

Noolaham Foundation
Project Report

Project Title	Unwritten Laws and Practices, their influence on the community and Human Rights in Jaffna.
Project Number	NF/PG/2014/0007
Project Location	Jaffna
Sector	Law and Legal Systems
Implementing agency and contribution	Noolaham Foundation
Grant Agency and Contribution	Neelan Tiruchelvam Trust
Total Budget and Expenditure	Total budget LKR 550,000
Start and End date	1 st March 2014 to 30 th November 2014
Responsible Stakeholders	Sector experts, various stakeholders, consortiums, children, youths, women, men and Community Based Organizations(CBOs)

Summary:

The **Unwritten Laws and Practices, their influence on the community and Human Rights in Jaffna** project was carried out by Noolaham Foundation with the support of Neelan Tiruchelvam Trust in Jaffna. This project aimed to research on the status of Unwritten Laws and practices among the Jaffna community and to identify their influence on Human Rights at present. Other objectives of the project are to create awareness on this topic among the public, to preserve and document project related materials and to make them available to the wider public.

Almost hundred and twenty unwritten laws, practices and trends were identified, and produced as a research paper in the project period. These unwritten Laws and practices were identified through interactive discussions with experts in the field, community based organizations, consortiums, and beneficiaries, video footages, audio recordings, books, flyers, news from local media, and related photos 30audio recordings and videos from interactive discussions were also documented and preserved. The recorded documents were transcribed. Noolaham Foundation also conducted five factual presentation on the status and influence of unwritten Laws and practices on Human Rights in the targeted community. The targeted community gets clear understanding on the matter and provides a conducive environment for self-resilience. The presentations and discussions created a good avenue for self-understanding and positive social dynamics toward international standards.

Further twenty three project-related books were collected and digitized from repositories and various scholars. The research book and all digitized documents are made available online through Noolaham Foundation's digital library at www.noolaham.org to multiple users through this project. This digitization has increased the breadth of access that was provided. Use of a digital surrogate may decrease the need to use the original – which may be difficult to access. This project collectively promotes peace, reconciliation and human rights by increasing access to this valuable information and provides an opportunity towards the mission of Neelan Tiruchelvam Trust as well.

Introduction and Background

Most of people know that Jaffna has “a written Law, not an unwritten one.” That’s a central feature of our law. But today ordinary people in Jaffna are not aware that they have an unwritten Law. They do have several varieties of unwritten law. This is a good thing as there are a many laws outside the text—the everyday, non-written law, written and unwritten laws that structure our government and society.

Unwritten rules, principles, and norms have the effect and force of law, though they have not been formally enacted by the government as laws. The ‘Thesawalamai Law’ is a partly unwritten law in 1799 when Sri Lanka was taken over by the British. The Dutch first codified the customs of Jaffna people and the British codified the Thesawalamai by the Regulation of 1806. By contrast, unwritten law consists of those customs, traditions, practices, usages, and other sayings of human conduct that the government has recognized and enforced. It should be noted that the Laws of Sri Lanka have been from time to time altered by legislation.

These customary laws are applicable to the Tamils who inhabit the Jaffna District. It is very difficult for one to actually trace the origin of this system of law. But it would suffice if one realizes that this system of law prevailed in Northern Sri Lanka for several centuries. It would be appropriate for one to know what “customary law (practices)” really means. “Custom (practices)” are a source of law comprising legal rules. These rules have not been promulgated by any legally constituted authority but they stem from popular use and opinion which by the effluxion of time receives the sanctity of law.

Unwritten laws are most commonly found in Tamil primitive societies where illiteracy is prevalent. Because earlier many residents in such societies cannot read or write, there is little point in publishing written laws to govern their conduct. Instead, societal disputes in primitive societies are resolved informally, through appeal to unwritten maxims of fairness or popularly accepted modes of behavior. Litigants present their claims orally in most primitive societies, and judges announce their decisions in the same fashion. The governing body in primitive

societies typically enforces the useful traditions that are commonly practiced in the community, while those practices that are narrative or risky fall into disuse are discouraged.

Jaffna society mainly covers Tamil and Hindu cultural traditional norms and the home town of Sri Lankan Tamils. Minorities are Muslims, Indian Tamils and Sinhalese where they all live together in peace and harmony. Earlier society was governed by unwritten law. Economic and social statuses were seriously divided by the caste system in Jaffna. Early Tamil communities practiced unwritten law towards their economic, political and cultural activities.

