognized.<sup>144</sup> K.N.O. Dharmadasa notes that the Vanniyala-etto community is an unusual example of peaceful coexistence between the more powerful and numerous newcomers and the indigenes compared to events in many aboriginal societies where Europeans settled in aboriginal homelands.<sup>145</sup> The then Vanniyala-etto Chief, Tissahamy expressing his view had stated that he compromise with the new development taking place that the country would benefit, but he would opt to live in the way his ancestors have lived.<sup>146</sup> The elders who have experienced the transcending period, who opt to the new life, and even some belonging to the younger generation are lost in between two worlds; their cultural and the new world. Vanniyala-etto community members find it very hard to get absorbed into the larger society. Their right to live in reserves is not protected by law. And they were not properly absorbed unto the larger society.

---

<sup>141</sup> *Supra* Note 9.

<sup>142</sup> A woman, Dambana, 25 November 2005.

<sup>143</sup> *Supra* 11, p.198.

<sup>144</sup> The UNESCO, the AfCHPR and the Algiers Declaration (Article 13), and Article 22 of the AfCHPR respectively.

<sup>145</sup> *Supra* Note 121, p.155.

<sup>146</sup> *Ibid.* p.165.

The HRC observes that Article 27 sets specific obligations on the States parties, to ensure the survival and development of the cultural, religious and social identity of the minority groups, which is different from other rights stated in the Covenant. E.g., temporary special measures can be taken, to ensure *de jure* and *de facto* equality. When setting policies and implementing, giving special attention to the Vanniyala-etto community, is not a discriminative action by the State. The States parties should take appropriate measures to safeguard rights of the minority groups so that they could make their contribution to the society. For this, appropriate measures should be taken from the States parties end.<sup>147</sup> To realize this right, the necessary steps for the conservation, development and diffusion of culture should be included in States policies.<sup>148</sup> The States should adopt laws to preserve customary practices and protect indigenous property, including ideas and knowledge. Allowing the indigenous people to actively participate forming laws and policies on managing resources in the development process that affect them.<sup>149</sup>

The Swedish government believes that preserving and developing minority cultures, enriches the Swedish cultural life as a whole. The National Council for Cultural Affairs has allocated SEK 7 million for new initiatives to promote national minority languages and culture by 2002.<sup>150</sup> The Swedish Parliament passed a law and a governmental authority had been set up with the primary task of nurturing a living Sámi culture in Sweden.<sup>151</sup> Through Sámi parliament, Sámi community's effective participation in decision making is also ensured.

### 4.3.1 Religious beliefs

---

<sup>147</sup> *Supra* Note 133, para. 9.

<sup>148</sup> *Supra* Note. 109.

<sup>149</sup> Agenda 21, The UN Conference on Environment and Development (UNCED).

<sup>150</sup> 'A summary of the Swedish Government's policy on national minorities', *National minorities and minority languages*, <<http://www.sweden.gov.se/content/1/c6/01/62/46/4cf4b38c.pdf>>, visited 1 January 2006.

<sup>151</sup> 'Protection of Minorities - Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities', *Commission on Human Rights Sub-Commission on Prevention of Discrimination and Protection of Minorities*, <[www.unhcr.ch/Huridocda/Huridoca.nsf/0/1d7c8013d362299580256778002f5271?Opendocument](http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/1d7c8013d362299580256778002f5271?Opendocument)>, visited 8 February 2006.

Most of the indigenous people's religious beliefs bond with lands. Article 18 (1) of the ICCPR equals the UDHR:<sup>152</sup>

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”.

The exercise of the right to religion cannot be discriminated as stated under Articles 2(1), 26 and 4(1) of the ICCPR and Article 2(2) of the ICESCR. The absolute character of this right in emergency situations is stated in Article 4(2) of the ICCPR:<sup>153</sup>

“No derogation from Article...18 may be made under this provision”.

Article 18(1) of the ICCPR more or less reproduced in Article 10 of the Sri Lankan Constitution:

“Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.

Article 9 of the Constitution assures all religions, as stated above in Article 10 and 14(1)(e), which states of practicing the religion or belief in person or with others.

It is a matter of balancing between the development that has to take place and protecting the cultural heritage of a country. The Vanniyala-etto's religious belief is of their *nā-yakku*, the dead ancestors. They perform rituals in spiritual lands. They lost their ancestral and spiritual lands over development projects. This is an infringement of a fundamental right stated in the Constitution itself. Notably, according to the historical chronicle *Mahawamsa*, the Vanniyala-etto are allowed, “to claim both to be autochthonous possessors of the land and to be in intimate contact with supernatural world.”<sup>154</sup> After 1968 they actually had lost their spiritual lands and freedom to perform rituals.<sup>155</sup>

## 4.4 Education

History shows that there was an excellent education system in Sri Lanka even back in 200 BC. During 1658 – 1796 AD, long before the UDHR was

---

<sup>152</sup> ‘Article 18, ICCPR’, < [www.ohchr.org/english/law/ccpr.htm](http://www.ohchr.org/english/law/ccpr.htm)>, visited 15 February 2006.

<sup>153</sup> Martin Scheinin, ‘Article 18’, in G.Alfredsson and A. Eide (Eds.), *The UDHR- A Common Standard of Achievement* (Martinus Nijhoff Publishers), p.383.

<sup>154</sup> *Supra* Note 121, p.155.

<sup>155</sup> Vanniyala-etto Chieftain, Dambana, 25<sup>th</sup> November 2005.

formulated the Dutch introduced a free and compulsory education system to Sri Lanka. During the British (1796 – 1948), the education system was further developed. The then Minister of Education, Dr.C.W.W. Kannangara placed education on firm grounds with the introduction of free education for all the children from kindergarten to the University; the adoption of the national languages as the media of instruction; the establishment of Central Schools...which for the first time opened for poor children from rural areas to obtain a good education.<sup>156</sup>

Since independence the government has given the highest priority to education. Section 12.0, Part I of the Secretary to the Ministry of Education's circular No. ED/1/12/2/6/1 dated 2004/05, states that every child must get a school *compulsorily*. And most importantly, every parent of a child of not less than five years and not more than fourteen years of age *shall* cause such child to receive an education by regular attendance at a school unless he has otherwise made adequate and suitable provision for the education of such child.<sup>157</sup> Free textbooks, free school meals for the first year students<sup>158</sup> and uniforms are provided to all the children. Within a period of less than 40 years the number of schools in Sri Lanka increased by over 50%...the literacy rate has grown correspondingly...<sup>159</sup>

There are legislations and special institutions to provide *de jure* protection and save children from employing them as domestic servants and exploitation: the Labour Department of Sri Lanka has a special unit to investigate, including a hot line to inform of the children who are employed as domestic servants. The Department of Probation and Child Care Services provides protection to child victims of abuse and sexual exploitation.

As stated above, even though Sri Lanka has a high-quality education system in comparison to the South Asian countries, according to the 1993 State report submitted to the CRC, has failed to achieve the treaty obligations on education. There are disadvantaged children who need attention; children who are living in the plantation sector, street children, child soldiers in the North and Eastern part

---

<sup>156</sup> 'Historical Overview of Education in Sri Lanka', [www.moe.gov.lk](http://www.moe.gov.lk), visited 31 December 2005.

<sup>157</sup> Regulation No.2, Government Notifications under the Education Ordinance, No.1003/5, dated 25<sup>th</sup> November 1997.

<sup>158</sup> 'Government Policies and Programs to Eliminate the Worst Forms of Child Labour - Sri Lanka U.S. Department of Labour, Bureau of International Labour Affairs', < H:\Bureau of International Labour Affairs (ILAB) - U\_S\_ Department of Labour. htm>, visited 20 February 2006.

<sup>159</sup> *Supra* Note 156.

of Sri Lanka, drug addicts, children who are sexually exploited, children of migrant parents, and tsunami children.<sup>160</sup>

The only law relating to right to education in Sri Lanka is the Education Ordinance No. 31 of 1939 (as amended). According to Part V, Article 37(1) of the Ordinance, the Minister of Education has the power to make regulations for the purpose of giving effect to the principles and provisions of the Ordinance. Article 37(4) states that, “every regulation made by the Minister shall, upon publication of the notification of the approval of that regulation as provided for in subsection (3), be as valid and effectual as if it were herein enacted”. Apart from the regulations, concerning administrative issues there are circulars by the Secretary to the Education Ministry.

Sri Lanka has ratified a great deal of international treaties that helps to protect children’s rights including education. The two Covenants, the ICRC, ICEDAW, ICERD, ICAT, the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others directly relates to the education of children.

#### **4.4.1 Non-discrimination in Education**

Discrimination in all areas and levels of education is one obstacle towards realizing the right to education. The UN Secretary General’s memorandum on “The Main Types and Causes of Discrimination” explains how discrimination can be identified in the area of education; discrimination means “any act or conduct which denied to certain individuals equality of treatment with other particular groups of the society”.

Articles 12(1) and (2) of the Sri Lankan Constitution guarantees the fundamental rights to all the “citizens” without any discrimination of any kind. Thus, Article 12(4) states that for the advancement of children, special provisions, laws or executive action can be taken. For the full realization of fundamental rights and freedoms of all people,<sup>161</sup> the government has an obligation to eradicate illiteracy completely and to assure to all persons of the right to universal and equal access to education at all levels<sup>162</sup>.

---

<sup>160</sup> ‘Initial reports of States parties due in 1993: Sri Lanka. 05/05/94’, < H:\international instruments\United Nations Human Rights Website - Treaty Bodies Database - Document - State Party Report - Sri Lanka\_files\United Nations Human Rights Website - Treaty Bodies Database - Document - State Party Report - Sri Lanka.htm>, visited 12 February 2006.

<sup>161</sup> Article 27(2)(a) of the Sri Lankan Constitution.

<sup>162</sup> Article 27(2)(h) of the Sri Lankan Constitution.

What does it mean by “complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels”? Does it mean providing a mere education by the state? How will the government interpret it? Or how can we interpret it according to the international norms and standards?

