



Sri Lanka's Universal Periodic Review 4th Cycle January 2023

By Australian Tamil Congress, British Tamils Forum, Maison du Tamil Eelam (France), Norwegian Council of Eelam Tamils, Swiss Tamil Action Group & United States Tamil Action Group

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Contact information:

Australian Tamil Congress (ATC): M. Manokaran, Chairman, T: +61300660629, Email: mano_manics@hotmail.com, Website: www.australiantamilcongress.com/en/, Twitter: [@austamilcongres](https://twitter.com/austamilcongres)

British Tamils Forum (BTF): V Ravi Kumar, T: +447814486087, Twitter: @tamilsforum, Email: info@britishtamilsforum.org

Maison du Tamil Eelam (France): Thiruchothy, T: +33652725867, Email: mte.france@gmail.com

Norwegian Council of Eelam Tamils (NCET): Steven Pushparaja, T: +4790641699, Email: stevenpush.k@gmail.com

Swiss Tamil Action Group (STAG): K Nivethithan, T: +41764450642, Email: swisstamilag@gmail.com

United States Tamil Action Group (USTAG): Anandaraj Ponnambalam, President, T: +1(202) 595 3123
Email: info@ustag.org, Website: www.theustag.org, Twitter: [@UstpacAdvocacy](https://twitter.com/UstpacAdvocacy)

This is a group of Tamils originally from the island of Sri Lanka now living in diaspora who work together on Eelam Tamil issues at the United Nations and elsewhere and who are in close touch with relatives, friends, neighbors and classmates who remain on the island.

Introduction

1. Sri Lanka is in the midst of a severe financial crisis in July 2022 which has not yet caused the government to completely collapse or brought the military directly into control, but between now and the Universal Periodic Review (UPR) in January 2023 there is a high likelihood of further instability. With instability and a very large security sector there is the strong possibility of an increase in the human rights abuses for which Sri Lanka is known, namely killings, disappearances, torture and sexual violence.
2. We date the financial crisis to the period before the last International Monetary Fund (IMF) bailout of Sri Lanka in June 2009 directly at the end of the war¹, when Sri Lanka had overspent on the military and other security forces to decimate the Liberation Tigers of Tamil Eelam (LTTE) irrespective of civilian casualties and abuses against combatants,² including war crimes, crimes against humanity and genocide. Lack of accountability for actions during the war, including atrocity crimes and corruption, led directly to lack of accountability for the same actors' corruption and mismanagement after the war when the population kept the victors in office irrespective of their crimes because of racist, ethno-nationalist sentiments against Tamils and Muslims.
3. From a Tamil perspective, the worst human rights fail since the last UPR review has been the lack of any progress on post-war transitional justice. In the UN Human Rights Council (HRC)'s 2015 Resolution 30/1, passed by consensus with Sri Lanka's active engagement³, Sri Lanka's government committed to a process of transitional justice to heal the wounds of 26 years of war and to account for the crimes committed during that war. In 2018 Sri Lanka accepted many of the recommendations made through the UPR process on transitional justice, but has made no substance progress on transitional justice since then, other than setting up of the Office of Reparations, a bureaucratic exercise which has, if at all, benefited only the government side of those affected by the war. The other institutions formed – notably not an accountability mechanism or ones with victim participation – have been effectively dismantled by the current government. Not a single disappeared person has been located, nor a single member of the security forces remains in prison for crimes committed during the war.
4. As part of recovery from both the financial crisis and the war, the opportunity for fundamental change in Sri Lanka's human rights trajectory must be seized. As Sri Lanka debates changing the constitution to get rid of the 20th Amendment or eliminating the executive presidency, it must also grapple with the root causes of the ethnic conflict which will lead to non-recurrence of conflict and human rights abuses. The structure of the state must be reformed to move away from the strongly unitary state in which all power resides with the central government. Chauvinist Sinhalese Buddhist politicians have used ethno-nationalism to attack and weaken the Tamils and Muslims, who continue to feel under threat. In our traditional areas of occupation in the North East⁴, Tamils and Muslims have no control over land, language, education, law & order, etc.
5. When Sri Lanka's creditors put conditions on their aid that the cost of government must be reduced and public servants sent home, the oversize military – which has actually increased in size since the war – must be the first to be reformed, since it consumes 15% of the budget salaries and is mostly based in the former war zones of the North East, which have been peaceful for over a decade.

