

## **UNIVERSAL PERIODIC REVIEW**

### **SRI LANKA**

Joint Submission by organizations and individuals<sup>1</sup>

#### **1. RULE OF LAW, DEMOCRACY, GOVERNANCE**

- 1.1. SL is a country failing to capitalize on the opportunity of addressing a past of human rights violations and responding to fundamental needs of its citizens. A culture of exclusion and impunity continue to manifest in the government elected in 2015 on a platform of good governance. The authoritarian, militarized and stifling nature of the previous regime under President Mahinda Rajapakse has eased considerably. Measures to establish a democratic, transparent and accountable culture and address institutional reform is slow at best, and on several fronts fail or run counter to the interest citizens.

#### **ACCOUNTABILITY AND RULE OF LAW**

- 1.2. Broad and systemic concerns of laws delays, barriers to accessing justice, lack of minimal obligations to ensure a transparent, victim centered due process are outstanding.
- 1.3. The victim and witness protection law though enacted is still not operative. It is recognized that reforms to policing, domestic violence legislation and child protection are currently under consideration.
- 1.4. Impunity is a serious concern as GOSL has failed to address (prosecute or take disciplinary action) on cases of human rights abuses, corruption or abuse of power and officials against whom there are complaints continue to serve within the machinery of the state.
- 1.5. Impunity continues to exist, except in a few cases<sup>2</sup>. In October 2016, the present President made a public statement criticizing prosecutions against military officials in response to a case involving former Defence Secretary Gotabhaya Rajapaksa and three former Navy Commanders on allegations of bribery and corruption.<sup>3</sup>
- 1.6. The lack of credible and independent investigations into human rights violations has resulted in derogation of public confidence and trust in the justice system. Attorney General's Department has abandoned prosecution on torture against Police officers, as required by the legislation against torture as well as the international conventions against torture.
- 1.7. Police often enjoy impunity. In a recent incident - police opened fire on two men in Jaffna while traveling on a motorcycle. A Headquarters Inspector and more than 30 other police personnel were alleged to have stormed into a party at Embilipitiya and severely assaulted people, and killed one person. These officers and personnel are still in duty without any repercussions.
- 1.8. The Inspector General of Police was found assuring a minister that the Police would not arrest a criminal suspect, while the IGP was answering the mobile phone during a speech on stage.<sup>4</sup>

#### **CONSTITUTIONAL REFORM**

- 1.9. Since 2015 the GOSL has embarked on a constitutional reform process. The Public Representations Committee (PRC) conducted island wide consultations and submitted its report in May 2016<sup>5</sup>. The reform process thereafter has lacked transparency and public access to deliberations have been limited. The 6 Parliamentary Sub-Committees<sup>6</sup> worked and deliberated with limited public accessibility and scrutiny<sup>7</sup> and released their respective reports in November 2016<sup>8</sup>. The Steering Committee deliberations have been closed to the public with no attempts to officially inform the public of progress.

- 1.10. Critical to the reform agenda is the issue of devolution power, expanding the fundamental rights chapter including justiciability for socio economic rights and ensuring the supremacy of the Constitution by amending/repealing Article 16(1), which saves regressive laws from fundamental rights review<sup>9</sup>. The debates on these issues within and outside government has highlighted extreme, racist and regressive rhetoric<sup>10</sup> on which the GOSL has failed to provide clear leadership. There is serious concern that in attempting to build consensus the reform process may compromise and undermine the rights of minorities and vulnerable groups.

## **LEGAL REFORM**

- 1.11. The GOSL has engaged in legal reform introducing laws on the Right to Information<sup>11</sup>, Victim and Witness Protection<sup>12</sup>, the Office of Missing Persons<sup>13</sup> and legally provide for Certificates of Absence (COA) for families of the disappeared<sup>14</sup>. A law to criminalize enforced disappearances was gazetted in February 2017. Reforms are also contemplated to the Criminal Procedure Code (CrPC) and to the Domestic Violence Act.
- 1.12. While some law reforms have been positive, others such as the amendments to the CrPC and introduction of counter terrorism legislation will undermine rights. Even in the case of positive reform a key criticism is that the process lacked transparency and public consultation. Where consultations were held (such as in the case of the OMP and the COA), the law failed to capture the sentiment and demands of the families of the disappeared.
- 1.13. Critically, the GOSL has failed to implement and/or operationalize many of the laws passed. There is at present no mechanism through which victims/witnesses can be protected which has a direct bearing on victim's access to justice. Families of the disappeared are yet to benefit from the CoA. The lack of preparedness to implement the RTI Act (See para 2.13). There is at present no timeline for operationalizing the OMP resulting in further loss of confidence and public trust.
- 1.14. Although Emergency regulations<sup>15</sup> were abolished in 2010, the Prevention of Terrorism Act (PTA) has continued to deny basic legal protections for those arrested and detained under it. Despite calls to repeal the PTA, the GOSL attempted to introduce a new Counter Terrorism Act (CTA)<sup>16</sup> to replace it. Provisions of the draft CTA demonstrably pose greater threat to civil liberties than the PTA. There were no public consultations on legal reform. The GOSL has failed to address the concerns relating to the PTA and supports extraordinary law that suspends basic rights.

## **NATIONAL INSTITUTIONS**

- 1.15. The 19<sup>th</sup> Amendment to the Constitution (April 2015) re-established independent commissions including the Human Rights Commission of SL (HRCSL) and the Commission To Investigate Bribery Or Corruption (CIABOC).
- 1.16. The composition and functioning of commissions have improved. Some commissions such as HRCSL have seen improvement in accessibility and response while others less so, National Police Commission (NPC). However public confidence in the functioning of such commissions and their independence has been severely eroded by (a) delays/lack of progress in holding persons accountable especially in the context of corruption (b) lack of political commitment and political interference in the work of the commissions, which in the case of CIABOC led to the resignation of its Director General in October 2016<sup>17</sup> (b) in the context of the HRCSL and the National Police Commission - failure to fully implement its mandate and hold persons accountable, compel cooperation by state officers and speedy completion of on-going inquiries and (c) failure to bring about necessary amendments to the HRCSL Act to ensure that in cases where there are findings of violations the cases are referred to the appropriate authorities for further action ensuring that the findings of the commission have a greater impact.

## **TRANSITIONAL JUSTICE**

- 1.17. The coming together of the two major political parties and cooperation of two major parties representing Tamils and Muslims, has brought about a unique opportunity to push towards significant reforms, but this appears to have been squandered. The President and the Prime Minister has failed to reach out to all SLNs, especially to the Sinhalese majority, about its reform agenda, while taking principled actions to win the confidence of numerical minorities such as Tamils and Muslims. They have been backtracking on government's official commitments, instead of championing them<sup>18</sup>.
- 1.18. A consultation process towards a new constitution drew a large number of public representations, dealing with many issues<sup>19</sup>. But the next steps are not clear, particularly in finding political solutions to the grievances of the country's ethnic minorities and dealing with concerns of oppressed communities<sup>20</sup>.
- 1.19. There is still no official policy, with a UN Human Rights Council resolution the GOSL co-sponsored<sup>21</sup> being the only official reference point. The commitments made therein includes setting up 4 major institutions<sup>22</sup>, legal reforms and some practical measures on the ground<sup>23</sup> to address long standing grievances of war affected communities, but many such grievances still remain<sup>24</sup>. 17 months after the commitments, the enabling legislation for only one institution has been passed<sup>25</sup>, but the only progress for six months has been amendments to reduce the powers.
- 1.20. It appears to be largely aimed at pacifying international concerns and to lesser degree some domestic pressures<sup>26</sup>. Many human rights challenges do not fall into the framework of and there is a danger that they may worsen social inequalities, poverty and lead to more protests and government repression<sup>27</sup>.

## **2. CIVIL AND POLITICAL RIGHTS**

### **ENFORCED DISAPPEARANCES**

- 2.1. Enforced disappearances including 'white van abductions' against ordinary civilians as well as HRDs and journalists have been widely documented during and in the aftermath of the war<sup>28</sup>. Despite public and international commitments, GOSL steps to address the issue falls well short of the demands by families of the disappeared for truth, justice and reparations.
- 2.2. Despite passing the OMP Act<sup>29</sup> and ratifying the disappearances convention in 2016,<sup>30</sup> there is yet no domestic law criminalizing disappearances and the OMP has not taken effect. The OMP falls well short of the demands of families<sup>31</sup>. There has been no significant progress<sup>32</sup> on pending cases and complaints including Habeas Corpus applications into the disappearance of LTTE carders who together with their families surrendered to the military in the final days of the war<sup>33, 34</sup>.
- 2.3. Incidents of abductions are reported to date, although they are later confirmed as arrests by the TID<sup>35</sup>. Even abduction turned arrests, the extra-legal methods used to take persons into detention without due process and the practice of holding persons incommunicado for several days increases the vulnerability and insecurity.

### **EXTRA JUDICIAL KILLINGS**

- 2.4. While incidents have reduced since the end of the war and the change in government and there has also been some progress in cases such as the killing of journalist Lasantha Wickrematunga and Waseem Thajudeen<sup>36</sup>, the GOSL has failed to ensure accountability and end impunity for state crimes. Political statements at the highest level indicate an unwillingness to ensure justice in cases involving the State<sup>37</sup>. Cases of EJK including those cited above are still pending. There has been no justice for parliamentarian Raviraj killed in November 2006<sup>38</sup> and the 5 students in Trincomalee killed in January 2006<sup>39</sup>. The role of the judiciary and other state officers including the JMO and the police have been criticized for marked lack of independence<sup>40</sup>. New

cases of deaths in custody continue to be reported and have not been effectively inquired into and addressed<sup>41</sup>. Crimes committed by State supported paramilitary groups have also not been investigated or prosecuted<sup>42</sup>.

## **MASS GRAVES**

- 2.5. Recent mass gravesites have been uncovered in Matale (2012) (154 skeletal remains) and in Mannar (2013)(80 skeletal remains).<sup>43</sup> The forensic and judicial process in Matale and Mannar highlights critical gaps in domestic law<sup>44</sup> and the lack of capacity to apply standard international protocols and the importance of independence of the judiciary and due process and the treatment of affected persons.<sup>45</sup> Immediate enactment of laws and protocols, appropriate directions for magistrates supervising investigations, training and access to appropriate professional expertise, and an explicit focus on mass graves in the mandate and working of the OMP is recommended<sup>46</sup>.

## **TORTURE**

- 2.6. The use of torture by State security forces is widespread and systemic and is not limited to the conflict.<sup>47</sup> Despite local and international condemnation, the GOSL has failed to stem incidents of torture or effectively hold those responsible to account. Regressive laws such as the PTA enable state officers to torture detainees with impunity<sup>48</sup>. Even the ordinary criminal procedure fails to sufficiently safeguard against torture.<sup>49</sup>
- 2.7. There is no independent complaints mechanism and no public record of disciplinary action against perpetrators<sup>50</sup>. Victims are forced to rely on the police to investigate cases in a context where reprisals are common. There have been no new cases filed under the Torture Act since 2011<sup>51</sup> indicating a lack of willingness on the police to investigate the Attorney General to prosecute. The only option available therefore is a fundamental rights application, which remedy is beset by systemic delays and technical obstacles to justice. None of the remedies address the full physical and psychological impact of torture or aims to provide holistic redress and restitution to the victim<sup>52</sup>.