The Sri Lankan society is a pluralistic society comprised of different cultural groups. If cultural pluralism helps the minority groups to participate fully in the dominant society, and maintain their cultural differences, education has a major role to play in the pluralistic society. Then it cannot be a mere education one should get. All the cultural groups in the pluralistic society must have a good knowledge about the cultural differences to tolerate to a certain degree and coexist with the other groups.<sup>163</sup> Then, what does it mean by the human right to education?

Different interpretations can be given to the human right to education: focusing on the thesis topic, one could say that it is the right of the Vanniyala-etto to get an “education”. However, there are different actors in the field of education: the government, parents, teachers, students, or third parties who provide educational facilities, and surprisingly, the anthropologists who have studied the Vanniyala-etto community or countless other persons that may make a contribution to the “education” of the Vanniyala-etto, e.g., the international community; Conversely, the political and economical environment of the country; government policies on education or economy may be vital factors in deciding the right to education.

As the present Vanniyala-etto Chieftain affirmed the value of education:

“If I am not a knowledgeable person, I won’t be able to answer you. The society is very complicated now. Therefore, the younger generation might face lots of problems if they are ignorant. There were 136 indigenous representatives from all over the world at an international conference. I was fascinated by the way we interacted with each other, using one common language of humanity, since our cultures were different. They respect and had protected their own cultural identities but have assimilated into the larger societies. This has not harmed their cultural identity. There was a respect towards Vanniyala-etto community as well.”<sup>164</sup>

Article 26 of the C169 states that measures shall be taken to ensure that members of the peoples concerned have the opportunity to acquire education at all levels at least on an equal footing with the rest of the national community.<sup>165</sup>

Apparently, the Directive Principles of State Policy and Fundamental Duties, stated in Article 27 and 28 of the Sri Lankan Constitution is more extensive than Article 26 of the C169, since the articles states of the State

---

<sup>163</sup> ‘What is cultural pluralism?’, <H:\Cultural Pluralism. htm>, visited 2 January 2006.

<sup>164</sup> Present Vanniyala-etto Chieftain, Dambana, 25<sup>th</sup> November 2005.

<sup>165</sup> ‘Annexes - Part VI of the ILO C169 is on education and means of communication’, in P.Thornberry (ed.), *Indigenous Peoples and Human Rights*, (Juris Publishing), P.449.

obligation, to eradicate illiteracy “completely”, assure to “all persons” of the “universal and equal access to education, at all levels” it covers education of the children and adults, as stated in Article 13(1) of the ICESCR “...right of everyone to right to education...” See the above paragraph on Article 26, of the C169 as well. In any case, the directive principles are only to guide the State to formulate States policies. Those principles are not justiciable.<sup>166</sup> The aim and objectives of the right to education of the child as stated in the ICRC is to: build up his personality over his own cultural beliefs, making him respect his own cultural identity first (see Article 29 of the ICRC, paragraph 7, page.27).

When establishing a socialist democratic society there are directive principles of State policy to guide the Parliament, the President and the Cabinet to enact laws to establish a just and a free society.<sup>167</sup> When establishing such a society, the State pledge for the full realization of fundamental rights and freedoms of all people<sup>168</sup> and the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels<sup>169</sup>.

The education system in Sri Lanka does not focus on the child. It only aims exams. Education must focus on the child, to build up his or her personality says Gunawardhana, the first graduate from the Vanniyala-etto community.<sup>170</sup>

The Sri Lankan policy on education is to fulfil the Education Ordinance, to provide “education for all”. To this extent different circulars are issued and / or regulations were made.<sup>171</sup>

When fulfilling the States obligation as stated in the ICESCR on right to education, neither the *progressive realization* nor *availability of resources* can be brought to justify the State party’s delay. Progressive realization means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realization of Article 13 (GC No.3, para.9).<sup>172</sup> Its application is *full and immediate* (GC No.3, para.2).<sup>173</sup> When *taking steps* (Article 2(1)) to realize the right to education, *all appropriate means* include adopting legislations, administrative, judicial, policy, economic, social, and educational and all other measures that requires

---

<sup>166</sup> Article 29 of the Sri Lankan Constitution.

<sup>167</sup> Article 27(1) of the Sri Lankan Constitution.

<sup>168</sup> *Supra* Note. 161.

<sup>169</sup> *Supra* Note. 162.

<sup>170</sup> Dambane Gunawardhana, Dambana, 25<sup>th</sup> November 2005.

<sup>171</sup> ‘Regulation 1 (b) of the Gazette notification No. 1003/5 of 25 November 1997.

<sup>172</sup> *Supra* Note. 109.

<sup>173</sup> *Ibid.*

realizing the right to education.<sup>174</sup> This is acknowledged in the Sri Lankan Constitution, in Article 12(4) (see paragraph two, under sub-heading 4.5.1). The free and compulsory education therefore, has to meet the above national and international goals.

Even if the States have to realize rights progressively due to constraints of financial and other available resources, the States have an immediate obligation (GC No.3, para. 1, CESCR) to guarantee that the right to education will be realized without discrimination of any kind (Article 2(2)). Such steps must be “deliberate, concrete and targeted” towards the full realization of the right to education.”<sup>175</sup> When States do not have adequate funding, economical and technical assistance can be obtained as stated in Article 55 and 56 of the UNC.<sup>176</sup>

Sri Lanka is a developing country where resources are scarce. The Constitution guarantees the equality and non-discrimination to all. And special attention is given for the right to education in the State Policy and Fundamental Duties as well.<sup>177</sup> Even if the international treaties only speaks about minority groups using their languages, the UN and other regional mechanisms when formulating human rights instruments have respected the States parties’ independence in formulating States policies. It is the State’s responsibility to guarantee the right to education of all.

Sweden’s belief is that all the children learning the history of the country’s national minorities, their culture, language and religion is vital. The school curricula have therefore been amended to include instruction on national minorities and minority languages.<sup>178</sup> The Swedish National Agency for School Improvement is working on a project to produce Romany Chib teaching materials including computerized dictionaries. A survey was completed on the language subjects taught at the university and college level. Accordingly, Romany Chib and Yiddish courses are to be introduced. It is said that in 2002 the Swedish Broadcasting Corporation, the Swedish Educational Broadcasting

---

<sup>174</sup> *Ibid.*

<sup>175</sup> *Ibid.*

<sup>176</sup> *Supra* Note. 104, Articles 29 to 34.

<sup>177</sup> Articles 27 and 28 of the Constitution of Sri Lanka.

<sup>178</sup> ‘ Education’, <http://www.sweden.gov.se/content/1/c6/01/62/46/4cf4b38c.pdf>, visited 11 February 2006.



Company and Swedish Television were granted new broadcasting licenses. New national minority programmes have been introduced.<sup>179</sup>

In Mexico, students from 47 indigenous groups are learning through bilingual and intercultural education programmes. It is said that their educational performance falls far below than the non-indigenous students. It is same with Chile.<sup>180</sup>

In Sri Lanka, educating the indigenous students or other students of the Vanniyala-etto culture, religious belief or history appropriately is not taking place. The WB has funded since 1997 to improve the curriculum, the quality, access and management of schools, and the training of teachers from grade one to nine.<sup>181</sup> But since independence, though the anthropologists and other researchers have well informed the government, perhaps for the reason that the Vanniyala-etto community is assimilating unto the larger society would not construct any room for learning of their language or culture, the government did not see any need for such a policy.

Each indigenous community in the world has different traditional knowledge and cultural heritage. In the larger society, there is only a limited space to develop their cultural heritage. But education helps to protect, preserve and promote the traditional knowledge, cultural heritage and the intellectual property. The Draft Declaration on the Indigenous People lists the importance and ways of indigenous education:<sup>182</sup>

- “Indigenous philosophies and principals to underpin indigenous education;
- Promotion of quality and exemplary indigenous education models;
- Indigenous teacher education programs;
- Ethics of indigenous education research and development;

---

<sup>179</sup> ‘National minorities and minority languages - A summary of the Swedish Government’s policy on national minorities’, [www.sweden.gov.se/sb/d/2188/a/19444](http://www.sweden.gov.se/sb/d/2188/a/19444), visited 23 February 2006.

<sup>180</sup> ‘The Special Rapporteur’s report – E/CN.4/2005/88, p.9.

<sup>181</sup> ‘Government Policies and Programs to Eliminate the Worst Forms of Child Labour - Sri Lanka U.S. Department of Labour, Bureau of International Labour Affairs’, < H:\Bureau of International Labour Affairs (ILAB) - U\_S\_ Department of Labour. htm>, visited 20 February 2006.

<sup>182</sup> ‘Article 15 – Education’ , *The Draft Declaration on the Rights of Indigenous Peoples (UNWGIP)*, < H:\international instruments\Education as an indigenous Right.htm>, visited on 12 February 2006.

- Indigenous schools and post-school learning centres;
- Indigenous studies for all people (including teacher education courses);
- Equal access to and with education systems;
- Indigenous parental right to choose the kind of education that shall be given to their children;
- The right to enjoy their own cultures in community with other members of their group;
- Provision of conditions that are conducive to the use and maintenance of indigenous languages”.

The Kari-Oca Declaration - entitled The Indigenous Earth Charter (Brazil 1993), which includes the following statements on Indigenous Education:<sup>183</sup>

- Indigenous peoples have the right to their own knowledge, languages and culturally appropriate education including bi-cultural and bi-lingual education. Through recognizing both formal and informal ways the participation of family and community is guaranteed;
- Indigenous peoples must have the necessary resources...
- Elders must be recognized and respected as teachers of the young people;
- Indigenous wisdom must be recognized and encouraged;
- The use of existing languages is their right. These languages must be protected;

#### 4.4.2 Schools

Multicultural and intercultural education of a country has to run through the educational system itself. It involves research on countries that have already introduced such methods; their draw backs, research on what is suitable for the country concern, policy making, setting up institutions or making use of institutions that are already in place in the education system, schools at the national level or at the regional level, specially where the indigenous people live, creating new schools to suit their education, changing syllabuses; inclusion of indigenous culture, religious beliefs, history, training teachers from the indigenous communities itself to teach their culture and other teacher training programmes, educating the majority populations on indigenous culture, etc.