After the interventions of Europeans, the domination of these unwritten laws decreased. But groups like the elite group, high caste communities give importance to these laws. The sources of Human rights laws are based on human and social life, but different from unwritten laws. When the human rights and fundamental rights of the community are violated, community or individual expects the current judicial system to address violations. . On such occasions, unwritten laws are not taken into account.

Child rights, Women rights, labor rights, civil rights, IDPs rights are the foundation of human rights. Jaffna community has got different experiences from feudal and royal times to the post war era. Human rights change time to time or develop new things as laws. But unwritten laws are not changed according to time and retain the value of the community Traditional society is survived by means of unwritten laws. This project plans to find out the influence of unwritten laws on Human Rights. The interventions of European laws and national laws have affected Jaffna society. Million peoples are displaced from their indigenous places.

Normally, in Asian culture or particularly in Sri Lankan culture, parents do punish their children with the view to correcting their mistakes. But such a practice is not entertained in child laws. This situation leads to a clash between traditional values and modern human rights discourses. Unwritten laws undergo changes over time.

Implementation Procedure

The research is an analysis of the Unwritten Laws and practices observed in Jaffna society, and how they have influenced society and human rights in comparison with the United Nations articles (Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10thDecember 1948). The research focuses on the community's contemporary social efflux and aims to document and index it.

At the very beginning of the project, Noolaham Foundation worked on defining the project areas using a framework for the documentation. Many experts in the field were approached with a view getting consultation of the framework (**See annexure 01**). Initially NF identified

five major community areas and then added one more area. These areas are either affected or protected by our social norms, practices and unwritten laws.

Basic and secondary information was also collected from sector experts **(See annexure 02)** via interactive discussions and questionnaire. During data collection gender equity was upheld. The personalities who work closely with the community in Jaffna provided valuable reference sources and inputs on a regular basis. Further they helped us to identify people who have done research in this area. Among them, we selected Mr. N. Selvakumaran (The former Dean Faculty of Law, University of Colombo) as the moderator of the project and Mr. R. Sentitcumaran (Attorney-at-Law) as the co-moderator of the project.

This project's primary data was collected from different sources of the communities in Jaffna. It also implemented the orientation process to create awareness on this issue among the public. Specially, we conducted key informal interviews, focused group discussions and filled questionnaires. Personal Interviews were conducted in a flexible manner and we collected large amounts of information from the interviewees. Using questionnaires helped us conduct the interviews quickly. Interviewee's reactions, behavior and feelings were recorded. Individual interviews (selected individuals) as well as Focus group Interviews (Women organizations, CBOs, Youth) were conducted. Almost documents were collected as primary and secondary data. These collections include video footages, audio recording, books, flyers, news from local media, and photos.

The research team worked for six months for data collecting activities and the researcher worked for three months. Noolaham Foundation's staff were heavily involved in implementing this project. During the project period, NF's staff involvement and dedication was highly observed. Mr. Sriranganathan Srivakeesan worked as project researcher and Mr. Noel Rukshan Premakumar worked as project assistant. The researcher was the key person of this project. During the project implementation period three narrative reports and financial reports were submitted to Neelan Tiruchelvam Trust. The reports covered the activities of the project, results obtained, the impact expected and summarize the extent to which its objectives have been achieved. On the other hand, after the data collection, the data was analyzed. The researcher prepared the final research report with the help of Mr. N. Selvakumaran who acted as moderator of the project. At the same time NF identified potential documents. The recognized project related books and magazines were digitized and preserved.

The main body of the research report included the following sections: background, methods, results, discussion, conclusion, and references. The background introduced the topic area and

provided a succinct review of the appropriate literature. This section concludes with the objectives/purpose of the study and by stating a hypothesis. The methods section provides information on the design of the study. Other information includes inclusion and exclusion criteria, ethical approval (consent), equipment, procedures, methods of analysis and data analysis. The results section contained a detailed presentation of the data analyzed and is related to the supporting information presented within their related observations. The discussion focused on main findings. This section also compared and contrasted the findings the study with previous literature on this topic. The strengths and limitations of the study were addressed along with ideas for future studies. Where possible, emphasis was placed on the application to practices. The conclusion also provides a different or new view of the problem outlined in the background and supported by the findings.

Objectives and Achievements /Results

This project was carried out under Noolaham Foundation's objectives of providing knowledge and information services to promotion of good governance and institution building, promoting and protecting human rights, promoting pluralistic values and engaging youth in social transformation. The project aimed to ensure free and open access of sources, and thereby support educational, research and development endeavors related to Sri Lankan Tamil speaking communities. This research project focused on the status of unwritten laws and practices among the Jaffna community and sought to assess its influence on human rights. It also aimed at to documenting and sharing materials related to unwritten laws amongst the wider public.