## **PTA DETAINEES**

- 2.8. The GOSL has failed to release all political prisoners being held in administrative detention and/or review the cases pending against those released on bail or who have been convicted under the regressive PTA<sup>53</sup>. Detainees under the PTA do not have the safeguards afforded to prisoners under general law making the vulnerable to abuse and torture. They lack regular access to lawyers, family visits and medical treatment. The Magistrate does not have and/or fails to exercise its power to ensure that the detention is legal and proper treatment of detainees.
- 2.9. Allegations of secret detention centers have not been responded to. At present, there are around 160 known cases of persons being held in detention<sup>54</sup>. Despite persons being released under the present Government, cases continue against ex-detainees including HRDs and families of disappeared<sup>55</sup>. There are reports of persons being re-arrested and sent back to detention.<sup>56</sup> The threat of re-arrest adds to the vulnerability of ex-detainees and rehabilitees who are under constant surveillance and threat.

## **CONDITIONS IN PRISON**

- 2.10. The GOSL has failed to address conditions in detention and in prison including overcrowding<sup>57</sup>, routine violence including sexual violence against inmates by prison guards and authorities as well as fellow prisoners<sup>58</sup>, lack of basic facilities including sanitation<sup>59</sup>, nutrition and recreation, and the failure to afford proper and time medical treatment and refer cases to a JMO for examination<sup>60</sup>. Prisoners are also denied the opportunity for holidays at home and release for work purposes to which they are entitled under law.

## **FREEDOM OF EXPRESSION**

2.11. Media freedom has improved in SL under the current government<sup>61</sup>. However the reactivation of the SL Press Council in July 2015 is of serious concern as the institution is empowered with quasi-judicial powers to inquire into complaints against the media and impose penalties including prison sentences. State media was reported as less partisan under the current administration ‘although proposals to convert state-controlled broadcasters and print outlets into independent institutions with a public-service mission were not implemented in 2015<sup>62</sup>’. There have been reports of surveillance against journalists in the North and East continuing in 2015.<sup>63</sup> There have also been a number incidents of threats, harassment and physical attacks against journalists.<sup>64</sup> No action has been taken against those responsible to date.

## **RIGHT TO INFORMATION**

2.12. The RTI Act came into effect on 4th August 2016. However in practice State institutions appear ill prepared to respond to RTI requests on the supply side including by making proactive disclosure of available information and appointing public information officers as required under the Act. Activists trying to use the Act have also faced resistance.<sup>65</sup> On the demand side, the GOSL has failed to adequately carry the RTI message to the public.

2.13. Transparency International SL (TISL) called for the details of assets and liabilities of the President and Prime Minister under the provisions of the new right to information Act. The President responded addressing RTI conference, stating that the NGOs should limit their activities for their mandate.<sup>66</sup> The request for information was internally rejected.<sup>67</sup> Justice Minister found fault with TISL for filing this application for information.<sup>68</sup>

## **RELIGIOUS FREEDOM**

2.14. Post war, there has been a rise in attacks and hate speech against religious minorities by right wing Buddhist groups. The Government has largely failed to hold fundamentalist groups<sup>69</sup>. To date there have been no successful prosecutions against those responsible for violence and sustained measures to ensure the eradication of racist hate speech and to protect minorities.

## **HUMAN RIGHTS DEFENDERS**

2.15. Though reduced, intimidation of HRDs continues. In September 2014 Two Human rights lawyers received death threats.<sup>70</sup> Three HRDs working on enforced disappearances received death threats in January 2015.<sup>71</sup> In July 2014, a training for investigative journalists from Jaffna held in Colombo was disrupted by security forces and protesters.<sup>72</sup> Ruki Fernando was arrested under the PTA in 2014, and in October 2016 was stopped at Bandaranayake Airport, questioned and later released.<sup>73</sup>

## **3. ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

### **EDUCATION**

5.1 Inter and intra-regional disparities in school infrastructure, trained staff, choice of subjects, and transport, have led to unevenness in access and quality of education. Latest available data show 34% of the schools across the country classified as ‘difficult’ or ‘very difficult’,<sup>74,75</sup> with only 9 % of schools country-wide offering Advanced (Secondary) Levels in all subject streams.<sup>76,77</sup> Rural areas (70% of the population), Estates<sup>78</sup> and war affected North and the East<sup>79</sup> have the least number of well-resourced schools<sup>80</sup>, with access further hindered by caste and ethnicity.<sup>81</sup>

5.2 The relatively well off are more likely to pursue tertiary education,<sup>82</sup> while children from poor families are more likely to drop out of schools to work.<sup>83</sup> In 2017, the state cut over 100 billion rupees on education, ignoring demands to commit 6 % of GDP to education,<sup>84</sup> and is pushing privatization, which may further erode access to education as a right.<sup>85</sup>

### **HEALTH**

- 5.3 The ‘free’ public healthcare system does not meet the quality health needs of all people.<sup>86</sup> It serves only 60% of the population and almost 96% of private health expenditure is out-of-pocket.<sup>87</sup> Regional disparities in healthcare infrastructure and long wait for specialist care and advanced procedures in the public sector have eroded the fundamentals of universal health coverage.<sup>88,89</sup>
- 5.4 With drug prices not falling,<sup>90</sup> alternate systems<sup>91</sup> not receiving adequate support and cuts in state spending (Rs. 13 Billion in 2017 budget), health needs are being compromised or people forced to access private health care.<sup>92-93</sup> The healthcare system is not well equipped to face rising (nearly 90% of the disease burden<sup>94</sup>) chronic non-communicable diseases,<sup>95</sup> and health needs of an ageing population.<sup>96,97</sup> Mental health care in SL is simply inadequate owing to poor funding, regional disparities in service provision, a scarcity of trained medical officers, poor referral systems and lack of social protection.<sup>98</sup>

## POVERTY AND SOCIAL SECURITY

- 5.5 While absolute poverty<sup>99</sup> has fallen from 23 per cent (2002) to 6.7 per cent (2012/13), about 40 per cent of the population live on less than 225 rupees per person per day.<sup>100</sup> Multidimensional poverty measures classify an additional 1.9 million people as poor,<sup>101</sup> while rising inequality,<sup>102</sup> leaves many at risk of extreme poverty.<sup>103</sup> There are also entrenched pockets of poverty—urban areas such as Colombo, the Estate sector, and war-affected districts such as Batticaloa, Mullaitivu, Kilinochchi as well as Puttalam and Monaragala.<sup>104</sup>
- 5.6 Spending levels on education, health and social protection have failed to keep up with GDP growth.<sup>105</sup> SL’s main social security programme, *Samurdhi*, is critical for the poor and near-poor. But it is meager, paternalist, not rights-based,<sup>106</sup> and involves high levels of coercion and control,<sup>107</sup> as well as arbitrariness and lack of transparency.<sup>108</sup> Cheap loans have tended to become an exit pathway.<sup>109</sup> Social security reforms underway are not transparent appear focused on efficiency at the cost of justice.<sup>110</sup>

## FOOD SECURITY AND NUTRITION

- 5.7 While child and maternal nutrition have improved,<sup>111</sup> there are “high levels of and disparities in malnutrition and micronutrient deficiencies.”<sup>112</sup> SL has “one of the highest wasting prevalence in the world.”<sup>113</sup> A 2017 national review notes: 5.2 million people (almost 25% of the population) are currently undernourished, 18 per cent of pregnant women were in “a poor maternal nutrition situation” in 2015, and a quarter of the children between 6-59 months are underweight.<sup>114</sup>
- 5.8 War-affected districts, the Estate sector, and some areas in the south-east “represent the worst levels of under-nutrition”,<sup>115</sup> while chronic food insecurity is widespread.<sup>116</sup> A 2015 survey of over 1300 households in the North and East found food insecurity has generally worsened.<sup>117</sup> Some of the major causes for food insecurity and malnutrition include: high reliance on the market, rising food prices, income inequality, poor infrastructure, insecure employment, gender inequality.<sup>118</sup>

## RIGHTS OF WORKERS AND FREEDOM OF ASSOCIATION

- 5.9 Informal sector workers account for 68% of the labour force, a majority of whom live below the international poverty line,<sup>119</sup> and are female.<sup>120</sup> But decent permanent work is diminishing even in the formal sector and workers increasingly hired through contractors with fewer benefits and protections.<sup>121</sup> The recently revised minimum wage,<sup>122</sup> is not pegged to the cost of living or inflation and by-passes informal sector workers. Serious concerns have emerged over the management of the primary social security funds for formal sector workers.<sup>123</sup>
- 5.10 The right to strike and many other rights of trade unions workers are seriously curtailed or effectively non-existent.<sup>124</sup> Many categories of workers, such as domestic and care workers, mostly women, are entirely unrecognized.

## HOUSING, WATER AND SANITATION

- 5.11 The current housing shortfall, including post-war housing needs, is estimated at one million units.<sup>125</sup> Nearly 60% of the Estate sector live in ‘line rooms’, which not only bring stigma but most of which are cramped and very old leading to reduced access to toilets or water within the household and lack of safe drinking water.<sup>126</sup>

- 5.12 Some inadequately resourced post-war housing projects have led to indebtedness,<sup>127</sup> while the 65,000 houses project has been criticized for lack of participation, social mobilization and arbitrarily imposing pre-fabricated houses on poor war-affected households.<sup>128</sup>
- 5.13 Since 2010, the Urban Development Authority has forcibly evicted around 5500 families in Colombo, often using the military,<sup>129</sup> and without compensation or title, into high rises.<sup>130</sup> Thousands more are due to be moved,<sup>131</sup> despite evidence of deteriorating quality and standard of life, breakdown of community life, and other problems.<sup>132</sup>
- 5.14 Inadequate sanitation is noted as another significant concern with 68% in North, East and North Central Provinces not having toilets.

#### **LANGUAGE RIGHTS**

- 5.15 Despite the National Language Policy mandating government departments to offer services in Sinhala and Tamil,<sup>133</sup> implementation remains weak due to lack of resources and trained personnel. The state and private sector provide information primarily and often only in Sinhala;<sup>134</sup> even key institutions such as the police in Tamil-speaking areas have mostly Sinhala speaking personnel impeding access to justice.<sup>135</sup>
- 5.16 As a result, Tamil-speaking minorities do not have fair and equal access to state services. This risks violation of interlinked rights, such as the right to information, access to justice, right to education and health and also infringes upon cultural rights, identity, and way of life.<sup>136</sup> The language of other minorities such as Kaffirs, Veddhas (indigenous people), Burghers, Malay and Telugu speaking people are nearing extinction.<sup>137</sup>

#### **LAND, ENVIRONMENT AND FOOD PRODUCERS**

- 5.17 Conflicts related to land and environment are proliferating with militarization, ill-conceived development projects, measures such as ‘land banks’, and titling without safeguards against alienation increasing dispossession.<sup>138</sup> From Paanama<sup>139</sup> (East coast) to Vallikaamam<sup>140</sup> (North) to Mullikulam<sup>141</sup> (west coast) and Kepapulavu<sup>142</sup> land acquisition the military for security or tourism continues to seriously undermine the rights of communities including fisher folks.
- 5.18 Large development projects such as the Uma Oya water diversion scheme<sup>143</sup> and the Colombo Port City<sup>144</sup> projects continue to be pursued despite evidence of serious harm to the environment and livelihood. Poor enforcement of environmental norms<sup>145</sup>, weak regulation, and poor planning have caused significant loss of lives, livelihoods, and property through floods and landslides, especially in the Estate areas.<sup>146</sup>
- 5.19 Inadequate support for small farmers and chronic kidney disease has seriously affected many farming communities. Increasing commercialization with a focus on cash crops for export has also enabled large multinational companies to take over land and peasants are often reduced to precarious workers on these farms.<sup>147</sup>

### **4. WOMEN’S RIGHTS**

#### **LEGAL FRAMEWORK DISCRIMINATES AND OPPRESSES WOMEN**

- 4.1 Constitution does not recognize a right to bodily integrity for women. The constitution in its current language is not gender neutral. Regardless of the guarantees of equality and non discrimination, a gamut of laws<sup>148</sup> discriminate against women are protected by Article 16(1)<sup>149</sup> of the constitution. Abortion continues to be criminal and there is no comprehensive sex education. Discriminatory concepts such as ‘head of the household’; nuclear ‘happy families’, ‘guardianship’ and ‘family background reports’<sup>150</sup> inform a number of state policies<sup>151</sup>.
- 4.2 Muslim women and girls are denied equality and suffer abuse under and in terms of Muslim personal law which prohibits women from holding any official positions within the Quazi (Muslim) court system, dispenses with their right to consent to marriage and denies access to justice, permits child marriage and provides for unequal systems of divorce. Practice and attitude of Quazi courts and mosque committees/federations has resulted in degrading and

abusive treatment of women<sup>152</sup>. Reform has been outstanding for over 50 years<sup>153</sup> and continues to be met with hostility<sup>154</sup>. The state has failed to address the practice of female genital mutilation which continues to be practiced within certain sections of the Muslim population.