“...[i]t involves a complete revision of educational contents and methods in a country...[i]t basically means that the cultural diversity of the country is reflected in the curriculum and the preservation and promotion of cultural diversity become an objective compatible with democratic governance and the enjoyment of human rights by all...revision of traditional ideas held by majority or dominant cultural groups about national culture and identity”<sup>184</sup>

---

<sup>183</sup> ‘The Kari-Oca Declaration - The Indigenous Earth Charter (Brazil 1993)’, <H:\international instruments\Education as an indigenous Right.htm>, visited on 12 February 2006.

<sup>184</sup> ‘Report by the Special Rapporteur – year 2002, E/CN.4/2002/97, p.20.

Sweden has taken major steps to preserve the Sámi culture and education. Some of the obligations of the Swedish Sámi parliament established in 1993 are to appoint the board of the Sámi Schools as stated in the School Act, to deal with Sámi language issues.<sup>185</sup> In 1997, Norway had introduced curriculum in Sámi schools in six municipalities.<sup>186</sup> In 2002, Greenland's Parliament introduced a far-reaching educational reform in the country, the Atuarfitsialak programme, to secure local culture.<sup>187</sup>

The government of Canada, funds 119,000 students, so that the First Nations children could attend grades K-12, computer assisted instruction while some First Nations and Inuit can attend higher education.<sup>188</sup>

Sri Lanka cannot be compared with developed countries. But when there are difficulties in realizing economic, social and cultural rights, the State's obligation is to get international assistance as stated in the ICESCR Article 2(1).

Guatemala has introduced a Mayan bilingual and intercultural education project with the help of the UNESCO: to teach two languages (mother tongue and the dominant tongue), teaching and testing of complementary value systems (Mayan and universal values), teaching of Mayan art and art from other cultures, identification, analysis and interpretation of the world on the basis of indigenous Mayan culture and the accumulated knowledge of mankind in general.<sup>189</sup>

In Sri Lanka, the Vanniyala-etto are mainly restricted to two Provinces: Uva and the Eastern Province, comprising with Badulla , Monaragala and Ampara Districts respectively.

According to the Education Ministry circular No.ED/3/37/9/2/3(1) dated 2005/01/18 the schools are categorized as remotest, remote, schools that are not difficult, popular and very popular (the circulars are only available in Sinhalese and Tamil languages, therefore, the translation is subject to clarification) based

---

<sup>185</sup> sametinget - News', < [www.sametinget.se/sametinget/view.cfm?oid=2000&sat=no](http://www.sametinget.se/sametinget/view.cfm?oid=2000&sat=no)>,

visited on the 8<sup>th</sup> February 2006.

<sup>186</sup> *Supra* Note. 180, p.15.

<sup>187</sup> *Ibid.*, p.14.

<sup>188</sup> *Ibid.* para. 25,p.9.

<sup>189</sup> *Ibid.* 188, p.19.

on the indicators, availability of: (1) basic facilities, (2) usable equipment, (3) basic usable sanitary facilities, (4) usable building spaces, (5) minimum spaces, (6) education – teacher availability, professionalism of the teachers, (7) location – distance, traffic count, location and (8) school value, according to the facilities provided to the teachers.

Those indicators are only to implement the national teachers transfer policy. But this policy indicates of the type of schools any child goes to. Mostly, the Vanniyala-etto children go to schools that come under the first two categories of schools, remotest or remote. They may not get the best teachers, since the teachers always try to get transferred from these types of schools.

The government schools are graded by functional grade and status (2004) as: (1) 1AB – upto Advance level – with science classes, (2) 1C – Advance level – Arts, Commerce and no science classes, Type 2 – upto year 11, Type 3 – upto year 8.

Pollebadda is a Vanniyala-etto village in Ampara, Maha Oya Divisional Secretariate in Sri Lanka. It has a population of 1688, 150 Vanniyala-etto families. The Pollebadda Vidyalaya is a type three school (upto year 8) according to the statistics by the Education Ministry for the year 2004. But it has classes upto the 11<sup>th</sup> year. 10 teachers, one each to teach Tamil and English languages as well. There are only five teachers to teach from year 5 – 11. The required teachers are 16. For the year 2006 there had been 50 applications as new enrolments. The parents had not known the school admission procedure. Because of their ignorance, there had been last minute school admissions on the first day in school, for the year 2005. The normal procedure for school admissions will be to select the students before the end of the previous year. It was revealed that when parents want to cultivate *Chenas* (where you grow vegetables, etc) the students do not attend school.<sup>190</sup>

Gunawardhana, a graduate teacher from the Vanniyala-etto community, stated that they have classes upto year five, but there are only two teachers, the principal and himself to teach all the subjects. According to the Education Ministry statistics for the year 2004, the Gurukumbura Kanishta Vidyalaya, (belongs to Dambana, Mahiyangana District), is a type 4 school, which goes beyond the Education Ministry grading.<sup>191</sup>

The above examples are of two Vanniyala-etto schools belonging to different Districts. The schools belong to either the remotest or remote areas as stated in the Education Ministry circular No.ED/3/37/9/2/3(1) dated 2005/01/18 (see chapter 4.5.2, paragraph 8, page.51.) How many of the children belonging

---

<sup>190</sup> ‘Chandrasiri - Regional Coordinator, Ampara – discussion with the Principal, Pollebadda Vidyalaya’, 5 December 2005.

<sup>191</sup> ‘Gunawardhana, a graduate teacher, Dambana, 25 November 2005.

to the Vanniyala-etto community gets an opening for a better education? The social background shows the parents ability to provide an education to their children is near to the ground.

Educated people like Gunawardhana states that it is because of the education he got, that could make out between the Vanniyala-etto and the larger society. To make a living, he could be in either of the societies. But his option would be the education he has obtained. Most of the members belonging to the larger society have a different attitude towards the *Veddas*, that is how we are oftenly called, that we are unclean and who doesn't belong in the society, who kills animals. The great majority question us whether we eat rice. They never try to learn about the Vanniyala-etto lifestyle, culture and the language. Gunawardhana does not have any hope for tomorrow; he says that with the principal's help, he has done his level best to teach their culture to the younger generation. That it is not going to be the same if another principal comes who doesn't understand the importance of preserving Vanniyala-etto culture.

According to Article 2(1) of the ICESCR, the government has the obligation to respect, protect and fulfil the rights stated in the ICESCR. Failure to fulfil such obligations is a violation of economic, social and cultural rights. When implementing the State's obligation on right to education: obligation to respect is the State refraining from interfering when the Vanniyala-etto enjoy their rights, by taking measures to preserve their cultural heritage on their own; e.g., educating the children on their culture, religion through their cultural centre, or through publications.<sup>192</sup> The State has an obligation to protect the Vanniyala-etto rights against third parties; NGOs and other organizations that had tried to intervene with the Vanniyala-etto life in so many unnecessary ways.<sup>193</sup> Some organizations show a sad situation the Vanniyala-etto are in and try to get funds from the international donors. Protecting from such happenings is also the State's obligation. The obligation to fulfil requires States to take appropriate legislative, administrative, budgetary, judicial and other measures. As stated in the first paragraph of this section, the State has to take a great deal of measures to bring equality between the larger society and the Vanniyala-etto.<sup>194</sup> To meet the end, taking temporary special measures is not discriminative towards other members of the society and it is not giving new rights for the Vanniyala-etto as well.<sup>195</sup> Since temporary special measures are only being taken to alter the inequality between the larger society and the Vanniyala-etto.

### 4.4.3 Language

---

<sup>192</sup> 'A guide to the study of Veddas' language and culture', Dambane Gunawardhana.

<sup>193</sup> Jayasekera, Future in our hands Development Project, Dambana. 25<sup>th</sup> November 2005.

<sup>194</sup> *Supra* Note 104, Article 6.

<sup>195</sup> Article 2, ICESCR and Article 39, Article 2(2) – non-discrimination, Limberg Principles.

“Literacy in first languages is increasingly perceived as providing opportunity and means for empowerment, especially for communities that have historically been disenfranchised or otherwise excluded. Children are empowered: they are more communicative and secure and less inhibited when teaching and learning are reflective of their own culture and language. Teachers are empowered: they become cultural brokers, reflective educators, and community leaders. Authors are empowered: indigenous languages can be a vehicle for personal and professional growth as well as a force for inspiring social change. Communities are empowered: indigenous peoples investigate their own cultures to contribute to preservation efforts and in order for communities to understand themselves. People are empowered: literacy does not destroy or acculturate, but leads to self-realization.”<sup>196</sup>

Hence, reference is made to all the chapters in this thesis that mention about the principles of equality and non-discrimination based on language.

Even as a European regional instrument, the Oslo Recommendations regarding the Linguistic Rights of National Minorities is an important document. This document is based on the UDHR; Recommendations states that Article 1 of the UDHR is important as a base for protection of the languages of the national minorities. “Equal in dignity and rights”, is seen as the foundation of the identity of human person. Language is identified as one of the fundamental components of human identity. When a person’s dignity is respected, means that his identity is respected which, ultimately leads to respecting his language. The recommendations connect articles in the ICCPR. Article 2 of the Covenant ensures rights to all, without any distinction such as...language, who are within the jurisdiction of the State party. Article 19, guaranties the freedom of expression - to receive, impart, including the right to choose the medium or language of expression. Guarantying the freedom of assembly and association as stated in Articles 21 and 22, the Recommendations link the right to receive and impart information of all persons.