NF collected verbal documents from different target groups and listed the use of unwritten laws. Further NF has used primary and secondary data collection methods through orientation and mobilization activities to identify the relevant data. These unwritten laws and practices were also identified through interactive discussions with experts in the field, Community Based Organizations, Consortiums, and beneficiaries. These orientations, meetings, discussion, data collection, and interviews have initiated a vibration among the communities and beneficiaries.

During the meetings and discussions with community based organizations, members shared their problems and difficulties as well as their willingness to find out the solutions. Some of them came out with suggestions. This could be observed as a major improvement among the beneficiaries.

Through the research the status from earlier and current life styles, and nature of the unwritten laws and practices which play a major role of the society of Jaffna community are found. Further the research intended to state the relationship between human rights and

unwritten laws, practices and trends. On the other hand, the research report indicated aspects that affect unwritten laws, practices and trends in the community.

NF conducted five awareness creation activities to achieve the project objectives through presenting the findings to stakeholders and the community. These awareness creation activities targeted to motivate CBOs, youth, and women because these groups play a major role in the community. This awareness creating activities among 250 youths, women, member of CBOs, and community will provide space for acquiring Human Rights related knowledge and understanding. NF believes that this project will create awareness among people about their rights, create a friendly and protective environment and ensure the creation of a healthy society.

The collected videos and audios of the group discussions and informal interviews were archived. Further the research report and the twenty three project related books collected during the project were digitized and made available online through Noolaham Foundation's digital library (www.noolaham.org) for public access. The dissemination of these sources will benefit our users in Sri Lanka and abroad. This digitization and documentation initiative will bring out the richness of the community and social transformations that take place at present.

Noolaham Foundation also made ten field visits to monitor and evaluate the relationship between the project findings and aspects related to the community. During the field visit, informal interviews and presentation were conducted. Since this intervention, interaction through discussion and other activities the community groups, CBOs, Women group, and youth will be motivated and they will be encouraged to learn historically hidden contexts. NF believes that this project will encourage peoples throughout Jaffna to explore avenues to promote an equitable society where human rights and freedoms are respected and upheld.

The research work made a way for other researchers to build on the findings and to produce a valuable discussion on unwritten laws, practices, trends and Human Rights.

Constrains / Challenges and lesson learned

- There are many unwritten laws in practice among the Tamil speaking communities in Sri Lanka. Therefore NF limited this project to Jaffna district.
- Due to lack of relevant resources, qualitative data and personalities on the subject of unwritten laws and social practices, the project staff found difficulties in identifying potential resources and reference materials in the Jaffna district. It was observed as a

major threat during data collection. However, NF managed to collect most of the available information.

- Noolaham Foundation is expected to work 7-12 hours per week with a moderator and a principal investigator. But due to their workload project staff faced some difficulties in this respect.
- Many socially excluded women engage in productive activities, and return home after 6 pm. Therefore we had to schedule appoints with them either during weekends or at night.
- Due to cultural restrictions, many Tamil women, particularly in Jaffna, would not like to share their sensitive thoughts with others. They perceive that they may be a traitor to their society and may be alienated when others hear about the information which is shared by them.
- During the implementation period, it was essential to understand the differences between these views, consider areas of unwritten law and practices where the research sees popular sovereignty as making a real difference on stare decisis and women's equality. Although everyone agrees that the Constitution's text is supreme, that supreme law sometimes seems at variance with day-to-day practice in the courts—a gap that an unwritten constitution might fill.

Suggestions and Recommendations

- For Noolaham Foundation, this can be a starting point for similar projects. The potential of collaborative effort is realized and similar projects would be undertaken to create a healthy society. Works of this kind should be encouraged more and more to increase research and further study in this area.
- Allocating more time to complete the research report will reduce extra pressure on the researcher

Acknowledgments

Noolaham Foundation takes immense pleasure in expressing its gratitude to Mr. N. Selvakumaran, former Dean Faculty of Law, University of Colombo and Mr. R. Sentitcumaran. NF would like to acknowledge their valuable guidance and their suggestions towards all our activities.