#### **VIOLENCE AGAINST WOMEN**

- 4.3 The machinery to address GBV including sexual violence, domestic violence and ensure access to justice remains weak and enables impunity.
- 4.4 Approximately 1,400 rape complaints result in 0 to 7 convictions per year (2009-2014). The GOSL has failed to address suspended sentencing for rape, criminalize marital rape, address lacunae in the implementation of the domestic violence act by police and judiciary and address the backlog of rape cases. The state has failed to protect the right to bodily integrity which is continuously compromised by notions of morality and the need to protect the family unit.
- 4.5 The state has failed to hold accountable military, police and public officers that have committed crimes against women including during the armed conflict those who have sexually exploited women seeking state services. There are no support services<sup>155</sup> for women accessing justice. There are also lengthy delays<sup>156</sup> in securing justice, lack of information to victims about the legal process and the decisions taken affecting them by the Attorney General.

#### **POLITICAL PARTICIPATION**

- 4.6 There is a drastic lack of representation with only 5.8% in Parliament<sup>157</sup>, 4% at provincial and 2% in local government level. There are no quotas for women in parliament or at the provincial level. There are also no programmes to promote and secure participation.<sup>158</sup>

#### **ECONOMIC AND SOCIAL RIGHTS**

- 4.7 Female labour force participation is only 34%. Women comprise 54% of the informal economy<sup>159</sup> and are denied protections afforded to the formal sector. Equal pay for work of equal value is denied to women in all sectors. Discrimination against Tamil speaking women continue in administrative practice.<sup>160</sup>

#### **WAR AFFECTED WOMEN**

- 4.8 The GOSL has failed to address the rights and needs of war affected women to security, livelihood, reparation and restitution, including return of land<sup>161</sup> and access to basic facilities and crucially to access truth and justice for crimes committed against them and their loved ones.
- 4.9 One in four households are female headed (approximately 90,000), a significant proportion of which are war affected are officially not recognized and are excluded from welfare, resettlement and other policies and programmes. Female ex-combatants are marginalized by their communities, under surveillance by the military and are denied employment and access to services by the state.

### **5. EXCLUDED IDENTITY GROUPS**

#### **LGBTIQ**

- 5.1 The constitution does not recognize rights of LGBTIQ persons. Several laws discriminate and criminalize LGBTIQ persons<sup>162</sup>: Sections 365<sup>163</sup>, 365A<sup>164</sup>, and 399<sup>165</sup> of the Penal Code<sup>166</sup>, Vagrants Ordinance<sup>167</sup>. LGBTIQ persons are denied state services such as police, healthcare,



education and employment<sup>168</sup> and fear reprisals which results in abuse being unreported to the relevant authorities.

- 5.2 Some state interventions such as the “Gender Recognition Certificate” are problematic and invasive as it requires an evaluation by a psychiatrist or a testimony by parents as opposed to self-identification of gender.
- 5.3 LGBTIQ persons are denied of equal enjoyment of rights such as health, housing, education and social protection. As a result, many experiences poverty, deprivation and vulnerability. There are cases of LGBTIQ persons being refused employment based on their gender identity.
- 5.4 On January 2017, the cabinet denied the inclusion of the rights of LGBTIQ persons, including sexual orientation and gender identity in the National Action Plan for the Promotion and Protection of Human Rights, on the basis that it is against the country’s culture.

#### **DISABLED PERSONS**

- 5.5 GOSL has not ratified the optional protocol to the CRPD<sup>169</sup> and there is no domestic legislation that fully gives effect to its international obligations<sup>170</sup>. Children/youth with disabilities suffer discrimination in accessing education<sup>171</sup> and vocational training<sup>172</sup>. The government circular allocating 3% of public service cadre is not implemented<sup>173</sup> and there are difficulties in accessing public institutions<sup>174</sup> and transport<sup>175</sup>. The Sign language used by disabled persons is not officially recognized and there is insufficient means to access information/communicate.

#### **MALAIYAHA MAKKAL /UPCOUNTRY TAMIL PEOPLE**

- 5.6 Their history of indentured work<sup>176</sup> and statelessness<sup>177</sup> has left the Malaiyaha Makkal amongst the most excluded. Levels of poverty are higher and levels of education lower;<sup>178</sup> they also suffer from inadequate access to land, adequate housing, and water<sup>179</sup> and access to public services is constrained.<sup>180</sup> They are also exploited as workers and more prone to human and natural disasters.<sup>181</sup>
- 5.7 As submissions on behalf of the Malaiyaha Makkal to the Consultation Task Force on Reconciliation Mechanisms points out, the community risks being excluded from transitional justice processes.<sup>182</sup>

#### **Indigenous Peoples: Veddhas**

- 5.8 SL has no special legislation or mechanism to protect the right of the “Veddhas”.<sup>183</sup> Conservation regulations have deprived them of hunting grounds<sup>184</sup> criminalized their livelihood.<sup>185</sup> Large development projects have led to their forced resettlement<sup>186</sup>, a majority of whom are socially isolated and economically and politically marginalized.<sup>187</sup> Development projects and urbanization undermine their culture, for example patriarchal rules of inheritance are displacing matrilineal ones.

#### **Oppressed Castes**

- 5.9 Though an offence,<sup>188</sup> oppressed or ‘low’ caste communities face discrimination.<sup>189</sup> Caste-based discrimination can result in poor access to basic services, perpetuating poverty,<sup>190</sup> or lead to children from oppressed caste groups denied access to good schools and/or face abuse by teachers and peers alike.<sup>191</sup> Women are especially vulnerable to caste-based discrimination, which can compound the discrimination they already.<sup>192</sup> The silence around caste poses a direct challenge to understanding and addressing caste-based discrimination by State and non-state actors.<sup>193</sup>

### **6. PRECARIOUS OCCUPATIONAL GROUPS**

#### **Sex Workers**

- 6.1 Sex work itself is not illegal in Sri Lanka but the criminalization of many of its outward manifestations—under the Vagrants Ordinance<sup>194</sup> and the Brothels Ordinance—<sup>195</sup> renders sex workers ‘criminal’ and highly vulnerable to abuse. These laws allow sex workers operating on the street, in massage parlours or hotels to be arrested and subjected to violence and exploitation by the police. Transgender sex workers face specific vulnerabilities while in police custody. The Anti-Trafficking law of SL<sup>196</sup>, which conflates trafficking for sexual exploitation with sex work,

denies sex workers the right to choose this trade<sup>197</sup> and is used to harass sex workers and restrict their travel.

### **Migrant Workers**

- 6.2 Sri Lankan migrant workers in the Middle East, especially women domestic workers, are highly vulnerable to abuses and grave miscarriages of justice.<sup>198</sup> Present MoUs between SL and host countries “mention nothing about the protections provided to women migrant workers except protections and rights provided under existing labour laws of the destination countries”.<sup>199</sup>
- 6.3 In July 2013, Ministry of Foreign Employment issued a circular, which makes it mandatory for women to obtain permission from their husbands or fathers to migrate.<sup>200</sup> This practice is discriminatory on the basis of sex, parental status, and age, and arbitrarily restricts freedom of movement.<sup>201</sup>
- 6.4 Migrant workers are also vulnerable to exploitation by recruitment agencies who siphon their money with little guarantees of secure or decent jobs.<sup>202</sup>

## **7. REFUGEES AND DISPLACED POPULATIONS**

### **INTERNALLY DISPLACED PERSONS**

- 7.1 There is a backlog in addressing housing and property rights of IDPs<sup>203</sup> with 60,000 houses of originally displaced, and another 75,000<sup>204</sup> needed to meet the requirements of subdivided families and landless.

### **REFUGEES AND RETURNEES**

- 7.2 Lack of legal documentation and the GOSL unwillingness to recognize documents issued in Tamil Nadu affects the right to return, access benefits, livelihood, and basic facilities<sup>205</sup>. GOSL levies penalties on persons not carrying the UNCHR return card<sup>206</sup>. Returnees also face severe difficulties in accessing their land<sup>207</sup>, shelter<sup>208</sup>, livelihood<sup>209</sup>, services, having educational and professional qualifications recognized in SL<sup>210</sup>.

### **INTERNATIONAL REFUGEES & ASYLUM SEEKERS**

- 7.3 SL has not signed the Refugee Convention. Refugees have no right to work and are reliant on UNHCR for all needs. Asylum seekers are even more vulnerable since they don't receive the UNHCR allowance. In 2014, GOSL detained and deported 385 asylum seekers. While treatment has improved under the current government<sup>211</sup> visa restrictions continue against Pakistani and Afghan nationals and asylum seekers are turned away at the airport<sup>212</sup>.

## **8. RECOMMENDATIONS**

- a. Government must support and promote amongst the general public, a new constitution based on proposals of the Public Representations Committee, which includes a strong bill of rights that reflects highest standards of international human rights and humanitarian law, includes justiciable social, economic and cultural rights, doesn't include any provisions that could be interpreted in a way that could discriminate any person or community on any grounds and ensure the supremacy of the constitution over personal and other laws.
- b. The President and other relevant authorities must make public by 31<sup>st</sup> December 2017, all reports of Presidential Commissions of Inquiries, and other such bodies that looked into allegations of grave crimes and human rights and humanitarian law violations, and implement recommendations made in favor of victims.
- c. Government must fully implement recommendations of the Consultation Task Force (CTF) on reconciliation mechanisms.

- d. Government must fully implement the commitments it has made in UN Human Rights Council Resolution 30/1 in October 2015, as well as recommendations by UN High Commissioner for Human Rights, Treaty Bodies, Special Procedures, UPR and other UN mechanisms
- e. The government must update the National Human Rights Action Plan by 31<sup>st</sup> March 2018, to include a road map towards implementation of (b), (c) and (d) above, with time bound, clear benchmarks and transparent and inclusive process involving participation of diverse sections of civil society, survivors and victims' families.