The Sri Lankan government is a party to the ICCPR. Therefore, there is a State obligation to fulfil rights enshrined in the Covenant. The principles of equality and non-discrimination are enshrined in the Sri Lankan Constitution (Articles 12(1) and (2), see chapter 2.4, paras.11, 12, page.23), as well as the freedom of expression, and peaceful assembly and association are also guaranteed under the Constitution.<sup>197</sup>

In a Magistrate’s Court case mentioned (in chapter 2.4, p.23, para.1) though the application to the Supreme Court<sup>198</sup> was not based on a violation of freedom of speech<sup>199</sup>, the major part of the incident can be taken as a violation of freedom of speech, when the Vanniyala-etto was kept in police custody for 61/2 hours because he refused to talk in any other language other than his own

---

<sup>196</sup> L. David Van Broekhuizen, *Pacific Resources for Education and Learning – Literacy in Indigenous Communities*, P.12 < [www.prel.org/products/re\\_indigenous.htm](http://www.prel.org/products/re_indigenous.htm) >, visited 11 February 2006.

<sup>197</sup> Article 14 (1) (a), (b), (c) of the Sri Lankan Constitution.

<sup>198</sup> SC Spl. 40/2004

<sup>199</sup> Article 14(1) of the Sri Lankan Constitution.

language. This shows the cultural and language difference between two communities, (reference to paragraph 6, page 25) and the lack of training the State officials have got, in dealing with members of different cultural backdrops.

Although many attribute language loss to socio-political or historical factors methodically imposed by external forces, with the exception of cases of genocide of entire language communities, like the Tainos in the Caribbean, language shift is difficult to impose from without. It is much more likely that the loss or death of a language occurs as a complex and gradual process, through the assimilation of its speakers into other (majority) language communities. One might argue that this assimilation phenomenon is a direct result of external forces. But these forces alone cannot be held responsible for the ultimate loss of the language (see paragraph 4, page 34). Though socioeconomic or political forces can coerce language communities to assimilate, nonetheless the individual language community determines the use or disuse of the language. However, the detrimental effects of oppressive and restrictive laws forbidding the use of indigenous languages cannot be ignored. The assimilation process in the U.S. seems to be accelerating. At the turn of the century, immigrant communities in the U.S. completed the process of Anglicization (i.e., shifting from the immigrant language to English) in three generations. Currently the assimilation to English occurs in only two generations (Veltman, in Cantoni, 1996, p. 52).<sup>200</sup>

Vanniyala-etto never had any predicament with assimilating into the larger society and being a part of the development process. There is only a situation where the two societies' paths are not met, as the attitude and the misunderstanding towards the Vanniyala-etto community. This opens the avenue to discuss education in different points of view.

Declaring how the rights of the national minorities could be protected, the Oslo Recommendations<sup>201</sup> states that where the national minorities are numerically high; the regional or local public institutions have to maintain registers in the national minority language as well, the national minorities have the right to acquire civil documents and certificates both in the official or language of the State and in the national minority language in question (Article 13). And when the national minorities have expressed their wanting and the possibility to use their language in communicating with the administrative authorities. The public authorities must ensure that the public services are provided in national minority languages, and adopt recruitment / training

---

<sup>200</sup> 'Pacific Resources for Education and Learning', < H:\international instruments\Literacy in Indigenous Communities\_files\Literacy in Indigenous Communities.htm>, visited 11 February 2006.

<sup>201</sup> 'Administrative Authorities And Public Services', 'The Oslo Recommendations Regarding The Linguistic Rights Of National Minorities', < H:\The Oslo Recommendations - Linguistic Rights of National Minorities & Explanatory Note.htm>, visited 7 February 2006.

policies and programmes to fulfil this obligation (Article 14).<sup>202</sup> The national minorities rights are so secured, Article 15 states that the European countries have to make sure that the elected members of regional and local governmental bodies also use the national minority languages, in their sessions.<sup>203</sup>

Even as a regional system, the European human rights instruments have no direct relevance to Sri Lanka. But, looking at the above recommendations, how they have been formulated linking the UN human rights instruments, present guidelines as to how a country that is with a national minority population, in the Sri Lankan context the Vanniyala-etto community, could devise legislations to secure their rights.

Under the European system, freedom of expression (Article 10 of the ECHR) is guaranteed<sup>204</sup> without any discrimination such as...(Article 11) language. The Council of Europe's Declaration on Freedom of Expression and Information, with special reference to the UDHR and the ECHR confirms, that freedom of expression and information is necessary to build up the economic, social and cultural and political development of all persons. The Declaration further states that, this becomes a condition for the peaceful existence of social, cultural groups, nations and the international community. In this connection, the freedoms of peaceful assembly and association as guaranteed by Article 11 of the ECHR are essential.

The same philosophy on freedom of expression, assembly and association is confirmed in other European documents, OSCE; in paragraphs 9.1-9.3 of the Document of the Copenhagen Meeting of the Conference on the Human Dimension, all the Heads of State and Government of the OSCE participating States, in the Charter of Paris for a New Europe affirmed this; therefore, Article 27 of the ICCPR states that, in the States where...linguistic minorities exist, shall not be denied of the right to enjoy their own ...language.

Preamble to the European Charter for Regional or Minority Languages details the basic principles of the Charter; why educating indigenous people in their mother tongue is important and how their languages can be used.<sup>205</sup> In the European system, there is respect for minority and regional languages. But the protection and promotion of regional or minority languages is carried out with respect to the territorial integrity of the European states. Learning mother tongue is not identified as separation, but an integration, that regards the

---

<sup>202</sup> *Ibid.*

<sup>203</sup> *Ibid.*

<sup>204</sup> Article 10 of the ECHR.

<sup>205</sup> Patrick Thornberry and Maria Amor Martin Estebanez, 'The European Charter for Regional or Minority Languages', in Patrick Thornberry and Maria Amor Martin Estebanez (eds.), *Minority Rights in Europe* (Council of Europe publishing, 2004), p.140.



linguistic diversity, while giving due place to the official language(s) of the States concern.<sup>206</sup>

The national minorities in Sweden include the Sámi, who are indigenous people, and the Swedish Finns, the Tornedalers, the Roma and the Jews. The minority languages are Sámi, Finnish, Meänkieli (Tornedal Finnish) Romany Chib and Yiddish.

Swedish policy on minorities has two objectives on minority languages: to preserve and to strengthen their languages. And, to protect the national minorities, to make them participate effectively in the decision making process and to keep historical minority languages alive.<sup>207</sup>

Sweden has a specific Sámi policy as well. Methods being used to protect their language, culture and history will be interesting to note:

“The Government Bill, based on the Minority Language Committee's report, recommended a number of specific measures at both national and regional level aimed at strengthening the status of the Sámi language in Sweden. One of the proposed measures was the inclusion at national level of the Sámi studies (language, culture and history) as an elective subject in the national curriculum. At regional level, the Government proposed new legislation giving individuals the right to use the Sámi language in dealings with administrative authorities and courts of law, irrespective of their knowledge of Swedish. These rights would only apply in geographical areas where the Sámi language has established roots and is still used to a significant extent. This area comprises Sweden's four most northerly local government authorities...”<sup>208</sup>

The above example of Sweden shows the importance of preserving both the minorities and their languages.

Some States find it difficult to teach indigenous languages, without the alphabet. Many American, African and Pacific communities do not have a written language, e.g., the Shoshoni language spoken by the Native Americans in Idaho, Nevada, Utah and Wyoming; the Djingili of the Barkley Tableland

---

<sup>206</sup> ‘Article 8 on Education’, ‘The EU Charter for Regional or Minority Languages’, Council of Europe, 5, November, 1992, <[conventions.coe.int/treaty/en/Treaties/Html/148.htm](http://conventions.coe.int/treaty/en/Treaties/Html/148.htm). >, visited 7 November, 2005.

<sup>207</sup> ‘National Minorities’, < H:\swedish minorities\National Minorities files\National Minorities.htm>, visited 1 January 2005.

<sup>208</sup> ‘Use by the Sámi of their own language’, para 38, ‘*Fourteenth periodic reports of States parties due in 1999: Sweden*’, 25/11/99, CERD/C/362/Add.5. (State Party report), [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.362.Add.5.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CERD.C.362.Add.5.En?Opendocument), visited 1 January 2005.

area, and the Tiwi of Bathurst and Melville Islands are said to be learned only by speaking; the languages used by the Yavapai Indians of West-central Arizona and the Svan language used by the people live in Mount Elbrus in the Caucasus speaks an unwritten language.<sup>209</sup>

Vanniyala-etto are with a history of over 4000 years, but their language also is without an alphabet and a written tradition.<sup>210</sup> Yet their language is not preserved for many reasons, it is said that the Vanniyala-etto, themselves cannot remember more than two or three generations of ancestors. Assimilation into the larger society had made them forget their language.<sup>211</sup> Alternatively, the anthropologists and language experts have investigated and preserved the Vanniyala-etto language to a certain extent.<sup>212</sup> K.N.O. Dharmadasa who has done so many researches on the Vanniyala-etto find it difficult to teach in the Vanniyala-etto language, in comparison to the Indian tribes, whom, numerically hold larger communities, where the language difference is visible from one community to the other.<sup>213</sup>

The present Vanniyala-etto Chieftain in Dambana, believes that they "...belong to one cultural heritage, just like Sinhalese and Tamils have; we had a history, own separate language and culture".<sup>214</sup> He believes that not learning their language is a drawback from the other communities' part. "If any person can speak our language, no need of a third party's help to converse".<sup>215</sup> De Silva, who had researched into the Vanniyala-etto language, finds that the present day language is different from the older language of their ancestors... and there are many items not known to Sinhalese people and not identifiable as Indic words.<sup>216</sup> The Seligmanns had also observed that the Vanniyala-etto of Dambana displayed a distinct desire to retain the remnants of the Vanniyala-etto language.<sup>217</sup>

The special rapporteur on the situation of human rights and fundamental freedoms of indigenous people for 2002 states that the "...formal teaching of the vernacular tongue and of the vehicular idiom as a second language requires special training and pedagogical skills which indigenous teachers often lack..."<sup>218</sup>

---

<sup>209</sup> "Marusca Perazzi", [marusca.perazzi@mrgmail.org](mailto:marusca.perazzi@mrgmail.org).

