

Vienna Convention and Sri Lankan Child Worker on Death Row

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On 15 July 2007, just one day before the deadline, a judicial appeal was filed to save Rizana Nafeek, a Sri Lankan teenager, from facing execution in Saudi Arabia. Had this deadline passed without an appeal, the nineteen-year-old would have faced public beheading, after receiving no legal representation and accused of a crime she, at most, became party to through a tragic accident while working as a child in a foreign country.

Compared to another case in which three Sri Lankans were sentenced to death two years ago and executed last February in Saudi Arabia without any legal representation, it is good that Rizana is finally receiving the assistance needed to file for an appeal. One would be remiss, however, to ignore the inadequacies of the Sri Lankan government's response to Rizana's case and overlook the urgent need for an overarching strategy on the part of the Sri Lankan government to protect the basic rights of its citizens who are working abroad.

Each year, over two hundred thousand Sri Lankans leave to the Middle East for employment, their remittances accounting for a significant part of the country's foreign exchange reserves. More than a million Sri Lankans are reported to be working in the Middle East today, most of them in low-skilled jobs. As foreigners unfamiliar with their surroundings, lacking Arabic language skills, and being at the bottom of the economic ladder, these workers are vulnerable to ill treatment in the host countries. Their vulnerability is heightened all the more in the case of domestic workers, who are often isolated from their peers, as was the case of under-aged Rizana, who was only seventeen when she left her poverty-stricken family to work in Saudi Arabia.

The Asian Human Rights Commission played a critical role in advocating for Rizana, publicizing her case and raising the necessary funds to pay for her appeal.¹ By contrast, the government of Sri Lanka has yet to formulate an effective strategy to protect the basic rights of its citizens, like Rizana, who live and work abroad.

* *The ideas, opinions and viewpoints expressed herein are the author's alone and do not necessarily reflect those of Sandler, Travis & Rosenberg. First published on Groundviews – www.groundviews.org*

¹ <http://www.ahrchk.net/statements/mainfile.php/2006statements/1118/>

The Sri Lankan government must do more to secure legal protection for its citizens abroad. At minimum, it must: (1) put in place a system to exercise its rights under the *Vienna Convention on Consular Relations* ("*Vienna Convention*") to promptly arrange for the legal representation of its nationals in foreign custody;² and (2) accede to the *Vienna Convention's* associated *Optional Protocol Concerning the Compulsory Settlement of Disputes* ("*Optional Protocol*"), thereby securing access to legal proceedings for its citizens at the International Court of Justice (ICJ).³ To the extent the Sri Lankan government continues to neglect these measures, it fails to utilise existing mechanisms to safeguard its citizens' rights in the international arena.

Vienna Convention on Consular Relations

The Sri Lankan government acceded to the *Vienna Convention on Consular Relations* in May 2006, after much media pressure and activist criticism of the government's inability to protect the rights of the three Sri Lankans in 2005. The most relevant section of the *Vienna Convention*, Article 36, paragraphs 1(b) and 1(c), reads:

*Article 36, 1(b): if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. **The said authorities shall inform the person concerned without delay of his rights under this sub-paragraph;** (emphasis added)*

*Article 36, 1(c): **consular officers shall have the right** to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and **to arrange for his legal representation.** They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action. (emphasis added)*

In the case of Rizana, having adopted this Convention in May 2006, the Sri Lankan consulate had the right and the responsibility to exercise this right promptly to arrange for Rizana's legal representation. But even after acceding to the Convention and while

² Copy of the *Vienna Convention* can be found on http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf.

³ Copy of the *Optional Protocol* can be found on http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961_disputes.pdf

Rizana remained in the custody of the Saudi authorities, the Sri Lankan government failed to invoke Rizana's right to legal representation. She ultimately received her death sentence on 16 June 2007, without legal representation or assistance from the Sri Lankan Embassy. Earlier, Rizana also had been subject to police interrogation, where she was pressured to confess to the crime, not only without legal representation, but even without a translator by her side. (Rizana does not speak Arabic, and the interrogation took place within one month of her residence in Saudi Arabia).

While signatory to the *Vienna Convention*, the Sri Lankan government failed to do its part to stand up for Rizana's rights spelled out in the Convention. It is urgent that the government of Sri Lanka put in place an effective strategy to exercise its rights under the *Vienna Convention*.

Such strategy would be incomplete without Sri Lanka's accession to the *Vienna Convention's* associated *Optional Protocol Concerning the Compulsory Settlement of Disputes*.

Optional Protocol Concerning the Compulsory Settlement of Disputes

Two years ago, while urging the Sri Lankan government to act on behalf of the three Sri Lankans on death row, columnists had pointed out that while necessary, adopting the *Vienna Convention* would not be sufficient to give legal muscle to the government.⁴ It was vital for the government also to accede to the associated *Optional Protocol*.

This is because the *Optional Protocol* stipulates that in the case of a dispute regarding the adherence to the *Vienna Convention on Consular Relations* (where the two countries cannot reach a mutually satisfactory settlement), the International Court of Justice would have the jurisdiction to decide the case. Had Sri Lanka ratified the *Optional Protocol*, should the present appeal before the Saudi High Court not result in Rizana's acquittal, there would be grounds for appealing the case further before the ICJ.

In a similar case a few years ago, some 51 Mexican nationals were saved from death row in the United States precisely because Mexico dutifully claimed the rights of its citizens under the *Optional Protocol*. In this case, when the Mexican consulate realised that their nationals had not been properly informed about their rights to access the assistance of the Mexican Consular, in violation of Article 36 (b) of the *Vienna convention on Consular Relations*, they challenged the United States before the International Court of Justice, invoking the *Optional Protocol*. The ICJ ruled in favor of Mexico, and the Mexicans were acquitted.

⁴ See, for example, Nishan De Mel's article published on http://www.lines-magazine.org/Art_May05/nishan.htm and <http://www.dailymirror.lk/2005/04/08/opinion/1.asp>

Sri Lanka, however, has yet to ratify the *Optional Protocol*, thus failing to secure for Rizana the available recourse to an international legal proceeding.

It should be acknowledged that in the recent month, following the death sentence and amidst much pressure from both international and Sri Lankan civil society, the Sri Lankan government has petitioned for Rizana's release to Saudi authorities (just as it did in the case of the three Sri Lankans on death row, without success and without availing itself of existing international mechanisms).

The appeals of both civil society and the Sri Lankan government, however, have tended to be based on: (1) Rizana's status as a child at the time of the alleged incident and her rights under the UN Convention on the Rights of the Child to be protected from the death penalty;⁵ and (2) the likely accidental nature of the incident. (The current judicial appeal is being made on the ground of "accidental death").

These are valid bases on which appeals for clemency can be and should be made on Rizana's behalf. The Sri Lankan government, however, continues to overlook an important mechanism for protecting the legal rights of its nationals like Rizana. It has failed to invoke its right to arrange for Rizana's legal representation promptly, even while being signatory to the *Vienna Convention on Consular Relations*. It also has failed to adopt the *Optional Protocol Concerning the Compulsory Settlement of Disputes*, thereby forfeiting the power to take Rizana's case to the International Court of Justice. These failures point to critical inadequacies in Sri Lanka's capacity to protect the legal rights of its citizens who labour beyond its borders. By its inaction, the government of Sri Lanka subjects perhaps the most vulnerable segment of its citizenry – those driven outside its borders by poverty and desperation – to unjust imprisonment and execution.

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⁵ See, for instance, <http://www.groundviews.org/2007/07/10/rizanas-future-what-we-can-do/> and <http://www.ahrchk.net/ua/mainfile.php/2007/2463/>.