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<sup>1</sup> *\*List of Organizations:*

1. NAFSO, Negombo
2. MONLAR, Rajagiriya
3. Law and Society Trust (LST), Colombo
4. INFORM, Colombo
5. CHRD Colombo, Batticaloa, Mannar
6. Justice for All (JFA), Colombo,
7. Savistree, Baththaramulla
8. Sri Vimukthi Fisher Women organization, Negombo
9. DIFSO, Akkaraipaththu, Ampara
10. RDS, Poththuvil,
11. Valarpirai Citizen forum , Addalaichenai
12. Kilakku Sooriyan Women District Committee, Addalaichenai
13. Lucky Sports Club, Addalaichenai
14. NSLA, Akkaraipaththu
15. Vali North Resettlement Organization, Jaffna
16. RLO, Jaffna
17. DIFSO, Jaffna
18. NPFPU, Mannar & Jaffna
19. JDFCSU, Jaffna
20. Poonthalir Women District Committee, Jaffna
21. Vali North Citizen Forum, Jaffna
22. Vali East Citizen forum, Jaffna
23. SFO, Gall & Matara
24. Environmental Conservation Trust (
25. HRO, Poddala, Galle
26. Inter Religious Group, Galle
27. HPDP, Galle
28. Ginimella Fisheries Organaization,
29. SDF, rathgama, Galle
30. Citizen Forum, Hikkaduwa, Galle
31. Uva Shakthi, Badulla
32. CWA, Passara
33. CCDF, Badulla
34. Citizen Council , Passara
35. UVA Redio, Badulla
36. UWF, Badulla
37. PCDF, Passara
38. EST, Madulsima
39. CDC, Betticaloa
40. CAMID, Betticaloa
41. Marumalarchchi Women District Organaization, Betticcaloa
42. SLNF, Betticaloa
43. Stand Up Movement, Negombo
44. NGO Consortium, Betticaloa
45. DIFESO, Betticaloa
46. Citizen Forum, Trincomalee
47. DIFSO, Trincomalee
48. WNW, Trincomalee
49. RDS, Sampoor
50. TDC, Trincomalee

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51. Udayam District Women Organization
  52. Society for Resettlement, Trincomalee
  53. DFCFU, Trincomalee
  54. DIFSO, Mannar
  55. MSED, Mannar
  56. Citizen Forum, Mananr
  57. MCC, Mannar
  58. Nesakaram Citizen Forum, Mannar
  59. Valarpirai District Women Organizatin, Mannar
  60. UWS, Matara
  61. Jayantha Gamage Foundation, Matara
  62. FFD, Matara
  63. Pratheeba Media Collective, Matara
  64. CCS, Matara
  65. Savistree, Matara
  66. YSDF, Hatton
  67. MOD, Hatton
  68. DIRC, Hatton
  69. SIDPS, Hatton
  70. CCT, Hatton
  71. UWF, Maskeliya
  72. ULM, Hatton
  73. CDO, Hatton
  74. PSLM, Hatton
  75. ZOA, Mannar
  76. Suneru Foundation
  77. Council of Returned Refugees
  78. Praja Abilasa Network, Negombo
  79. PAAL, Colombo
  80. Women Development Federation, Weligepola
  81. Sramabimani Kendraya, Seeduwa
  82. FIOH, Badulla
  83. Lanka Farmers Forum- Colombo
  84. Progressive Peasant Congress, Higurakgoda
  85. CSDF-Dematagoda
  86. PHM-Borella
  87. Lawyers for Democracy -Colombo
  88. UWWO-Wellawaya
  89. PPPO-Paanama
  90. Rural Workers Organization, Jaffna
  91. Dabindu Organization, Katunayake
  92. Center for Society and Religion, Maradana
  93. Tissa Jaya welfare children foundation, Weligama.
  94. Women and Media Collective

<sup>2</sup> Former parliamentarian Duminda Silva and four others received death sentences in connection with the killing of Bharatha Lakshman Premachandra another former parliamentarian. On September 8, 2016, he was sentenced to death by the High Court of SL on charges of murder.

<sup>3</sup> <http://www.ceylonews.com/2016/10/belligerent-sirisena-blasts-probe-against-gotabhaya-military-officers/>. Following this statement certain other military personnel suspected of criminal activities were released by court.

<sup>4</sup> <http://www.silumina.lk/2016/12/04/columns/controversy-over-phone-call-rocks-house>

<sup>5</sup> Full report of the Public Representations Report on Constitutional Reforms is at [http://www.yourconstitution.lk/PRCRpt/PRC\\_english\\_report-A4.pdf](http://www.yourconstitution.lk/PRCRpt/PRC_english_report-A4.pdf)

<sup>6</sup> Sub Committees on Fundamental Rights, Judiciary, Center-Periphery relations, Law and Order, Public Finance and Public Service.

<sup>7</sup> Statement or public commitment that the proceedings will be televised and that the process will be transparent – newspaper link.

<sup>8</sup> <http://english.constitutionalassembly.lk/interim-report/126-interim-report>

<sup>9</sup> Article 16(1) states (1) All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter. The clause refers to over 600 laws introduced by statutes before 1978, as well as any unwritten law practiced prior to that

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- year. The more well known of such laws include the Code of Criminal Procedure 1976, Muslims Marriage and Divorce Act (MMDA) 1954, Kandyan Marriage Ordinance 1954, Thesavalamai Pre-Emption 1948, Penal Code Ordinance 1883 (including Section 365) and Vagrants Ordinance 1842.
- <sup>10</sup> <http://www.adaderana.lk/news/39585/new-constitutional-and-legal-reforms-to-destroy-the-nation-mahinda>
- <sup>11</sup> Act No.14 of 2016
- <sup>12</sup> Act No.04 of 2015
- <sup>13</sup> The Office On Missing Persons (Establishment, Administration And Discharge Of Functions) Act, No. 14 Of 2016.
- <sup>14</sup> Amendments to the Registration of Deaths (Temporary Provisions) Act No 19 of 2010
- <sup>15</sup> Promulgated under the Public Security Ordinance
- <sup>16</sup> <https://www.scribd.com/document/327735161/Proposed-Counter-Terrorism-Act-of-Sri-Lanka>. The draft counter terrorism legislation contains provisions that permit any police officer, any member of Armed forces and even coast guard officers to arrest without warrant, while the existing legislation permit such arrests by a Superintendent of Police or an officer not below the rank of Sub Inspector, authorized by him. Furthermore, The proposed legislation permits any member of police or armed forces or coast guards to stop and question any person at any moment. The power to issue detention orders earlier vested with the Minister, is proposed to be vested with Deputy Inspector General of Police. Higher police officers are permitted to obtain bank/ financial information and telecommunication details without court orders. Women could be searched by male officers 'in the presence of a female officer'. Such provisions do not meet the International Human Rights standards set by instruments such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT).
- <sup>17</sup> <http://www.dailymirror.lk/117558/Bribery-Commission-DG-resigns>
- <sup>18</sup> For example, neither turned up at the launch of the report of the Consultation Task Force on Reconciliation Mechanisms, despite months of waiting. There has been conflicting messages from within the government about commitments made, with the President and Prime Minister backtracking on a key commitment to have foreign judges in the judicial mechanism.
- <sup>19</sup> The report of the Public Representation Committee (PRC) has been published as well as reports of six sub-committees. Available at [http://english.constitutionalassembly.lk/images/pdf/PRC\\_1.pdf](http://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf), [http://english.constitutionalassembly.lk/images/pdf/PRC\\_2.pdf](http://english.constitutionalassembly.lk/images/pdf/PRC_2.pdf) and <http://english.constitutionalassembly.lk/interim-report/126-interim-report>
- <sup>20</sup> Such as women discriminated by personal laws, those with different sexual orientation and gender identities, religious minorities etc.
- <sup>21</sup> Human Rights Council Resolution, Promoting reconciliation, accountability, and human rights in SL, 14 October 2015, UN Doc. A/HRC/RES/30/1 (adopted 1 October 2015)
- <sup>22</sup> An Office of Missing Persons (OMP), a Commission for Truth, Justice, and Guarantees of Non-reoccurrence, a Judicial mechanism with Special Counsel, which will have the participation of foreign judges, prosecutors, investigators and defence lawyers, and an Office for Reparations.
- <sup>23</sup> Such as to reduce the military's role in civilian affairs, facilitate livelihoods, repeal and reform the Prevention of Terrorism Act (PTA), criminalise disappearances and review the victim and witness protection law. None of these have been fulfilled. One of the commitments, the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, UN Doc. A/61/488 and entered into force 23 December 2010) was done in May 2016.
- <sup>24</sup> Monuments erected to honour the Sinhalese dominated military during the Rajapakse time continue to dominate the Tamil majority Northern landscape. Army camps that were built over some of the cemeteries of former LTTE cadres that were bulldozed by the Army after the war are still there. The loved ones of those whose remains were in these cemeteries have no place to grieve, lay flowers, light a candle, or say a prayer. While the numbers have reduced from those under the Rajapakse regime, intimidation and reprisals on families, attacks, and threats and intimidation of activists and journalists continue to occur. Limited progress on issues, such as the release of political prisoners, land occupied by military, continuing military involvement in civilian affairs in the North and East, reports of continuing abductions, and arrests under the PTA have raised doubts about the Government's commitments. Although a few military personnel have been convicted and some others arrested on allegations of human rights abuses, the lack of progress in thousands of other cases only reinforces calls for international involvement for justice.
- <sup>25</sup> [http://media.wix.com/ugd/bd81c0\\_156157c2484244cba2fb9b2c1c0612df.pdf](http://media.wix.com/ugd/bd81c0_156157c2484244cba2fb9b2c1c0612df.pdf)