<sup>210</sup> *Supra* Note 184, para.65, p.20.

<sup>211</sup> *Supra* Note 9, pp.147, 148.

<sup>212</sup> M.W.S. De Silva (ed.), *Vedda Language of Ceylon* (R.Kitzinger, Munchen, 1972).

<sup>213</sup> *Supra* Note 11.

<sup>214</sup> Present Vanniyala-etto Chieftain, Dambana, 25<sup>th</sup> November 2005.

<sup>215</sup> *Ibid.*

<sup>216</sup> *Ibid.* 212, p.6.

<sup>217</sup> *Supra* Note 11, p.85.

<sup>218</sup> *Ibid.* 210, para.65, p.20.

David Van Broekhuizen in his *Pacific Resources for Education and Learning* states that, when learning an indigenous language, it is not simply learning a language but it has to reflect the cultural values and traditions. It is further stated that there is much controversy in multilingual settings like Kenya and Tanzania where elementary school texts in English and Swahili were analyzed for content (Mbuyi, 1987).<sup>219</sup>

“Mbuyi organized his findings around broad categories such as daily life, Africanization, African traditions, cooperative behaviour, and rural development. He argues that it is not only the medium of instruction that affects teaching and learning but the social policies/ideologies that are perpetuated by the content and curriculum. He comments that though one might assume that “mother-tongue medium textbooks will be more relevant to the local needs and teach more about local culture, it has never been proved conclusively that ‘language switch’ is the factor responsible for making the curriculum relevant”<sup>220</sup>”

Commenting on the right to education stated in Article 13 of the ICESCR, the CESCR in its GC No.13 explains of two elements of Article 13(3); the right to educational freedom. Accordingly, the State parties have to respect the parents or the guardians liberty to ensure the religious and moral education of their children in their own belief; this relates to Article 18(1) of the ICCPR on the freedom to teach a religion or belief, Article 13 is a replication of Article 18(4) of the ICCPR, and the HRC emphasis on the non-derogable nature of Article 18.<sup>221</sup> Article 13(3) permits public school instruction in subjects, e.g., history of religion and ethics, to the extent that the instructions are unbiased and are in an objective way, and respects the freedom of opinion, conscience and expression. If non-discriminatory exemptions or alternatives that would suit the parents are not being made, such instructions will not be in conformity with Article 13(3).<sup>222</sup>

The second element is that the liberty the parents and the guardians have to choose other than public schools, which should be read with the complimentary provision Article 13(4), such establishments have to be in conformity with to

---

<sup>219</sup> L. David Van Broekhuizen, *Pacific Resources for Education and Learning – Literacy in Indigenous Communities*, P.10 < [www.prel.org/products/re\\_indigenous.htm](http://www.prel.org/products/re_indigenous.htm)>, visited 11 February 2006.

<sup>220</sup> *Ibid.*

<sup>221</sup> Para.28, GC No.13, ‘Article 13(3) of the ICESCR, Implementation of the international covenant on economic, social and cultural rights - E/C.12/1999/10’, < <http://www.ohchr.org/english/bodies/cescr/comments.htm>>, visited 22 February 2006.

<sup>222</sup> *Ibid.*

the educational objectives set in Article 13 (1) and certain minimum standards; admission, curricula, and the recognition of certificates.<sup>223</sup>

In Sri Lanka children are taught of English / Sinhalese and Tamil as languages in the State schools. As mentioned in chapter 4.5.2, paragraph five, the Vanniyala-etto are restricted mainly to two Provinces. And they were never taught in their mother tongue in schools. One constituent that could be stated what is discussed above regarding Article 13(3) is that the government of Sri Lanka has the obligation to respect when the Vanniyala-etto community takes measures to educate the youngsters within their capacity: With the second International Decade of the World's Indigenous People commencing from 1<sup>st</sup> January 2005,<sup>224</sup> the Vanniyala-etto Chieftain is making an effort to teach their language to the children through the cultural centre in Dambana,<sup>225</sup> Dambane Gunawardhana has published a guide to the study of Vanniyala-etto Language and Culture and will publish many more.<sup>226</sup> The other constituent is that their religious beliefs are connected to the traditional land. The Vanniyala-etto have specific places where they perform rituals. Therefore, if the children are to get any experience about their traditional religious beliefs, it cannot be in a classroom. Will there be a possibility for the parents to exercise the educational freedom regard to such a religious belief?

In developing countries, with limited resources in hand, how could the educational freedom be interpreted? Can it be the parental right of choice? Will the parents belonging to indigenous communities have the ability to exercise such rights as stated above? In the above context, can a States party to the Covenants, disregard and restrict indigenous languages used in education?

#### **4.4.4 Curricula / Syllabus**

According to the present developments, primary education in Sri Lanka is divided into three stages: Stage I: Grades 1 and 2 - The main learning mode, guided play with secondary emphasis on active learning and a minimum of desk work. Stage II: (grades 3 and 4) equal importance will be given to all three modes of learning - activity, deskwork and play. Stage III: (grade 5) greater emphasis on deskwork. In the primary stage of education, three of the new integrated primary curriculum will consist main subjects of first Language,

---

<sup>223</sup> Ibid, Para.29.

<sup>224</sup> The General Assembly adopted resolution 59/174 on 20 December 2004, which proclaims a second International Decade of the World's Indigenous People to commence on 1 January 2005. < <http://www.ohchr.org/english/issues/indigenous/decade.htm> >, visited on 20th January 2006.

<sup>225</sup> Present Vanniyala-etto Chieftain, Dambana, 25<sup>th</sup> November 2005.

<sup>226</sup> Vaddas – The Indigenous People of Sri Lanka – 1, Dambane Gunawardhana, (Simple Wisdom publishers, 2003).

environmental related activities and religion. And in the junior stage of education curriculum in grades six to nine includes ten subjects. Some of the subjects including practical work and work on small projects will be the first language, social studies, life competencies, religion, aesthetics, health and practical and technical skills.<sup>227</sup>

On the face of it, the new developments indicate that the structure is in place. In the primary stage the children get an opportunity to learn and develop themselves in their own cultural environment. According to the above formulation of the primary education may what expected of the States parties when ratified the ICRC, if the policies are to be carried out properly. E.g., the Vanniyala-etto children may not get an opportunity to learn in their language, of their religious beliefs since the language of instruction is either Sinhalese or Tamil. In the junior stage, it is mentioned of the first language. The normal circumstance would be then again to learn/in either Sinhalese or Tamil since the Vanniyala-etto language (at schools) is not recognized as the first language of the children belonging to that community.

According to a memorandum of the SG to the UN, “If a child receives its education in a language which is not its mother tongue, this might imply that the child not treated on an equal basis with those children who... receive their education in their mother tongue”<sup>228</sup>

In the primary stage of education, the child has to learn his/her first language, environmental activities and religion. Interestingly, when taken all three subjects, when taking action, it would be taking some of the actions that could be taken under *all appropriate means* according to Article 2(1) of the ICESCR and measures under the Sri Lankan Constitution, when the government is to take executive, administrative actions and policy decisions to advance the curricular for the learnings of the Vanniyala-etto children.

At present, in the first years of studies, there are assignments *pävarum* given to the primary school children. Where they have the freedom to choose a topic.

---

<sup>227</sup> Recent Developments in Education in Sri Lanka, <http://www.moe.gov.lk/modules.php?name=Content&pa=showpage&pid=6#top> >, visited 21 January 2005.

<sup>228</sup> A memorandum of the Secretary General of the UN, “The Main Type and Causes of Discrimination”, ‘The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities’, in Patrick Thornberry (ed.), *The United Nations Charter and the treaties of peace: the issue of minorities (...publishers)* p.126.

The teacher's duty is only to supervise the student. These assignments do not aim any grading; therefore, the children will not be very enthusiastic in putting the best effort to their work. Most of the time the students are disheartened since there is no system in getting credits that has a direct or indirect relevance for their studies. Gunawardhana suggests that in the primary stage the students must be taught in their mother tongue. Therefore, the curricula must be specially designed to suit the environment of the children from the Vedda-community. This could be merged in the latter stages of the education, so that children belonging to all the communities could get to know about all the other communities at a certain stage (by sixth year or so). But giving the primary education in a child's mother tongue is essential since the child will not be confused and will get to know about his/her social background first.

The only time that any questions formulated on the Vanniyala-etto may have / had been to cover regional dialects. At the Ordinary level and Advance level examinations, where questions (four for the O/L and ten for the A/L respectively) are formulated. Sometimes questions may have based on Vanniyala-etto language. This is just to test the general knowledge of the students. This has no direct or indirect relevance to learning the Vanniyala-etto language. There had been no proper learning about their history or culture *per se*. None of the subjects in the present curricula speaks about the Vanniyala-etto religious beliefs, culture, and their language<sup>229</sup>.

Article 12 of the African Charter on the Rights and Welfare of the Child is vital in realizing an equal and balanced education. Specially Article 12 (b) which states of eliminating all stereotypes in textbooks, syllabuses and the media, that perpetuate discrimination.

“The indigenous children have the right to education in their own languages, in an appropriate manner to their cultural methods of teaching and learning<sup>230</sup> ... indigenous peoples have the right to have the dignity and diversity of their cultures, traditions, histories, and aspirations appropriately reflected in all forms of education and public information”<sup>231</sup>

The Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, 2005 have made a study on the right to education of the indigenous people: When providing an education to the indigenous people, the States have the obligation to look into the appropriateness and the quality of the education that is to provide;<sup>232</sup> he

---

<sup>229</sup> Harendra, Zonal Deputy Director of Education, Mahiyanganaya, Sri Lanka, 22 November 2005.

<sup>230</sup> *Supra* Note 180, para.21, p8.

<sup>231</sup> *Ibid*, Article 16.