¹ [Sri Lanka : Ex Post Evaluation of Exceptional Access Under the 2009 Stand-By Arrangement \(imf.org\)](#)

² [Do you know anything about this--from any angle? | Tamil Diaspora News](#)

³ [United Nations \(mfa.gov.lk\)](#)

⁴ [IN LK_870729_Indo-Lanka Accord.pdf \(un.org\)](#)

6. A new generation in Sri Lanka participating in the #GoGotaGama protests is giving hope that the financial crisis will lead to a new spirit of inclusiveness and an understanding of the benefits of diversity. Sri Lanka must seize the moment to allow all her peoples to live with dignity in peace and prosperity.
7. Several of the recommendations by state parties made at Sri Lanka's 3rd cycle UPR will now be considered.

Recommendations Sri Lanka Accepted

8. Sri Lanka accepted many of the recommendations made to it. We recognize that many of these acceptances were aspirational, but still it is disappointing how few have been successfully accomplished. For Tamils, one can fairly say that improvement on almost every recommendation would have made life better. Most of the recommendations were aimed directly at dealing with either root causes of the war such as discrimination, land seizure and poverty, or the consequences of war such as disappearance, torture and sexual violence. So few recommendations have been implemented – even under the previous government, much less the current one – that it leads to the suspicion that the entire exercise is one of image-building rather than a sincere interest in ameliorating issues for the populace, particularly those not members of the majority community.
9. On transitional justice, the most numerous set of recommendations (#116.69 – 116.96), recommendations covered the entire gambit of transitional justice. The Office of Missing Persons has collected fewer cases than the 24,000 documented by the Paranagama Commission established in 2013, has not found a single missing person, was not set up with nor includes victim participation and has lost any small independence and credibility it once had under the current government. The Office of Reparations does not have an independent budget or clear guidelines for action. The Office of National Unity and Reconciliation (ONUR) is headed by a past president who most Tamils consider a war criminal.
10. Of the four pillars of transitional justice, the institutional change required for non-recurrence was not directly addressed by most countries beyond vague calls for 'reconciliation,' an acknowledgement that any new constitution should include the right to non-discrimination (#116.13) and a few calls for the military to withdraw from economic activities, for legal reform for accountability, etc. For Tamils and Muslims, non-recurrence means much more than this. As noted in Paragraph 4 above, non-recurrence of the root causes of the war requires a restructuring of the strongly unitary state with more freedom of action for the provinces in important areas such as land, language, education and law & order. A new attempt to change the constitution was started the current government, with even less transparency and less participation of Tamils and Muslims than the one ongoing in 2017.
11. Calls for an end to discrimination (#116.32 – 116.43), including against children (116.163-116.164), along with punishing hate speech and ensuring participation of minorities (#116.171 – 116.172) note one of the root causes of the war, but has not been acted on in any meaningful way. The Tamil language remains little used in government and commerce even though it is now an 'official' language, employment is often patronage-based using ethnicity, the Tamil education stream is under-resourced, there are active efforts to decrease Tamil representation in Parliament. The recommendation of the Russian Federation to end discrimination under the law against 'national and religious minorities' (#116.60) is a useful one in that it recognizes that different nations can exist within the borders of one state. Tamils consider themselves a nation with a common language, culture, geography and history amalgamated into one state with the Sinhalese by the British colonizers.