Relevant Attachment:
Annexure 01
Framework for the documentation

Human Rights

Articles:

1. Right to equality
2. Freedom from discrimination
3. Right to life, liberty, personal security
4. Freedom from slavery
5. Freedom from torture & degrading treatment
6. Right to recognition as a person before the law
7. Right to equality before the law
8. Right to remedy by competent tribunal
9. Freedom from arbitrary arrest & exile
10. Right to fair public hearing
11. Right to be considered innocent until proven guilty
12. Freedom from interference with privacy, family, home & correspondence
13. Right to free movement in and out of the country
14. Right to asylum in other countries from persecution
15. Right to a nationality and the freedom to change it
16. Right to marriage & family
17. Right to own property
18. Freedom of belief & religion
19. Freedom of opinion & Information
20. Right of peaceful assembly & Association
21. Right to participate in government & in free elections
22. Right to social security
23. Right to desirable work & to join trade union
24. Right to rest & leisure
25. Right to adequate living standard
26. Right to education
27. Right to participate in the cultural life of community
28. Right to a social order that articulates this document
29. Community duties essential to free & full development
30. Freedom from state or personal interference in the above rights

Unwritten Laws

(Cultural, Methodical, Traditional,
hereditary, Religious, Social, Political,
Economical etc...)

Influence

Women (WHH and Others):

In the home & family: Dowry, Forced marriage, sexual & physical abuse, Men's control over women, Domestic violence, hard rules

In the working place: The gender wage gap, sexual abuse, Promotion, leadership

In the Community: Gender discrimination, Widows,

Children:

In the home & family: Physical & humiliating punishment, sexually abuse, gender base violence, pressurize their children to study harder, pushes children towards particular profession, emotional abuse, Independence

In the school & education settings: Discrimination against children from (poor families, marginalized group, personal characteristics), Corporal punishment, sexually abuse

In the community: Child trafficking, Sexual abuse

Youth:

In the home & family: Psychological harm, losing the benefits of education, controlling emotions,

In the education settings: Ragging, decision making

In the community: Unemployment, Social control by elders, Social movement, mingling with the opposite sex

Men :

In the home & family: Caring

In the working place: work load, working time

In the Community: Responsibility, priority

Excluded (Aged, Disables)

In the home & family: Verbal, psychological abuse

In the working place: Segregated, including in the general school system, to be employed, to participate in Sports, unemployable

In the Community: to move freely, segregated, to participate in Cultural activities, health

Community

In the religion:

In the cast system

Health and Social institutions

Annexure 02

The detail of discussed sector expertise and group discussion

No	Name of the Key informal Person	Type of Organization
1	Prof. K. Shithamparanathan	Professor of Drama & Theatre Faculty of Arts, University of Jaffna
2	Mr. N. Selvakumaran	Former Dean, Law Faculty, University of Colombo
3	Dr. Kiran Grewal	Senior Research Fellow Institute for Social Justice, Australian Catholic University
4	Ms. Rubini Nishanthan	Attorney at Law, Human Rights Commission, Jaffna
5	Mrs. Rajani Chandirasekaram	Women rights activist, Vallamai, Jaffna.
6	Ms. K.Prabha	Secretary, Cooperative Employees Commission
7	Mr .A. Jesurajah	Scholar, writer, Publisher, Jaffna
8	Miss. Uthayani Navaratnam	District Coordinator of Women Development, Jaffna District
9	Mr. K. Kirishnarajan	Lecturer, Department of Sociology, university of Colombo.
10	Mr .S. Pathmanathan (Sopa)	(President, HBCH), Former Principal of Teachers Training College, Pallali, Jaffna
11	Mr. T. Selvamanoocharan	(Assistant Secretary, HBCH), Part time lecturer, Hindu Philosophy, university of Jaffna
12	Mr. G. Jeyatheis	Sri Lanka Archive ,Former Lecture, University of Jaffna,
13	Mr. M. Nilanthan	Prominent journalist and eminent scholar, Jaffna
14	Mr. Gowthaman Kunchithapatham	Assistant District Psychosocial Officer, Jaffna
15	Ms. Kaliyugavarathan Thilakshi	Secretary, Working Women Organization
16	Mrs. Uthayakarasi	Staff Officer, Working Women Organization
17	Ms. Natkunasingham Niranjini	President, Working Women Organization
18	Mrs. S. Suthanthini	Social worker, Former Staff of FORUT, Sri Lanka
19	Mr. S.Murugaija	President Consortium of Organization for Rural Empowerment – Tellipalai Empowerment – Tellipalai
20	Mrs. S.Karthika	Women in Need
21	Mr. Iyathurai	Mavaikladi Village, President
22	Mr. Pirunthaban	President, Karuvi
23	Mr. Shiyam	Working Women , Organization
24	Group Discussion	Kalaisellvi, WRDS
25	Clients of Ms. Rubini Nishanthan	Two clients
26	Doby Man	Pandaitharipu
27	Children - 03 Numbers	Urumpiraih
28	Village Women	Mavaikaldi
29	A pilgrims of the Lord Ayyappan	Jaffna

Annexure 03 – Digitized books - The list of references (Books)