<sup>232</sup> *Ibid*, summary, p.2.

recognizes that the UNESCO has stressed the need for a linguistically and culturally relevant curriculum in which history, values, languages, oral traditions and spirituality are recognized, respected and promoted.<sup>233</sup> Lack of trained teachers who are bilingual,<sup>234</sup> lack of teaching materials suitable for intercultural and pedagogy,<sup>235</sup> are some of the problems. But there are new developments taking place as well; e.g., Alaska Native Knowledge Network is developing a school curriculum based on aboriginal knowledge. And he appreciates the knowledge of older people from the indigenous communities and states that the formal educators are devaluing their knowledge.<sup>236</sup>

The special rapporteur reports that the formal education has shown both sides; it has supplied an access of the indigenous children to the larger society. But when the formal education is provided in another language, the programmes, curricula and teaching methods coming from other societies, not from the indigenous culture itself, has made the indigenous people forcibly change or, are destroying indigenous cultures.<sup>237</sup> When the indigenous people are assimilated in either to the western or national dominant culture, as the case may be, it is difficult to achieve the fundamental goal of education, it is a culture which is alien to the indigenous people, this either make the indigenous cultures disappear or they are being marginalized within the cultural systems. Even if the legislations sets specific objectives,<sup>238</sup> on the principles of equality and non-discrimination.

It is true with Sri Lanka as well. The Vanniyala-etto either were assimilated into the Sinhalese or Tamil groups. Therefore, the formal education was given by either of the languages. Either because of the Vanniyala-etto community was ignorant or the attitude / the government's thinking to make them civilized, they never got the chance to educate in their native language. The common argument brought was that the language is not a developed one as the Sinhalese or Tamil languages. Even these two main languages have developed ever since by mixing with other languages. If due regard is given, there will be a way for

---

<sup>233</sup> *Ibid.* 232, para.45, p.13.

<sup>234</sup> *Ibid.* para. 52, p.14.

<sup>235</sup> *Ibid.*, para. 53, p.14.

<sup>236</sup> *Ibid.*, para.66, p.16.

<sup>237</sup> *Ibid.* para.15, p.7.

<sup>238</sup> *Ibid.* para.24, p.9.

the Vanniyala-etto language to be developed. The Vanniyala-etto and their language is a part of the Sri Lankan heritage.

#### 4.4.6 Teachers

Sri Lanka's National Teacher Education Policy of 2001 student-teacher ratio (STR) is; at the primary level, 26:1 and in the secondary level, 22:1. The Ministry of Education has identified an excess of teachers in the urban popular schools and shortage in rural difficult schools. For the university entrance classes they are recruited from the University Graduates. There are National Colleges of Education to train teachers. Teacher training is carried out through the National Institute of Education and Teacher Training Colleges (for untrained teachers). There are short-term continuing education courses introduced in Teacher Education Institutes. The Universities offer Post Graduate courses in education as well.<sup>239</sup>

The examples supplied in pages 51 and 52 show that the student-teacher ratio is well below that required. Training teachers to teach the Vanniyala-etto children in their language is a policy decision the Sri Lankan government have to make. Selecting the people from their own communities to be trained as teachers (who has basic qualifications) it vital, that they are well conversed in their language and have the knowledge of their culture.

It is well said by David Van Broekhuizen that preparing teachers to teach, read and write in indigenous languages differ from community to community. Some countries may speak one language.<sup>240</sup> In some countries, the same community in different parts speak different dialects according to their cultural background. E.g., in Sri Lanka, Kandyan Sinhalese and low country Sinhalese speak different dialects, so are the Tamils who live in the up country and in the North East part of Sri Lanka. Therefore, when teachers are trained the cultural backgrounds of those communities have to be contemplated.

---

<sup>239</sup> 'Reforms in Teacher Training and Deployment', [www.moe.gov.lk](http://www.moe.gov.lk), visited 23 February 2006.

<sup>240</sup> 'Pacific Resources for Education and Learning – Literacy in Indigenous Communities', L. David Van Broekhuizen (Ed.), [www.prel.org/products/re\\_indigenous.htm](http://www.prel.org/products/re_indigenous.htm), visited 23 February 2006.



Van Broekhuizen states that when a whole country speaks one language special training would not be essential. But when the teachers do not speak any native languages special attention should be given; e.g.,

“Native American communities where there are few native speakers left, community colleges have consulted with tribal leaders to establish pools of language teachers certified by the tribe. Each tribe is responsible for developing its own criteria.”<sup>241</sup>

In the Special Rapporteurs report for 2005 he mentions about the difficulties of teacher training to educate indigenous people or the whole community: if the teachers are ignorant of the indigenous languages then they would not be able to communicate well with the indigenous students.<sup>242</sup>

“...Lack of well trained indigenous teachers who are bilingual...before training teachers the trainers should be trained; overcoming institutional resistance, change the attitude of the ministerial officials, members of the teachers’ associations and unions within the formal education system. The instructors who are trained in the general teaching institutions have no knowledge and cannot speak any indigenous language.<sup>243</sup> Lack of teaching materials suitable for intercultural education and pedagogy.”<sup>244</sup>

The Special Rapporteur states that, South Africa and Namibia have taken major steps to promote indigenous languages in educational systems: preparing teaching materials for primary schools. South Africa wants to promote multilingualism and adult literacy.<sup>245</sup> He states of the importance of the non-formal education by using wisdom and knowledge of older-persons. He gives success stories of the Maori of Aotearoa New Zealand, some of the First Nations in Canada, the Sámi in the Nordic countries.<sup>246</sup>

---

<sup>241</sup>*Ibid.* 240.

<sup>242</sup>*Supra* Note. 232, para. 34, p.11.

<sup>243</sup>*Ibid*, para. 52, p.14.

<sup>244</sup>*Ibid*, para. 53, p.14.

<sup>245</sup>*Ibid*, para. 62, p.15.

<sup>246</sup>*Ibid*, para. 66, p.15.

# 5. Conclusions and Recommendations

## 5.1 Conclusions

Response to the main issue is that the right to education of the Vanniyala-etto community as an empowerment right is not being secured in the true sense, and therefore their distinct cultural identity and value is not being recognized by Sri Lanka. Upon the different constituents that were taken into consideration, the reasoning for the above will be as follows:

- 1) **Whether what constitutes a relationship between the indigenous people and the minorities could be applicable to the Vanniyala-etto under Sri Lankan law?**

Internationally recognized criterions on the definitions of indigenous people, including Article 1 of the C169, computes with the historical overview of the Vanniyala-etto. They are *the* indigenous community in Sri Lanka who has a distinct cultural identity and are declining for civilizing influences. Sri Lanka has not ratified C169, other than the non-discrimination clause in the Constitution; there are no legislations *per se* to protect Vanniyala-etto. Therefore, only the *de facto* recognition is evident as an indigenous community.

The normal standard setting reveals the separateness of indigenous people and minorities. E.g., C169 only applies to the indigenous people. But the individual human rights that have been formulated upon the principles of equality and non-discrimination are equally applicable to the indigenous people and minorities. E.g., Articles 2(1) of the ICCPR states of equality, while Article 26 extends its application to non-discrimination as well. And in scope, extends to the fields of economic, social, and cultural rights. The ICESCR does not contain a clause on indigenous people, but extends to indigenous people as well.

---

In its States reporting guidelines the Committee conditions the affirmative action towards indigenous people (See Chapter 2.3).

Accordingly, Article 12(1) and (2) of Chapter III of the Sri Lankan Constitution states of the principles of equality before the law, equal protection of the law and the non-discrimination principles, that are applicable to the citizens, including Vanniyala-etto.

The conclusion is that, what constitutes a relationship between the indigenous people and minorities; the equality and non-discrimination principles are applicable to the Vanniyala-etto as fundamental rights under the Sri Lankan Constitutional law.

## 2) **Comparatively, whether Sweden has protected Sámi rights?**

Comparatively, as for the principles of equality and non-discrimination, apart from the international obligations, the ECHR contains a clause, Article 14, which is applicable to all the citizens as stated in the Swedish Constitution (See chapter 2.4, p.24).

Sweden has not ratified C169 nor the Swedish Constitution recognize the Sámi status. But, accepts the Sámi as the indigenous people under the national minority policy. There is a separate Sámi policy as well. It is apparent that to a certain limited extent the Sámi people have *de jure* and *de facto* recognition. Furthermore, Sweden has granted the Sámi a very limited autonomous power, regarding their cultural life.

## **(3) On the other hand, if the right to education as an empowerment right has an extensive value that covers the human person's role in right to development. Then what does it mean by "right to education as an empowerment right" for the Vanniyala-etto community in Sri Lanka?**

The CESCR interpreting Article 13 of the ICESCR states that the right to education is a human right and is an empowerment right for the economically and socially marginalized people. When the States parties realizing the right to education, they must fulfil the normative objectives stated in Article 13 and the principles and purposes stated in Articles 1 and 2 of the UNC; basically, to respect the sovereignty, equality and non-discrimination as stated in Articles 1 and 2 of the UNC. The normative objectives of Article 13 of the ICESCR is that the education should aim to empower the individual, directed towards development starting at a young age (See Chapter 3).

Accordingly, as per Article 1 of the Right to Development, the central subject, active participant and the beneficiary is the human person. The meaning of development is an unvarying, continues economical, social cultural and

political development of a country as a whole.<sup>247</sup> (See chapter 4). Such an education must aim the individual's contribution to the development of the country. Therefore, the right to education as an empowerment right has an extensive value that covers the human person's role in right the to development.

Hence, Indigenous people's culture and lifestyle always relates to their land. In Chapter 4 it was dealt in great detail about the political, economical, social and cultural marginalization of the Vanniyala-etto community.

On the other hand, if the Vanniyala-etto children are denied of the right to receive an education in his/her mother tongue he/she is being discriminated against his human right to education as protected by the ICESCR, the ICRC and the Constitution of Sri Lanka.<sup>248</sup> This is acknowledged in the new primary education developments in Sri Lanka; leaving an opportunity for a child to learn/in their mother tongue at the primary and junior stages of education,. (See chapter 4.4.4).