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- <sup>26</sup> The Government's commitments have only been officially articulated in Geneva by the Foreign Minister and not in SL. The Foreign Minister has been the regular advocate and defender of these commitments. Most meetings with local activists have been convened by him or held at the Foreign Ministry, where the Secretariat for Co-ordinating Reconciliation Mechanisms (SCRM) is housed. All these contribute to the process being seen as emanating and driven by foreign pressure.
- <sup>27</sup> Unemployment, debt, and sexual and gender-based violence is widespread in the former war ravaged areas as well as other parts of the country. The new Government's economic and development policies are focusing on trade, investment, and mega development projects, which privilege the rich and marginalise the poor. Pre-war rights issues, such as landlessness, sexual and gender-based violence and discrimination, caste, rights of workers, including those working on tea estates, still need to be addressed.
- <sup>28</sup> The report issued in July 2016 following the visit of The UN Working Group on Enforced or Involuntary Disappearances, states that "during and after the conflict, enforced disappearances were still carried out for purely economic purposes such as extortion by some State officials and affiliated paramilitaries" available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/146/63/PDF/G1614663.pdf?OpenElement>.
- <sup>29</sup> The Office On Missing Persons (Establishment, Administration And Discharge Of Functions) Act, No. 14 Of 2016.
- <sup>30</sup> On 25 May 2016, Sri Lanka ratified the International Convention for the Protection of All persons from Enforced Disappearance and accepted the competence of the Committee under article 32.
- <sup>31</sup> Tamil Civil Society organizations criticized the mechanism for lack of sufficient resources and lack of engagement with victims abroad. <http://srilankabrief.org/2016/05/sri-lankas-office-for-missing-persons-critique-by-the-tamil-civil-society-forum/>
- <sup>32</sup> For example the case of disappearance of Journalist Prageeth Ekneligoda has not yet been fully investigated.
- <sup>33</sup> Over 2000 persons surrendered to the military have disappeared, as revealed in one case before the Magistrate's court of Mullaithivu. <http://www.gulf-times.com/story/526959/Court-seeks-list-of-LTTE-men-who-surrendered-in-20>
- <sup>34</sup> The failure of the Paranagama Commission to deliver any form of relief or redress to the scores of families that came before it and the lack of action on reprisals against families has further eroded confidence in a domestic led process of truth and accountability
- <sup>35</sup> <http://thedi diplomat.com/2016/07/abductions-and-torture-in-jaffna-can-sri-lanka-change/>
- <sup>36</sup> Wasim Thajudeen was a rugby player, who was killed on 17 May 2012 allegedly with involvement of a son of former President. <https://www.colombotelegraph.com/index.php/namal-rajabaksa-to-be-questioned-over-thajudeen-murder/>
- <sup>37</sup> <http://uk.reuters.com/article/uk-sri-lanka-corruption-probe-idUKKBN12H2GA>
- <sup>38</sup> The prosecution was under the PTA, where no jury trial allowed. But the High Court Judge allowed a request for a jury trial, and the accused asked for a Sinhalese jury. The accused was found not guilty. The appeal to Court of Appeal also failed.
- <sup>39</sup> Police Special task Force personnel were alleged to have engaged in killing these students. They were killed after a brief detention. [https://en.wikipedia.org/wiki/2006\\_Trincomalee\\_massacre\\_of\\_students](https://en.wikipedia.org/wiki/2006_Trincomalee_massacre_of_students)
- <sup>40</sup> Initial JMO reports on the death of Wasim Thajudeen (a rugby player, who was killed on 17 May 2012) indicated that the death was due to a motor accident, despite allegations that a son of former President was behind the incident. In August 2015, after Rajapaksa regime was overthrown, the Magistrate ordered to exhume the body and to submit a fresh JMO report. This confirmed that death was due to murder. The SLn medical council is conducting a disciplinary inquiry against the JMOs who conducted the first autopsy. <http://www.asianmirror.lk/news/item/16494-thajudeen-murder-ex-jmo-in-hot-water-over-first-autopsy>. Further, On 4th January 2016 Suminth Prasanna Jayawardhana (29) died following assault of a group of police officers including the Assistant Superintendent of Police of the area. His wife who was present at the scene clearly witnessed the torture and killing. According to eyewitnesses the victim was pushed off a two-storey building by the Assistant Superintendent of Police. The JMO report indicated that the death of the victim was due to multiple injuries and due to excessive bleeding. The JMO report further indicated that the body of the deceased did not show any sign of falling. These observations were contradictory to accounts given by eye-witnesses. <http://www.adaderana.lk/news/33927/witness-in-embilipitiya-case-wants-justice-for-sumith>
- <sup>41</sup> Killing of two persons was reported in Jaffna inside the Chunnaham police station in 2016. They were tortured and killed at the Police station.
- <sup>42</sup> For example, abductions of children committed by paramilitary group led by Karuna Amman have not been investigated. <http://www.uktamilnews.com/?p=15559>,

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<https://www.hrw.org/report/2007/01/23/complicit-crime/state-collusion-abductions-and-child-recruitment-karuna-group>

- <sup>43</sup> There are also sites in Satturukondal area in Batticaloa District, based on local information which have not been officially acknowledged or investigated.
- <sup>44</sup> Domestic law to recognize and respond to mass graves has not been introduced. The legal response to such a site is confined to police investigations into the crime of murder and legality of the burying of a body in an unauthorized site in terms of the Cemeteries and Burial Grounds Act 1900. There is no official procedure to secure and preserve evidence of a mass grave, to trace families and return remains.
- <sup>45</sup> The Matala case has been laid by indefinitely since July 2015 and families seeking to intervene have been shut out by judicial order. The Matala case record consists of Forensic Archeologists report which identifies signs of trauma and implements of torture on the bodies. In Mannar families have been able to intervene in the case but there has been no attempt to identify bodies so far.
- <sup>46</sup> The (OMP) Act fails to provide for a remedy of returning remains to families which is one of the substantive reliefs families seek. Can this be expanded to explain the other recommendations we make in addition to the OMP.
- <sup>47</sup> Preliminary Observations and Recommendations of the UN Special Rapporteur Juan E. Mendez dated 7th May 2016 and Concluding Observations of the Committee against Torture on the 5th Periodic Report on SL, dated 07.12.2016; The HRCSL in its letter to the Right to Life Organization, a SLn NGO sent in 22.08.2016 has stated that the HRCSL has received 481 complaints of torture in 2014. The Right to Life Organization has recorded 200 incidents of torture between 2011 and 2016. See, Joint Alternative Report from the SLn NGO Collective to the Committee against Torture, 13.10.2016. Further, Corporal punishment although prohibited by law is practised as a disciplinary measure in other settings, including juvenile centres, schools and the home, See, Global Initiative to End All Corporal Punishment of Children, submission to the review by the Committee against Torture of the report of SL in November 2016
- <sup>48</sup> Section 16 and 17 of the Prevention of Terrorism Act places the burden on the victim to demonstrate that his statement was given under duress.
- <sup>49</sup> Forced confessions and torture of suspects are likely to happen at police stations. Proposed amendment to Criminal Procedure Code contains provisions to allow lawyers to see the suspect only after recording of statements.
- <sup>50</sup> The NPC is mandated to inquire into and take action against police officers found guilty of torture. The Military also has its own disciplinary procedure. However apart from transferring the guilty officer, no further action appears in the public record. In a writ application before the Court of Appeal (CA Writ 437/2015), the family of a person who died while in custody have filed action against the National Police Commission for failing to inquire into or consider disciplinary action against the officers who were named in the Magistrates Court as being responsible for the wrongful death of the victim. The case is currently pending.
- <sup>51</sup> Only the police can trigger an inquiry under the Torture Act. There is no system or obligation for a Magistrate, JMO, HRCSL or even the Supreme Court to refer a complaint to the AG for action.
- <sup>52</sup> There is no system to document the full physical and psychological impact of torture and to provide for medical and other treatment for the full recovery, repair and restoration of the lives of torture survivors. The International Commission of Jurists (ICJ) recommended amending section 12 of the SL the Act against Torture to include the term “suffering” within the definition of torture, and enacting a non-refoulement provision in the Act in conformity with obligations under article 3 of the CAT, however these amendments have not yet been incorporated.
- <sup>53</sup> <http://thediplomat.com/2015/10/sri-lanka-is-sirisena-ready-to-release-tamil-political-prisoners/>  
In October 2015, following a sustained hunger strike by over 200 PTA detainees, the government in November released some on bail, sent others for rehabilitation, and pledged to charge and try the rest. <https://www.hrw.org/world-report/2016/country-chapters/sri-lanka>
- <sup>54</sup> Estimated 200 to 300 people continue to be held, though the actual number could be higher. <http://www.huffingtonpost.com/taylor-dibbert/sri-lanka-should-finally-b-9417618.html>
- <sup>55</sup> Human Rights Activist Ruki Fernando was arrested under the PTA in 2014 (See para 2.15). Jeyakumari Balendran was an activist campaigning for the families of the disappeared. The security forces detained her in March 2014, and later released on bail in March 2016. <http://www.bbc.com/news/world-asia-31812030>
- <sup>56</sup> Ram and Nagulal two persons released under the previous regime December 2016 were re-arrested.. A Female ex carder of Killinochchi was rearrested in March 2007.
- <sup>57</sup> Prison overcrowding and lack of sanitation is a major issue in prisons. In Vavniya prison only 0.6 square meters of space per prisoner is available, UN Special Rapporteur on Torture.

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- <sup>58</sup> <https://www.hrw.org/report/2013/02/26/we-will-teach-you-lesson/sexual-violence-against-tamils-sri-lankan-security-forces>
- <sup>59</sup> Prison overcrowding and lack of sanitation is a major issue in prisons. In Vavniya prison only 0.6 square meters of space per prisoner is available, UN Special Rapporteur on Torture.
- <sup>60</sup> The prison doctor cannot send a suspected victim of torture to a JMO directly for examination. The doctor has to obtain permission from the prison and refer the victim to the JMO through the courts. The Prison hospital is reluctant to send its inmates to a JMO for examination when recommended by the prison doctor.
- <sup>61</sup> The annual World Press Freedom Index for 2016 compiled by Paris based Reporters Without Borders (RSF) and released Wednesday (20 April 2016) ranked SL 141<sup>st</sup> out of 180 countries. SL's rank improved 24 notches from 165th place it earned in 2015.
- <sup>62</sup> SL: Freedom of the Press, 2016 at <https://freedomhouse.org/report/freedom-press/2016/sri-lanka>
- <sup>63</sup> Insert reference for this statement. Priyalal.
- <sup>64</sup> In December 2016, the Navy Commander assaulted Roshan Gunasekera, a local correspondent for *The Island* and *Divaina* newspapers, while covering a Navy activity at Hambantota harbour. See: <http://www.ifj.org/nc/news-single-view/backpid/59/category/news/article/sri-lankan-navy-commander-assaults-journalist/>. Journalists were physically obstructed or assaulted while attempting to cover local government affairs in the North of SL, Information collected by Free Media Movement and submitted to Freedomhouse. Published as SL: Freedom of the Press, 2016 at <https://freedomhouse.org/report/freedom-press/2016/sri-lanka>; Three journalists, who had been previously harassed by police TID and military intelligence, were attacked by two police officers with knives in Jaffna on 7 April 2015 for collecting information of a protest against water pollution. Journalists had been continuously harassed by the police, TID and military intelligence before the attack. See, <http://srilankabrief.org/2015/04/sri-lankan-police-at-war-with-tamil-journalists-in-jaffna/>. A Tamil journalist was detained in Jaffna on 8th April in connection with a story he wrote criticizing the police, See, <https://www.cpi.org/2015/04/journalist-faces-charges-after-publishing-report-c.php>; In July 2015 a photojournalist from Sinhala newspaper *Lankadeepa* was temporarily detained at a political party rally by a group of people claiming to be Rajapaksa bodyguards.
- <sup>65</sup> TI experience, experience of women who have made RTI's for information on complaints of family members who have disappeared and have been told that the complaint is not available and to re-lodge complaints?
- <sup>66</sup> <http://dailynews.lk/2016/09/29/law-order/94430>
- <sup>67</sup> <http://www.adaderana.lk/news/39478/president-and-prime-minister-refuse-to-reveal-assets-and-liabilities>
- <sup>68</sup> [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=162447](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=162447)
- <sup>69</sup> Muslims in Aluthgama, Beruwala and Dharga town were attacked in June 2014. At least 4 were killed and 80 were injured and hundreds were made homeless. During this incident hundreds were made homeless following attacks on homes, shops, factories, mosques and a nursery. 10,000 people (8,000 Muslims and 2,000 Sinhalese) were displaced by the riots. The Secretariat for Muslims (SFM) recorded 82 incidents of hate speech, acts of discrimination, attempts to desecrate or destroy Muslim religious edifices and verbal insults upon or use of physical force to impede Muslim cultural practices and rituals. The National Christian Evangelical Alliance of SL (NCEASL) documented a total of 87 cases of attacks on churches, intimidation and violence against pastors and their congregations, and obstruction of worship services during the year. NCEASL had reported a total of 96 such incidents in 2014. There has been 120 attacks on Christian Churches since Maithripala Sirisena took over power. The commission of religious liberty of the National Christian Evangelical Alliance, report that there have been 15 incidents of violence and intimidation against Christians in January 2016 alone. In August 2015, a group of Buddhist monks and about 30 villagers forced themselves into a Church in Galle. The pastor and his wife have been assaulted in this instance. Subsequently the pastor who was the victim of assault has been remanded.
- <sup>70</sup> On 13th September 2014, two unidentified men rushed to the the office of Mr. Namal Rajapakshe Attorney-at-Law, at Kelaniya and threatened that he and Mr. Manjula Pathiraja, also a human rights lawyer, would be killed, if they appear in "unnecessary cases". <http://srilankabrief.org/2014/09/two-hr-lawyers-namal-rajapakshe-and-manjula-pathiraja-threatened-with-death/>
- <sup>71</sup> <https://www.amnesty.org/en/latest/news/2015/01/sri-lanka-death-threats-against-activists-highlight-risk-violence-around-elections/>