12. Numerous countries called on Sri Lanka to ratify & implement the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (#116.2 - 116.10, #116.55 – 58). Sri Lanka ratified the Convention and it came into force in early 2018. Implementation into law and practice has been dismal, however, with torture remaining ‘endemic and systematic,’⁵ especially against Tamils and especially against former combatants, even those who have undergone ‘rehabilitation.’
13. Sri Lanka enacted the Enforced Disappearance Act in March 2018 (#116.61 – 116.68), but the law is not retroactive, so the enormous number of cases from the war and two insurrections are not covered. Some have argued that the continuing repercussions from enforced disappearances can allow for prosecution, but this has not been realized. Until the Prevention of Terrorism Act (PTA) is abolished, the risk of torture and disappearance remains high.

Voluntary Pledges and Commitments

14. Sri Lanka voluntarily agreed to repeal the Prevention of Terrorism Act (PTA) in 2018. This Act has been roundly criticized since its enactment in 1979, notably as a primary enabler of severe human rights abuses including torture and disappearances. Special Rapporteur on human rights and counter-terrorism Ben Emmerson at the of his visit to Sri Lanka on July 14 2017 called the PTA a ‘cruel and unjust system, a system that has overwhelmingly impacted the Tamil minority.’⁶ Sri Lanka has repeatedly promised the international community, including the HRC and the European Union, to reform this law without taking action. Foreign Minister GL Pieris claimed in his statement to the HRC in June 2022 that the PTA has been reformed, but there is no concrete evidence to this effect.⁷

Recommendations Sri Lanka Did Not Accept

15. There were quite a number of recommendations of special interest to Tamils which Sri Lanka would not commit to in the 3rd cycle and on which there has been no progress since. Sri Lanka did not agree to ratify any new human rights conventions (#117.1 – 117.15), notably the Rome Statute. Nor did Sri Lanka accept moving forward with the hybrid ‘judicial mechanism’ or ‘special court’ (#117.37) for accountability for atrocity crimes during and after the war that it committed to in HRC Resolution 30/1 (#117.26, 117.35-117.44), although it did agree to the more non-defined ‘transitional justice’ (#116.69 – 116.96). Numerous important suggestions for reconciliation following the war such as removing the military from civilian functions (#117.44) or the return of land taken during the war (#117.44, 117.47) were not accepted.
16. Sri Lanka did not accept almost all specific recommendations for human rights reform which would have constrained its actions precisely or in a given time frame.⁸ It accepted many of the same recommendations when worded more vaguely (#128). For instance, Sri Lanka committed to reform the PTA, but refused to accept an immediate moratorium on its use or even adherence to its regulations (#117.27, 117.34). Several countries urged Sri Lanka to commit to a firm timetable for accomplishing transitional justice targets (117.36 – 117.43), although it agreed to move forward on transitional justice, while Switzerland recommended publishing a

⁵ [Full Statement by Ben Emmerson, UN Special Rapporteur on human rights and counter-terrorism, at the conclusion of his official visit – Groundviews](#)

⁶ [ibid](#). See also [“In a Legal Black Hole”: Sri Lanka’s Failure to Reform the Prevention of Terrorism Act | HRW](#)

⁷ [Sri Lanka assures UNHRC it will honour legitimate commitments | Colombo Gazette](#)

⁸ Sri Lanka did accept to ‘formulate a comprehensive reparations strategy,’ but -- if it exists -- this strategy has not been made public (#126).

consolidated list of missing persons (#117.35), which has not been done, even by the Office of Missing Persons. Haiti recommended participation by all stakeholders in drafting the new constitution (117.16), an issue as relevant today.

17. Parsing the difference between vague promises and specific commitments, the lack of clear political will to move forward on human rights, transitional justice, reform and an end to impunity was clear in 2018 and remains clear today. It is for this reason that increased international attention to human rights -- at a time when the economic situation gives an incentive for Sri Lanka to take action on fundamental reform -- is so crucial.