Governments oftenly are reluctant to find solutions to indigenous people's problems because of the autonomy that links to their rights. One of the principles that the States should adhered to when realizing the right to education is the State's sovereignty (reference is made to para.1 above).

In this connection, Sweden gives a better example in trying to find a solution, inspite of the criticisms (see chapter 4, p.35). Sweden has recognized the Sámi as indigenous people within the concept of national minorities and their cultural identity and language is also protected. In Sámi schools, teaching is to be conducted in Swedish and Sámi and the Sámi language is to be a subject in all grades.<sup>249</sup>

The right to education as an empowerment right involves the right to preserve a culture. To preserve a culture what helps is one's own language. The Vanniyala-etto are denied to receive an education in their mother tongue: Education system in Sri Lanka only aims fulfilling the State's policy, to "provide education for all the children". The Vanniyala-etto were assimilated into the larger society to make them self-supporting communities (See Chapter 4, p.33, 34). The Vanniyala-etto children get the basic education, like all the other children, either in Sinhalese or Tamil language, depending on how they were assimilated unto the larger society. To this extent, the government of Sri Lanka has fulfilled its State's policy on the right to education, "education for all

---

<sup>247</sup> 'Para.2, Preamble of the Declaration on the Right to Development', see chapter 4 of the thesis.

<sup>248</sup> *Supra* Note. 228, p.126.

<sup>249</sup> 'The Sami Language in education in Sweden', [www1.faknaw.nl/mercator/regionale\\_dossiers/regional\\_dossier\\_sami\\_in\\_sweden.htm#Primary%20education](http://www1.faknaw.nl/mercator/regionale_dossiers/regional_dossier_sami_in_sweden.htm#Primary%20education), visited 5 March 2006.

the children”, but has failed to secure the right to education in its true sense towards the Vanniyala-etto community to secure the right to education as an empowerment right to the Vanniyala-etto children.

## 5.2 Recommendations

The recommendations for remedies upon the learning/discussion and conclusions will be at the domestic level and at the international level.

The right to education as an empowerment right interconnects, interdepends, and interrelates all other human rights including the right to development that comes under the international human rights standard setting. Therefore, when the State is looking for solutions, all the fundamentals have to be taken into consideration.

- i. It is recommended that the national State’s policy on education should be amended to be able for the Vanniyala-etto children could receive at least their basic education in their mother tongue. To the this extent:**
  - To amend the laws, amend administrative directives.
  - To carry on research, in Sri Lanka, regarding the ground situation, and on the countries that have already introduced methods, e.g., Sweden, India.
  - To amend the school curricula, for the Vanniyala-etto children to receive their basic education in their mother tongue.
  - To provide teacher training, on Vanniyala-etto language, and to choose people from their own community, to the possible extent.
  - To include Vanniyala-etto history, culture and language in the school curricula.
  - Alternatively, adopting temporary special measures to bring *de facto* equality for the Vanniyala-etto, a disadvantaged group is not discrimination by others right to education.<sup>250</sup>

---

<sup>250</sup>*Supra* Note 102, para.32.

**ii. Formulating or repealing laws, policies, administrative directives that are discriminative to give a solution to use the Vanniyala-etto community's traditional lands.**

- Repealing the land acquisition law that aided to take over the ancestral land of the Vanniyala-etto community and give a permanent solution, through negotiation.

For this, the State must understand and accept the importance of their lands to the Vanniyala-etto people, and the social, cultural and psychological trauma/impact on the Vanniyala-etto. The Vanniyala-etto are being identified as backward and primitive. The contribution of the Vanniyala-etto is vital for, and has an affect to the economical development of the State. E.g., the high prices of reindeer meat, has an effect and impact on the reindeer herding in Sweden, which is a part of the economy in Sweden, therefore, addressing the situation from both ends is vital.

- Some of the suggestions stated in the resolution of indigenous participants to the 14<sup>th</sup> session of the UN Working Group on Indigenous Peoples is supplemented as "A" hereto.

**iii. Ratification of C169**

Sri Lanka is not a party to C169. Assimilation unto the larger society cannot be done without addressing the problem properly. India has ratified C107 and has introduced a solution. But countries like Sweden or Norway has not ratified C169 but has introduced solutions. Therefore, alternatively, to observe the methods being used by such countries and adopt a method which is suitable to for the Vanniyala-etto community and Sri Lanka is suggested. (Conclusion No.2 is reiterated)

**iv. Obligation of the National Human Rights Commission of Sri Lanka under the Act No.21 of 1996, and its mandate to investigate, undertake research, advice and assist and to make recommendations to the government, including acceding treaties and other international instruments, towards finding a solution for the Vanniyala-etto community.**

**v. Right to petition**

The Vanniyala-etto, as citizens of Sri Lanka has the right to petition in the domestic sphere and at the international level, through the treaty monitoring system.

The international remedies are subsidiary to the domestic remedies since the ultimate protector is the State. Therefore, at the national level, the Vanniyala-etto community could always invoke the jurisdiction of the SC or the HRCSL of an infringement of a fundamental right.

On the contrary, the HRCSL has the mandate to research into, on its own initiation or, sometimes by a request by the SC to research and inform, when received of a petition of a group violation. The Social Action Litigation, that remedies group violations, is not that popular in Sri Lankan legal system as in India.

**vi. At the international level, the Vanniyala-etto have the remedies. The international treaty bodies concern are the CESC, ICCPR, CERD and CRC;**

- Under the CESC, re the infringement of their right to education as an empowerment right;
  - i. Not providing primary education to the Vanniyala-etto children in their mother tongue.
- Similar to the CESC, CRC is the other important treaty body, which could look into the violation of Articles 29 and 30 of the ICRC.<sup>251</sup>
- Sri Lanka has ratified both the ICCPR and the 1<sup>st</sup> O.P. to the ICCPR. Special attention is given to the indigenous people's issues under the individual complaint procedure. Vanniyala-etto being citizens in Sri Lanka, could invoke the jurisdiction of the HRC.
- The 1503 procedure established by the ESC looks into gross and consistent patterns of human rights violations, including rights of indigenous people<sup>252</sup> The Vanniyala-etto have the right to petition on the discriminations prevailing against them.

---

<sup>251</sup> Indigenous peoples' rights: the wider perspective, 'Working paper on the Relationship and Distinction Between The Rights of Persons Belonging to Minorities and Those of Indigenous Peoples', <[daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237](http://daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237)>, visited 23 December 2005.

<sup>252</sup> *Ibid.*





# Supplement A

- Pledge to support the Wanniyala-aetto people in their efforts to protect their rights to their land, their heritage, culture, and survival as a people.

## 1.1.1 Land claim

1. We, the Wanniyala-aetto, the indigenous people of Sri Lanka, want to have the 1983 Sinhalese land acquisition returned to us. The area is 198.72 sq. miles (or 51,468 hectares.). It is our hunting grounds, now, labeled as the Maduru Oya National Park. For borders, see Gazette 270/9 1983.11.09.
2. We want to return to our traditional migration routes. Areas recognized by us as Kudatalawa, Kiuliaya, Kotabakinni, Kaeragoda, Bullugahadena and Kandeganville.
3. These are the places where we usually build our houses, where we organize swidden and fallow-cultivations, and arrange small plots of horticulture.
4. The remaining part of the Maduru Oya National Park should serve, as the hunting and gathering ground of the Wanniyala-aetto.
5. Nobody but the Wanniyala-aetto people should be able to live and make a living inside the National Park. We will be responsible for the determination of Wanniyala-aetto identity.
6. The Wanniyala-aetto who were relocated to rehabilitation Villages, Henanegalla, and other land offered by the Mahaweli Development Project may return to their villages of origin.
7. The Wanniyala-aetto will not allow encroachers, neither government (State Timber Corporation, Tourist Board, Development Projects, religious institutions or military training camps) nor private entrepreneurs/projects or private individuals inside the park.
8. National Park guards will help the Wanniyala-aetto to keep encroachers outside. Game meat is harvested for private consumption only. Honey and medical herbs are sold.
9. The objective of the Wanniyala-aetto people is to maintain our culture, apart from the dominant society, and protect it against those who seek to change our beliefs, modify our customs or exploit our resources.
10. We wish to obtain a legal status in the constitution as indigenous peoples of Sri Lanka recognized by the central government.
11. Appropriate formal (school based) and non formal (practical) education facilities should be provided to us. To be effective, curricula and methodologies should be demand-driven, adjusted to our needs and realities and functional in our life within our communities and in our relationship with outside societies. Education should be bilingual and bicultural. The instructors of our culture (language, history, religion, subsistence etc.) should preferably be given by a Wanniyala-aetto person itself.

12. We ask to evolve, adopt and adjust ourselves in our own pace. We no longer use stone tools and clothes of beaten bark. We cannot be asked to regress to a relic part of our culture that died hundreds of years ago, such as the use of bow and arrow. The hunting weapon of today's Wannyalatto, is the muzzle loader, i.e. a shot gun which loads one bullet at time.

# Bibliography

## Literature

N.Wijesekera (ed.), *Veddas in Transition*

K.N.O. Dharmadasa & S.W.R. de A. Samarasinghe (eds.), *The Vanishing Aborigines – Sri Lanka's Veddas in Transition*, (in association with NORAD and Vikas Publishing House (Pvt) Ltd.)

M.W.Sugathapala de Silva, *Vedda Language in Ceylon* (R.Kitzinger, Munchen, 1972)

R.L.Spittel, 'About the Veddas, Vanished Trials', (Oxford University Press, 1961)

Geographies of eviction, expulsion and marginalization: stories and coping capacities of the *Veddas*, Sri Lanka', Ragnhild Lund, p.102.

K.N.O.Dharmadasa, 'The Veddas' Struggle for Survival: Problems, Policies and Responses

Dambane Gunawardhana, 'ovnsfuka ovnsug - Hunting Grounds',  
Dambane Gunawardhana (ed.)