1. Law of Thesavalamai – 2001 - by Saba Raveendran
2. Tesavalamai – Fourth edition – 1972 by T. Sri. Ramanathan
3. Constitution of the democratic socialist republic of Sri Lanka – reprint 2004 (இலங்கை சனநாயக சோசலிசக் குடியரசின் அரசியலமைப்பு - பாராளுமன்ற செயலக வெளியீடு - 2004)
4. An introduction to the legal system of Sri Lanka – L. J. M. Cooray
5. Statistical handbook Jaffna district secretariat, 2012
6. Jaffna District in Facts and Figures". Balasundarapillay. P, Rupamoorthy. k. Teepam Institute. Retrieved 21 Oct 2013.
7. Swami Gnanaprakasara's Yarlpana Vaipava Vimarsanam – Thamizhar Yugam 1928 (சுவாமி ஞானப்பிரகாசரின் யாழ்ப்பாண வைபவ விமர்சனம் - தமிழர் யுகம் 1928)
8. Thamizhch Samookamum Panpaadin meilkandupidipum - Prof. Karthikesu Sivathambi (தமிழ்ச் சமூகமும் பண்பாட்டின் மீள்கண்டுபிடிப்பும்)
9. Yarlpana samukam, panpaadu, karuthu nilai - Prof. Karthikesu Sivathambi (யாழ்ப்பாண சமூகம், பண்பாடு, கருத்துநிலை)
10. Ellath Thamizhar iramai - K. Satchchithananthan (ஈழத்தமிழர் இறைமை)
11. Mills, Lennox A. (1933). Ceylon Under British Rule (1795 - 1932). London: Oxford University Press. pp. 67–68
12. Yarlpana samookathai vilankikkollal - Prof.Karthikesu Sivathambi 1993 (யாழ்ப்பாண சமூகத்தை விளங்கிக்கொள்ளல் 1993)
13. Saathiyamum athatkkan poratamum – Puthiya Poomi publication 1996 (சாதியமும் அதற்கெதிரான போரட்டங்களும் புதிய பூமி வெளியீடு)
14. Pannual 7th edition 2009 (பனுவல் ஏழாவது இதழ் 2009, சமூக பண்பாட்டு உயர் கற்கைகளுக்கான நிறுவனம்)
15. A History of Jaffna(யாழ்ப்பாணச் சரித்திரம் அ. முத்துத்தம்பிப்பிள்ளை)
16. Saivath Thamilzh thirumanankal – P. Kumaravadivel (சைவத்தமிழ்த் திருமணங்கள் ஓர் கையேடு)
17. Ilankaiyin Inappirachchinnaiyum Arasiyal Yappukalum by S. A Jothilingam (இலங்கையின் இனப்பிரச்சினையும் அரசியல் யாப்புக்களும்)
18. Yarlpana samookam - Paramsoothi Thangavel (யாழ்ப்பாணச் சமூகம்)
19. Yarlpana Vaipavamalai - K. Sapanathan (யாழ்ப்பாண வைபவமாலை)
20. Yarlpaana vaipavamaalai - Reprint - Maatthkal Majilvakana pulavar - (யாழ்ப்பாண வைபவமாலை - மீள்பதிப்பு - மாதகல் மயில்வாகனப் புலவர்)
21. Elankai Manithaurimaikal Nillai - 2000 (இலங்கை மனித உரிமைகள் நிலை)
22. Yarlpana Samukaththil pen kallvi oru Aivu - Vallinayaki Eramalingam (யாழ்ப்பாண சமூகத்துள் பெண் கல்வி ஓர் ஆய்வு)
23. Kalacharamum Pen vellippadam - T. Mathusuthanan (கலாசாரமும்பெண் வெளிப்பாடும்)

Annexure 04

Discussion with Prof K. Sithamparanathan



Discussion with a pilgrims of the Lord Ayyappan



Discussion with Mrs. Rajani Chandirasekaram



Discussion with Village Women's, Mavaikaladi



Discussion with Village Women's, Mavaikaladi



Discussion with Mr. G. Jeyatheis, Sri Lanka Archive



Discussion with members of Kalaiselvi, WRDS.



Discussion with Mr. S. Murugaiyah the president of CORE Tellipalai, Jaffna.



Annexure 05

Details of awareness creation programme with the Organizations and CBOs :

Name of the organizations / CBOs
Hindu Board of Education, Thirunelvelly, Jaffna
Consortium of Organization for Rural Empowerment – Tellipalai (32 organizations included)
Thickam Central Community Centre, Point Pedro Jaffna (8 various organization)
Vallamai Women Organization, Jaffna