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- <sup>72</sup> Eleven Tamil journalists travelling to the workshop were stopped and questioned by security forces, whilst the driver of the vehicle was detained. On the next day the protesters raided the venue (Sri Lanka Press Institute) forcing the project team to abandon the workshop.  
<http://www.eyesrilanka.com/2014/07/27/protesters-disrupt-workshop-for-journalists/>
- <sup>73</sup> [http://www.huffingtonpost.com/taylor-dibbert/the-troubling-detention-o\\_b\\_12310814.html](http://www.huffingtonpost.com/taylor-dibbert/the-troubling-detention-o_b_12310814.html)
- <sup>74</sup> Ministry of Education classifies schools into five categories based on their level of difficulty in terms of facilities and accessibility.
- <sup>75</sup> Ministry of Education. (2013). SL Education Information. Colombo
- <sup>76</sup> Ministry of Education. (2013). SL Education Information. Colombo
- <sup>77</sup> These subject streams include commerce, science and arts subjects
- <sup>78</sup> Submission by the Malaiyaha Makkal (Up-Country People) to the Consultation Task Force on Reconciliation Mechanisms. (2016).
- <sup>79</sup> United Nations Development Programme. (2014). National Human Development Report 2014: Youth and Development. Colombo: United Nations.
- <sup>80</sup> United Nations Development Programme. (2014). National Human Development Report 2014: Youth and Development. Colombo: United Nations.
- <sup>81</sup> Lall, A. (2017). "Don't tell them where we live" – Caste and access to education in northern SL. Secure Livelihoods Research Consortium.
- <sup>82</sup> Gunasekara, V. (2015). Unpacking the Middle: A Class-based Analysis of the Labour Market in SL. Southern Voices Post-MDG International Development Goals, Occasional Paper Series (22). Retrieved from <http://southernvoice.org/wp-content/uploads/2015/02/SV-OP-22.pdf>
- <sup>83</sup> United Nations Development Programme. (2014). National Human Development Report 2014: Youth and Development. Colombo: United Nations.
- <sup>84</sup> 'Stalin criticizes budget allocation for education', Daily News, 22 Nov. 22, 2016, available at <http://dailynews.lk/2016/11/22/local/99831> accessed 25 March 2016.
- <sup>85</sup> Ibid.
- <sup>86</sup> Institute for Policy Studies. (2016). SL State of the Economy 2016. Fiscal Policy for Growth: Sustainable Financing for Development. Colombo: Institute for Policy Studies. SL (in 2014) spent significantly less than the global average in terms of percentage of GDP on healthcare—see World Health Organization Global Health Expenditure database. Retrieved from: <http://data.worldbank.org/indicator/SH.XPD.TOTL.ZS>.
- <sup>87</sup> Institute for Policy Studies. (2013). SL State of the Economy 2013. The Transition to a Middle-Income Country. Colombo: Institute of Policy Studies; Institute for Policy Studies. (2016). SL State of the Economy 2016. Fiscal Policy for Growth: Sustainable Financing for Development. Colombo: Institute for Policy Studies
- <sup>88</sup> "Universal Health Coverage (UHC) is defined as all people receiving quality health services that meet their needs without being exposed to financial hardships in paying for the services" – WHO (2014) cited in Institute for Policy Studies. (2016). SL State of the Economy 2016. Fiscal Policy for Growth: Sustainable Financing for Development. Colombo: Institute for Policy Studies.
- <sup>89</sup> Institute for Policy Studies. (2016). SL State of the Economy 2016. Fiscal Policy for Growth: Sustainable Financing for Development. Colombo: Institute for Policy Studies; Institute for Policy Studies. (2013). SL State of the Economy 2013. The Transition to a Middle-Income Country. Colombo: Institute of Policy Studies; United Nations Development Programme. (2014). SL National Human Development Report: Youth and Development. Colombo: United Nations; United Nations Development Programme. (2012). SL National Human Development Report: Bridging Regional Disparities. Colombo: United Nations.
- <sup>90</sup> Despite the passing of a National Medical Regulatory Authority Act of 2015.
- <sup>91</sup> Ayurvedic, Unani, Siddha and Homeopathy systems
- <sup>92</sup> In 2017, the state cut almost Rs. 13 Billion from spending on health, while budgetary provisions are made for the privatisation of health
- <sup>93</sup> Kumar, R. (2015, September 27). Unequal access to healthcare in SL?. Retrieved from the Sunday Times: <http://www.sundaytimes.lk/150927/sunday-times-2/unequal-access-to-healthcare-in-sri-lanka-165845.html>
- <sup>94</sup> Institute for Policy Studies. (2013). SL State of the Economy 2013. The Transition to a Middle-Income Country. Colombo: Institute of Policy Studies
- <sup>95</sup> Such as diabetes, hypertension, heart disease, asthma, cancer, chronic kidney disease.
- <sup>96</sup> Rapid decline in fertility rates and increased life expectancy has led to a growing aging population in SL.
- <sup>97</sup> Institute for Policy Studies. (2016). SL State of the Economy 2016. Fiscal Policy for Growth: Sustainable Financing for Development. Colombo: Institute for Policy Studies; Institute for Policy Studies. (2013). SL

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- State of the Economy 2013. The Transition to a Middle-Income Country. Colombo: Institute of Policy Studies; United Nations Development Programme. (2014). SL National Human Development Report: Youth and Development. Colombo: United Nations; United Nations Development Programme. (2012). SL National Human Development Report: Bridging Regional Disparities. Colombo: United Nations.
- <sup>98</sup> Ellepola, Y. (2016, October 10). Why SL needs better responses to mental health issues. Retrieved from Ceylon Today: <http://www.ceylontoday.lk/print20160701CT20161030.php?id=7017> ; The Sunday Times. (2013, October 10). Poor mental health: National institute can't cope with the demand. Retrieved from: <http://www.sundaytimes.lk/131006/news/poor-mental-health-national-institute-cant-cope-with-the-demand-64878.html>
- <sup>99</sup> Based on Rs. 120 a day per day per capita expenditure- The Centre for Poverty Analysis. (2017, January 08). Magic 'line' that makes us rich or poor. Retrieved from The Sunday Times: <http://www.sundaytimes.lk/170108/business-times/magic-line-that-makes-us-rich-or-poor-222743.html>.
- The absolute poverty line is measured based on minimum food and non-food needs of an individual, such as food, clothing, shelter, energy and health needs. There are shortcomings in money metric measures in terms of outcomes in health, education and living conditions. Money metric poverty measures do not take into account calorie requirement for a hard day's work or of those who are chronically ill. It also does not take into account access and progress in education, or living conditions such as houses without electricity, no access to clean water, sanitation, etc.
- <sup>100</sup> The World Bank. (2016, February 16). Poverty has Fallen in SL but Fiscal, Growth, and Inclusion Challenges Need to Be Tackled to Sustain Progress. Retrieved from The World Bank: <http://www.worldbank.org/en/news/press-release/2016/02/16/poverty-has-fallen-sri-lanka-but-fiscal-growth-and-inclusion-challenges-need-to-be-tackled-to-sustain-progress>
- <sup>101</sup> The Centre for Poverty Analysis. (2017, January 08). Magic 'line' that makes us rich or poor. Retrieved from The Sunday Times: <http://www.sundaytimes.lk/170108/business-times/magic-line-that-makes-us-rich-or-poor-222743.html>.
- <sup>102</sup> The World Bank. (2015). SL Ending Poverty and Promoting Shared Prosperity. Colombo: The World Bank
- <sup>103</sup> Especially due to shocks such as illness, inflation, natural disasters, etc.
- <sup>104</sup> World Bank 2015
- <sup>105</sup> World Bank 2015:46-47
- <sup>106</sup> It is a scheme and entitlements have no constitutional foundation in rights.
- <sup>107</sup> Recipients lose a minimum of 10% of already very low levels of transfers by way of various deductions, which could go up to 16% or even higher. This includes forced savings, which cannot be accessed until recipients are 70. They are also compelled to make various other contributions such as towards anti-smoking campaigns
- <sup>108</sup> For example, officials report that from the end of 2017 the number of Samurdhi recipients has to be cut by 10% annually. Arbitrary caps on the number of Samurdhi beneficiaries in districts, meaning that many deserving families are excluded.
- <sup>109</sup> Officials also report that under the reforms currently being considered, Samurdhi beneficiaries will be encouraged to exit the programme by giving them livelihood loans at 5% interest. There is significant evidence to suggest that loan based livelihood/self-employment programmes for women have failed and increased burden of debt. The impact on poor women in rural, including estate and more so the war-affected areas, are especially severe as women are often targeted for loan-based schemes.
- <sup>110</sup> 'SL's poor not just poor but destitute and barely managing to survive', Vijay K. Nagaraj, Sunday Times, 20 March 2016, available at <http://www.sundaytimes.lk/160320/business-times/sls-poor-not-just-poor-but-destitute-and-barely-managing-to-survive-186680.html>.
- <sup>111</sup> "The stunted and underweight population among children under 5 declined from 21.2 percent to 13.1 percent and 27.3 to 23.5 percent respectively during the period 1995/96 to 2012. Low birth weight declined from 21 percent in 1993 to 18 percent in 2012. Anaemia in children has declined from 25.2 percent in 2009/10, to 15.1 percent in 2012."
- <sup>112</sup> National Strategic Review of Food Security and Nutrition: Towards Zero Hunger, Feb 2017, World Food Programme, Govt. of SL and SAPRI, p. x. Available at [https://www.wfp.org/sites/default/files/NSRFSNZH\\_FINAL.pdf](https://www.wfp.org/sites/default/files/NSRFSNZH_FINAL.pdf)
- <sup>113</sup> SL ranks 128 out of 130 countries. Ibid.
- <sup>114</sup> Ibid.
- <sup>115</sup> Ibid.
- <sup>116</sup> In places as diverse as Ratnapura, Ampara, and parts of the Central and Uva provinces. See SL: Food Security Atlas 2015, p. v. World Food Programme.