Veddas – The Indigenous People of Sri Lanka – 1, Dambane Gunawardhana, (Simple Wisdom publishers, 2003)

P.Thornberry (ed.), *Indigenous Peoples and Human Rights*, (Juris Publishing)

P.Thornberry (ed.), *Indigenous Peoples and Human Rights*, (Manchester University Press)

Patrick Thornberry (ed.), *The United Nations Charter and the treaties of peace: the issue of minorities*

Patrick Thornberry (ed.), *International Law and the Rights of Minorities*, (Clarendon press. Oxford, 1991)

Patrick Thornberry and Maria Amor Martin Estebanez (eds.), *Minority Rights in Europe* (Council of Europe publishing, 2004)

Yoram Dinstein and Mala Tabory (Eds.), *The Protection of Minorities and Human Rights*, (Martinnus Nijhoff Publishers)

Patrick Thornberry and Maria Amor Martin Estebanez (eds.), *Minority Rights in Europe*, (Council of Europe publishing 2004)

G.Alfredsson and A.Eide (eds.), *The UDHR, A Common Standard of Achievement*, (Martinus Nijhoff Publishers)

A.Eide, C.Krause and A.Rosas (eds.), *Economic Social and Cultural Rights*, (martinus Nijhoff Publishers)

## **Research / discussions**

Chandrasiri, Regional Coordinator, Ampara, HRCSL, 5 December 2005.

The Dambana Vanniyala-etto Chieftain, Dambana, 25 November 2005.

Jayasekera, Future is in our hand, Dambana, 25 November 2005.

A woman, Dambana, 25 November 2005.

Vanniyala-etto Chieftain, Dambana, 25 November 2005.

Dambane Gunawardhana, Dambana, 25 November 2005.

Harendra, Zonal Deputy Director of Education, Mahiyanganaya, Sri Lanka, 22 November 2005.

## **Treaties and Legislations /General documents**

Regulation No.2, Government Notifications under the Education Ordinance, No.1003/5, dated 25 November 1997.

The Sri Lankan Constitution

The ECHR

The Framework Convention for the Protection of National Minorities

Indigenous Issues – report of the Special Rapporteur’, E/CN.4/2002/97

Report by the Special Rapporteur – Executive summary - E/CN.4/2003/90

The Special Rapporteur’s report – E/CN.4/2005/88

## Internet sources

### UN sites

[www.un.org/millennium/declaration/ ares552e.](http://www.un.org/millennium/declaration/ares552e)

<http://www.ohchr.org/english/bodies/cescr/comments.htm>

<http://www1.umn.edu/humanrts/gencomm/hrcom23.htm>

[www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument)

[daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237](http://daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237)

[www.ohchr.org/english/about/publications/docs/minorpam10.doc.](http://www.ohchr.org/english/about/publications/docs/minorpam10.doc)

[www.unhchr.ch/html/menu3/b/62.htm](http://www.unhchr.ch/html/menu3/b/62.htm)

[daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237](http://daccessdds.un.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237)

[unhchr.ch/Huridocda/Huridoca.nsf/...?Open Document](http://www.unhchr.ch/Huridocda/Huridoca.nsf/...?OpenDocument)

<http://www.unhchr.ch/udhr/lang/eng.htm>

[www.unesco.org/most/rr4educ.htm](http://www.unesco.org/most/rr4educ.htm)

[http://www.unesco.org/education/efa/ed\\_for\\_all/background/jomtien\\_declaration.shtml](http://www.unesco.org/education/efa/ed_for_all/background/jomtien_declaration.shtml)

<http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm>> ,

<http://daccessdds.un.org/doc/UNDOC/GEN/N05/253/74/PDF/N0525374.pdf?OpenElement>

[www.ohchr.org/english/about/publications/docs/fs16.htm](http://www.ohchr.org/english/about/publications/docs/fs16.htm)

[http://www.bayefsky.com/general/cescr\\_gencomm\\_13.php](http://www.bayefsky.com/general/cescr_gencomm_13.php)

[http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6b748989d76d2bb8c125699700500e17/\\$FILE/G0044704.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/6b748989d76d2bb8c125699700500e17/$FILE/G0044704.pdf)

[www1.umn.edu/humanrts/instreet/ainstls1.htm](http://www1.umn.edu/humanrts/instreet/ainstls1.htm)

[www1.umn.edu/humanrts/instreet/r1citp.htm](http://www1.umn.edu/humanrts/instreet/r1citp.htm)

[www1.umn.edu/humanrts/instreet/r1citp.htm](http://www1.umn.edu/humanrts/instreet/r1citp.htm)

[www.ohchr.org/english/about/publications/docs/fs16.htm](http://www.ohchr.org/english/about/publications/docs/fs16.htm)

[www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/4ceb75c5492497d9802566d500516036?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/4ceb75c5492497d9802566d500516036?Opendocument)

H:\international instruments\Fact Sheet No\_16 (Rev\_1), The Committee on Economic, Social and Cultural Rights\_files.htm

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument)

[www.unhchr.ch/Huridocda/Huridoca.nsf/0/1d7c8013d362299580256778002f5271?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/1d7c8013d362299580256778002f5271?Opendocument)

H:\international instruments\United Nations Human Rights Website - Treaty Bodies Database - Document - State Party Report - Sri Lanka\_files\United Nations Human Rights Website - Treaty Bodies Database - Document - State Party Report - Sri Lanka.htm

H:\international instruments\Education as an indigenous Right.htm

H:\international instruments\Literacy in Indigenous Communities\_files\Literacy in Indigenous Communities.htm

[www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.362.Add.5.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.362.Add.5.En?Opendocument)  
<http://www.ohchr.org/english/bodies/cescr/comments.htm>

<http://www.ohchr.org/english/issues/indigenous/decade.htm>

### Regional sites

H:\The Oslo Recommendations - Linguistic Rights of National Minorities & Explanatory Note.htm

[http://www.age-of-the-sage.org/vienna\\_declaration.html](http://www.age-of-the-sage.org/vienna_declaration.html)

[www.riksdagen.se/templates/R\\_PageExtended\\_6319.aspx](http://www.riksdagen.se/templates/R_PageExtended_6319.aspx)

H:\swedish minorities\National Minorities\_files\National Minorities.htm

<http://www.sweden.gov.se/content/1/c6/01/62/46/4cf4b38c.pdf>

[www.sametinget.se/sametinget/view.cfm?oid=2000&sat=no](http://www.sametinget.se/sametinget/view.cfm?oid=2000&sat=no)

[www.sametinget.se/sametinget/view.cfm?oid=2000&sat=no](http://www.sametinget.se/sametinget/view.cfm?oid=2000&sat=no)

H:\SWEDEN\_SE - National Anthem\_files\swedish minorities\Sami history\_files\kitok\_files\kitok.htm

H:\SWEDEN\_SE - National Anthem\_files\swedish minorities\Sami history\_files\Sami history.htm

[www.sweden.gov.se/content/1/c6/01/62/46/4cf4b38c.pdf](http://www.sweden.gov.se/content/1/c6/01/62/46/4cf4b38c.pdf)

<http://www.sweden.gov.se/content/1/c6/01/62/46/4cf4b38c.pdf>

[www.sweden.gov.se/sb/d/2188/a/19444](http://www.sweden.gov.se/sb/d/2188/a/19444)

[www.unesco.org/most/ln2pol6.htm](http://www.unesco.org/most/ln2pol6.htm)

<http://www1.umn.edu/humanrts/africa/comision.html>

[www.dhdi.free.fr/recherches/environnement/articles/rout.htm](http://www.dhdi.free.fr/recherches/environnement/articles/rout.htm)

IMC India - Seminar `Indigenous People ad their Land Rights

<http://india.indymedia.org/en/2004/01/208681.shtml>

## **WB**

file:///C:/Documents%20and%20Settings/I%20love%20IIIEE/Desktop/WB%20directive.htm,

[www.unhchr.ch/minorities/publications.htm](http://www.unhchr.ch/minorities/publications.htm)

## **General sites**

<http://cyberschoolbus.un.org/indigenous/index.asp>

H:\The Constitution of the Republic of Sri Lanka Bill\_files\WWW Virtual Library Sri Lanka - Sri Lankan People, Ethnic Groups and Casts.htm

[www.lankalibrary.com/cul.html](http://www.lankalibrary.com/cul.html)

[www.aare.edu.au/99pap/sco99698.htm](http://www.aare.edu.au/99pap/sco99698.htm)

[en.wikipedia.org/wiki/Sinhale](http://en.wikipedia.org/wiki/Sinhale)

<http://vedda.org/8-rights.htm>

<http://vedda.org/4-tomei.htm>

[vedda.org/6-mahaweli.htm](http://vedda.org/6-mahaweli.htm)

daccessdds.UN.org/doc/Undoc/GEN/Goo/142/37/PDF/G0014237

H:\University of Minnesota Human Rights Library files\ University of Minnesota Human Rights Library. Htm

[http://news.bbc.co.uk/2/hi/south\\_asia/country\\_profiles/1168427.stm](http://news.bbc.co.uk/2/hi/south_asia/country_profiles/1168427.stm)

[www.moe.gov.lk](http://www.moe.gov.lk)

H:\Bureau of International Labour Affairs (ILAB) - U\_S\_ Department of Labour. Htm

H:\Cultural Pluralism. htm

H:\Bureau of International Labour Affairs (ILAB) - U\_S\_ Department of Labour. htm

international instruments\Education as an indigenous Right.htm

[www.prel.org/products/re\\_/indigenous.htm](http://www.prel.org/products/re_/indigenous.htm)

[conventions.coe.int/treaty/en/Treaties/Html/148.htm](http://conventions.coe.int/treaty/en/Treaties/Html/148.htm)

“Marusca Perazzi”, [marusca.perazzi@mrgmail.org](mailto:marusca.perazzi@mrgmail.org).

[www.prel.org/products/re\\_/indigenous.htm](http://www.prel.org/products/re_/indigenous.htm)

[www.prel.org/products/re\\_/indigenous.htm](http://www.prel.org/products/re_/indigenous.htm)