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- <sup>117</sup> Sanguhan, Y. and Gunasekara, V. (2017). "Researching livelihoods and services affected by conflict: SLRC panel survey SL wave II report." London: Overseas Development Institute.
- <sup>118</sup> See SL: Food Security Atlas 2015, p. v. World Food Programme, and see also National Strategic Review of Food Security and Nutrition: Towards Zero Hunger, Feb 2017, World Food Programme, Govt. of SL and SAPRI. Other causes identified in the two reports include land degradation, urbanization, population aging and climate change.
- <sup>119</sup> \$1.90 per day in 2015.
- <sup>120</sup> Gunasekara, V. (2015). Unpacking the Middle: A Class-based Analysis of the Labour Market in SL. Southern Voices Post-MDG International Development Goals, Occasional Paper Series (22). Retrieved from <http://southernvoice.org/wp-content/uploads/2015/02/SV-OP-22.pdf>
- <sup>121</sup> 'State sector manpower workers in limbo', *The Sunday Times*, 5 Feb 2017, available at <http://www.sundaytimes.lk/170205/news/state-sector-manpower-workers-in-limbo-227233.html> accessed 25 March 2017.
- <sup>122</sup> Rs. 10,000 per month in the private sector.
- <sup>123</sup> These include the Employees Provident Fund and the Employees Trust Fund; see 'Unions ask govt. not to meddle with EPF and ETF', *The Island*, 9 Nov 2015, available at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=135062](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=135062) accessed on 25 March 2017
- <sup>124</sup> Survey of violations of Trade Union Rights, ITUC, available at <https://survey.ituc-csi.org/Sri-Lanka.html#tabs-2> accessed 25 March 2017.
- <sup>125</sup> Ministry of Construction, Engineering Services, Housing and Common Amenities, National Housing Symposium 2011; In 2010, the NHDA Chairman stated that there were 1.2 million people without housing, who face difficulties such as no permanent address, with its resulting impacts on access to employment, income, schooling, and even nutrition. 2012 Census sated that 3,418 had no roof above their heads whatsoever, and studies have shown that a high percentage of homeless people suffer from mental illness and alcoholism.
- <sup>126</sup> According to the latest HIES, 75.9% households in the Estate sector have a toilet exclusive to the household compared to the national average is 89.9%. Only 67.4% of estate sector households have a source of drinking water within the premises while the data for Urban and Rural sectors is 92% and 79.6% respectively. While the national percentage of housing units owned by a member of the household has grown from 70% in 1981 to 83% in 2012, in the Estate sector it has only increased to 22% in 2012 from the 1% it was in 1981. For more, see K. Romeshun and Priyanthi Fernando, Centre for Poverty Analysis, Poverty in the Estate Sector: has it turned the corner?, 07 May 2015, *The Island*, available at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=124227](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=124227) and see also Malaiyaha Makkal (Up-Country People) and Transitional Justice: A Submission to the Consultation Task Force on Reconciliation Mechanisms, available on file.
- <sup>127</sup> Life and Debt, K. Romeshun Vagisha Gunasekara Mohamed Munas, Centre for Poverty Analysis, 2014.
- <sup>128</sup> See 'Open letter to the Prime Minister on proposed 65,000 houses project in NE', *Daily FT*, 3 Feb 2015, available at <http://www.ft.lk/article/524944/Open-letter-to-the-Prime-Minister-on-proposed-65-000-houses-project-in-NE> accessed 25 March 2017; See also 'Controversy over 65,000 Steel Houses', *Eye SL*, 7 Dec 2016, at <http://www.eyesrilanka.com/2016/12/07/controversy-over-65000-steel-houses/>.
- <sup>129</sup> This figure does not include hundreds of families who land has already been acquired and are awaiting housing from the UDA, such as the 500 plus families from Java Lane who were promised housing by 2016. Construction of their promised housing has not yet begun and families have not been informed about time lines yet. See Centre for Policy Alternatives report '[The making of a world class city: displacement and land acquisition in Colombo](#)' (January 2017)
- <sup>130</sup> Not all those who were forcibly relocated were living on State land, many lived on private land and had title to their properties and due process not followed in land acquisition process. See Centre for Policy Alternatives reports '[Forced evictions in Colombo: the ugly price of beautification](#)' (April 2014) and '[Forced evictions in Colombo: High-rise living](#)' (May 2015).
- <sup>131</sup> Even though UDA figures claim that a total number of 68,812 families live in 1,499 community clusters (underserved settlements) which "do not have a healthy environment for human habitation and access to basic infrastructure facilities such as clean water, electricity, sanitation etc", according to the Underserved Settlements Survey 2012 conducted in the Colombo district by the Colombo Municipal Council and Sevanatha Urban Resource Center, 54.4% of settlements in Colombo fall into the category of 'upgraded' and 39.3% fall into the category of 'fully upgraded' - which means that almost 94% of the settlements in Colombo are of satisfactory conditions and do not fall into the categories 'underserved' (5.9%) or 'extremely poor' (0.3%). Furthermore, according to the Census of Population and Housing

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2011 of the Department of Census and Statistics, out of the 555,926 housing units in the Colombo District, only 7979 housing units fall under the category of “hut/shanty”

- <sup>132</sup> In a survey conducted in 3 high-rises complexes built under the Urban Regeneration Programme, the Centre for Policy Alternatives interviewed 1222 households who have been living in the apartments for more than one and half years. Some key findings include - only 26% of surveyed respondents stated that they were fully informed prior to relocation regarding moving, terms and conditions, nature of the house, location etc. Almost 40% of respondents say that the relocation has deteriorated the quality of life of their family, with 13.2% saying that it has greatly deteriorated. 32.4% say that there has been no change while 17.9% say that their quality of life has somewhat improved. 60% said that people using drugs was a big problem in their apartment complex 17.4% said that it was not a problem. Majority of the surveyed respondents (77.2%) prefer to live in detached house while 14.4% would prefer to live in a low-rise apartment that doesn't require elevators. Only 6.9% of respondents said that they would prefer to live in a high-rise apartment. 47.1% say that the move has had no effect on their earnings while 36.8% say that their earnings have decreased. However, majority of respondents (79.9%) say that their total monthly expenses are higher now while 18.9% say that it is the same. Around 70% of surveyed respondents said that their electricity and water bills are higher now. For complete report see 'Living it down: Life after relocation in Colombo's high-rises' (December 2016)
- <sup>133</sup> Language, among others, has been a key factor in defining the contours of SL's ethnic conflict in the past. Insofar, the government appointed Lessons Learnt and Reconciliation Commission (LLRC) too observed that “It is language that unifies and binds a nation” LLRC Recommendation 8.236
- <sup>134</sup> Sekaram, S. (February, 2017). Lost in Translation: Shortfalls in the Implementation of SL's Official Languages Policy. Groundviews. Retrieved from: <http://groundviews.org/2017/02/20/lost-in-translation-shortfalls-in-the-implementation-of-sri-lankas-official-languages-policy/>
- <sup>135</sup> Ibid. Sekaram also notes how in Pungudutheevu, Jaffna, the mother of young Vidya, who was raped and murdered, had to rely on the help of a three-wheel driver to report the crime, as there was no Tamil-speaking officer or interpreter at the police station. In Vavunia, when a mother of another rape victim attempted to make a statement at the police station, the Sinhalese officer incorrectly noted that it was the mother who had been raped.
- <sup>136</sup> See Watchdog, State Facilitated Colonization of Northern SL (2013) <http://groundviews.org/2013/09/19/state-facilitated-colonization-of-northern-sri-lanka-2013/> and Thimbiriyagama Bandara, Without a Mother Tongue (2011) <http://www.cpalanka.org/wp-content/uploads/2012/02/2nd-Edition-Vibhasha-English-.pdf>
- <sup>137</sup> Report submitted by the Special Rapporteur on Minority Issues, Ms. Rita Izsák-Ndiaye on the conclusion of her official mission to SL (10-20 October 2016), A/HRC/34/53/Add.3, 31 January 2017.
- <sup>138</sup> 'What the 2016 budget means for land rights', Vijay Nagaraj, *The Sunday Times*, 13 Dec 2015, available at <http://www.sundaytimes.lk/151213/business-times/what-the-2016-budget-means-for-land-rights-174728.html> accessed 26 March 2017.
- <sup>139</sup> In 2010, 350 families of farmers and fisher folk living in Paanama, a coastal village in the east of SL, were forcibly and violently evicted from lands they had cultivated and lived on for over forty years. Approximately 1220 acres of land was taken over by the military to establish camps, and they are now being used to promote tourism. In February 2015, the government, through a cabinet decision announced the release of 350 acres of land back to the community<sup>139</sup>. In May 2015, the Pottuvil Magistrate Courts ruled out that the land should be made accessible to its rightful owners. However the government has not taken any measures to release and resettle the community back in their own lands. See Piyadasa, T. (2016). *Development by Dispossession? Forced evictions and land seizures in Paanama, SL*. [online] Oxfam International and Peoples' Alliance for Right to Land (PARL). Available at: [https://www.oxfam.org/sites/www.oxfam.org/files/file\\_attachments/bn-development-dispossession-land-sri-lanka-260916-fr.pdf](https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bn-development-dispossession-land-sri-lanka-260916-fr.pdf) [Accessed 23 Mar. 2017]. Kannangara, N. (2015). Panama Land Grab Exposed. *The Sunday Leader*. [online] Available at: <http://www.thesundayleader.lk/2015/03/01/panama-land-grab-exposed/> [Accessed 23 Mar. 2017].
- <sup>140</sup> The demarcation of a High Security Zone in Valikamam North and East in 1990, approximately 9,905 Tamil families consisting of 33,353 individuals were displaced. Affected families since then have been living with host families. Out of the 6381 acres of private land occupied by the military in Valikamam, only 1,013 acres of land (613 acres in Valikaamam North and 400 acres in Valikamam East) has been released in March 2015. The Myliddy harbour in the area still remain inaccessible to fisherfolk as it is under the control of the Navy. The Displaced families continue to demand the release of the remaining 5368 acres which are yet to be released. Valikamam Land Issue. (2016). [online] Available at: <http://www.nafso-online.org/2016/02/valikamam-land-issue.html> [Accessed 23 Mar. 2017].

- <sup>141</sup> Over 200 families from the village of Mullikulam were forced to leave their village in September 2007 by the SLn Army. Subsequently the Navy occupied Mullikulam. Occupied land includes private lands of people (legally owned by deeds, grants or permits), land belonging to the Catholic Church, as well as State land. As a result of rigorous campaigning and lobbying to win their right to land, villagers of Mullikulam were allowed to resettle in the border of their village in June 2012. Approximately 175 displaced families went and started living in the jungle close to their original homes. They had to seek shelter under trees as they were not provided with any assistance by the government<sup>141</sup>. In September 2014, 146 families were given half an acre of land by the Government of SL with no proper facilities and living conditions. The community of farmer and fisherfolk have been resettled in an area where they cannot engage in their livelihood activities. At present 245 families are protesting calling for justice and their right to land. Fernando, R. (2012). The struggle to go home in post war SL: The story of Mullikulam. [Blog] *Groundviews*. Available at: <http://groundviews.org/2012/08/01/the-struggle-to-go-home-in-post-war-sri-lanka-the-story-of-mullikulam/> [Accessed 23 Mar. 2017]. Azwer, M. (2012). Displaced Community In Mullikulam Forced To Settle In Jungle. *The Sunday Leader*. [online] Available at: <http://www.thesundayleader.lk/2012/06/24/displaced-community-in-mullikulam-forced-to-settle-in-jungle/> [Accessed 23 Mar. 2017]. Who belongs Mullikulam lands. (2016). [Blog] Available at: <http://www.nafso-online.org/2016/02/who-belongs-mullikulam-lands.html> [Accessed 23 Mar. 2017].
- <sup>142</sup> Approximately 520 acres of land belonging displaced families in Kepapulau have been occupied by the military. The community in Keppulau were displaced during the last leg of war and were held in IDP camps. Subsequently, 150 families were resettled in an area called 'Kepapulau Model Village' in 2012, where they were given 40 perch lands irrespective of the extents of land they owned prior to displacement. In the aforementioned model village, the land provided was neither adequate nor suitable for farmers and fisherfolk to engage in livelihood activities. The remaining families who did not accept the alternative lands continued to live with host families. Since 2012 there have been many public protests and demonstrations by the community calling for the release of their own lands. In March 2017, subsequent to a rigorous fasting protest, 54 families were allowed to return to their own lands. The rest families continue to demand for their right to land and have re-commenced a series of public protests in Kepapulau. See Fernando, R., de Silva, M. and Arulingam, S. (2016). Broken promises: Kepapulau displaced to restart fast unto death next week. *Daily FT*. [online] Available at: <http://www.ft.lk/article/554936/ft> [Accessed 23 Mar. 2017].
- <sup>143</sup> The Uma Oya development project which commenced in 2011 has taken over 3000 acres of housing and cultivation lands. Approximately 2700 people have been displaced by this project by the construction of Maketilla Oya, Kuhulpola reservoir, Handapanagala tank and Alikota Ara reservoirs. The construction of underground tunnels have drastically affected the water table and also the caused serious damages to houses and buildings in the area. In 2016 September, the Supreme Court last week ordered the Director of Agriculture, Uva Province to estimate the loss caused to the farmers as a result of the Uma Oya Multi-Purpose project, and to pay compensation to them. The Court also ordered that water be provided before December 31 to the victims. Interview with Sajeewa Chamikara, Executive Director at the Environment Conservation Trust on 01st of December, 2016. See also Nizam, I. (2016). Uma Oya Project To Benefit Or Ruin?. *The Sunday Leader*. [online] Available at: <http://www.thesundayleader.lk/2016/09/19/uma-oya-project-to-benefit-or-ruin/> [Accessed 23 Mar. 2017].
- <sup>144</sup> Corea, C. (2016). Why the Port City is bad for the country. *The Sunday Times*. [online] Available at: <http://www.sundaytimes.lk/160612/sunday-times-2/why-the-port-city-is-bad-for-the-country-196859.html> [Accessed 23 Mar. 2017]. Kumarasinghe, K. (2016). Port City Project: Development or disaster. *Daily Mirror*. [online] Available at: <http://www.dailymirror.lk/article/Port-City-Project-Development-or-disaster-120208.html> [Accessed 23 Mar. 2017].
- <sup>145</sup> Though it is mandatory for larger development projects to have an environmental impact assessment, it is more common to submit incorrect reports for initial environmental approval, and neglect proper environmental assessment. The *Uma Oya* development project, Port City development project, Mattala International Airport project, *Moragahakanda* and *Kalu Ganga* irrigation projects have all led to undesirable effects on the environment and wildlife due to lack of proper environmental assessment before implementation. A Wind Power project in Mannar has been launched on the basis of an Initial Environmental Examination though the project site sits on a path used by migratory birds.
- <sup>146</sup> R.M.S. Bandara, Overcoming Landslide Issues and Effects, Landslide Research and Risk Management Division, National Building Research Organisation, Ministry of Disaster Management available at [http://www.mpid.gov.lk/en/images/NPA\\_UNDP/9\\_Mr\\_Bandara\\_plantation\\_final\\_30-4-2015.pdf](http://www.mpid.gov.lk/en/images/NPA_UNDP/9_Mr_Bandara_plantation_final_30-4-2015.pdf). See also Amantha Pieris, 'After devastating floods and landslides, SL plans new building code', 26 May 2016, IRIN News available at <http://www.irinnews.org/news/2016/05/26/after-devastating-floods->

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[and-landslides-sri-lanka-plans-new-building-code](#) accessed 26 March 2017; and, Raveendra Kariyawasam, 'Floods and landslides in SL: Where have we erred', *The Daily News*, 25 May 25, 2016 available at <http://dailynews.lk/2016/05/25/features/82709> accessed 26 March 2017.

<sup>147</sup> Interview with Chinthaka Rajapakse, Moderator at the Movement for Land and Agricultural Reform on 23<sup>rd</sup> of March 2017. In November 2016, Dole abandoned its banana plantation in Kantale without paying to more than 100 workers who had been hired through a manpower agency. See Ravaya 4th December 2016 <http://ravaya.lk/?p=48375>.

<sup>148</sup> Penal Code provisions on consensual same sex relations; statutory rape (Penal Code exempts married girls between the ages of 12- 16 from being protected under the law of statutory rape); marital rape; impersonation; provisions in the Land Development Ordinance and State Lands Ordinance that grant state land in single ownership, instead of joint or co ownership; personal laws including Muslim personal law and Thesawalamai; Vagrants Ordinance and Brothels ordinance continue to be enforced.

<sup>149</sup> Article 16 of the Constitution exempts all laws prior to the Constitution including Muslim Personal Law from judicial review and consistency with the fundamental rights chapter of the Constitution.

<sup>150</sup> Women with children under the age of 5 are prohibited from migrating for overseas employment. All women expecting to migrate for work have to provide a Family Background Report, this does not apply to men.

<sup>152</sup> Hadd punishment case from Puttalam where the Mosque Committee was found to have flogged a woman who was accused of adultery. There is no provision for such penal sanction for adultery and this practice of extra judicial punishment has been reported in the Eastern and Western parts of the country.

<sup>153</sup> Despite multiple government committees, with predominantly Muslim men, appointed to review the Muslim personal law since 1990, none of these efforts have been yet fruitful. In 2011, recommendations by the CEDAW Committee called for an inclusive process of engagement, in particular women's groups in the reforms process.

<sup>154</sup> Recent backlash from conservative Muslim groups has created a hostile environment where women activists, advocates and affected women who gave testimonies, have been intimidated.

<sup>155</sup> Professional counseling, medical, psychosocial and rehabilitation services, shelters, identification parade is conducted without any security provided, victim and witness protection, in camera trials. There is also a drastic lack of female police officers.

<sup>156</sup> Rita John's case (rape) took 14 years. <http://archives.dailynews.lk/2004/01/28/new18.html>

<sup>157</sup> 13 seats secured by women out of 225 seats

<sup>158</sup> There is no effort or commitment by political parties to ensure that women are included in the nomination lists. There is also no incentive or schemes to assist and enable women's participation in politics. Political participation must also be viewed as broader than party politics and a effective engagement in democratic politics. For most women, particularly away from the center, this remains a challenge. There is currently a 25% quota that has been introduced at the local government but this does not adequately reflect an optimum level of participation. The call for women's participation is that it should at least be 50% or based on a gender neutral formula where no one gender is allocated more than 2/3 of seats at any level of government. This same call is reflected in the advocacy for women's participation in all decision making bodies of government including independent commissions and public authorities.

<sup>159</sup> Consisting largely of rural, fisher, agricultural and domestic sectors.

<sup>160</sup> Tamil speaking women face discriminatory practices including language barriers and stereotyping when they access justice, due to lack of Tamil speaking officers in courts, police stations and hospitals.

<sup>161</sup> Women are denied access to land, including traditional use of common land, housing, and other resettlement assistance. The military continue to occupy lands without returning them to the original owners, including to female heads of households.

<sup>162</sup> For over 134 years now, the law criminalize homosexuality and same sex relationships. Such discrimination takes places on the grounds of "protection of public health or morality" as stated in the Constitution of Sri Lanka (Article 15(7)). Same sex relations are criminalised by the Penal Code on the grounds of being "against the order of nature" and "gross indecency".

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- <sup>163</sup> Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with fine and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount - determined by court to the person in respect of whom the offence was committed for injuries caused to such person.
- <sup>164</sup> Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be guilty of an offence, and shall be punished with imprisonment of either description, for a term which may extend to two years or with fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.
- <sup>165</sup> A person is said to "cheat by personation " if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.
- <sup>166</sup> Penal Code, No.2 of 1883 (as amended)
- <sup>167</sup> Vagrants Ordinance, No.4 of 1841 (as amended)
- <sup>168</sup> Harassment and discrimination of LGBT person in Sri Lanka have been widely documented, Human Rights Watch 'Not All Five Fingers Are the Same' [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf) Discrimination of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka : Shadow Report submitted to the Presented to the 66th Session of the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW), 2017 <http://womenandmedia.org/wp-content/uploads/2017/02/WMC-LBT-SHADOW-REPORT-FINAL-20-JAN-2017.pdf> Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report Submitted for consideration at the 110th Session of the Human Rights Committee, 2014 [http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT\\_CCPR\\_ICO\\_LKA\\_15986\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf)
- <sup>169</sup> Convention on the Rights of Persons with Disabilities
- <sup>170</sup> The 1996 Act guarantees only 3 basic rights for persons with disabilities. A more comprehensive legislation was submitted to parliament in 2006 but has not been passed.
- <sup>171</sup> Children with disabilities do not have same access to school education, and they cannot freely select their stream of education due to lack of facilities. Accessible alternative formats are not available for higher education.
- <sup>172</sup> Persons with disabilities do not have sufficient vocational training facilities or opportunities. Training given by Vocational training institutions for persons with disabilities do not match the demand of labour market.
- <sup>173</sup> Sri Lanka Public Administration Circular No. 27/88 [http://www.hrcsl.lk/PFF/Library\\_Domestic\\_Laws/regulations/Document1.pdf](http://www.hrcsl.lk/PFF/Library_Domestic_Laws/regulations/Document1.pdf)
- <sup>174</sup> A gazette notification issued in 2006 recommended all government institutions to arrange proper access facilities for people with disabilities. However these provisions are not fully complied with.
- <sup>175</sup> Public transportation system does not have easy access facilities for people with disabilities.
- <sup>176</sup> The community, primarily oppressed caste Tamils from Southern India, were first brought as indentured labour to work in SL's tea plantations by the British, have a nearly 200 year history of pervasive discrimination, exploitation and violence.
- <sup>177</sup> A newly independent Ceylon perpetuated this through the 1948 Citizenship Act, which rendered the majority of the community stateless and disenfranchised. The Act was discriminative on two grounds, firstly for targeting the Upcountry Tamils as the Act required the proof that their father or grandfather was born in SL to qualify for citizenship under descent. On the other hand, the Act symbolised the passing of citizenship through the fathers and not through the mothers. See Kanapathipillai, V., (2009) *Citizenship and Statelessness in SL: The Case of the Tamil Estate Workers*, Anthem Press, 42-45.
- <sup>178</sup> According to data from the latest Household Income and Expenditure Survey (HIES 2012/13), the poverty headcount ratio in the Estate sector is 11%, higher than in the Rural (8%) and Urban sectors (2%). Only 2.2% have passed GCE (A/L), while in the Urban and Rural sectors the rates are 20.5% and

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11.1% respectively. Multiple forms of deprivation are pushing Up-Country youth to give up education and join the labour force. Women in the Estates have the lowest Body-Mass-Index (BMI) in the country, indicating that despite a larger number of women from the Estates participating in the labour force, their labour has not reaped an escape from poverty. Nearly 60% of the Estate sector live in 'line rooms', which not only bring stigma but most of which are cramped and very old leading to reduced access to toilets or water within the household and lack of safe drinking water.

<sup>179</sup> According to the data from the Household Income and Expenditure Survey, 75.9% households in the Estate sector have a toilet exclusive to the household compared to the national average is 89.9%). Only 67.4% of estate sector households have a source of drinking water within the premises while the data for Urban and Rural sectors is 92% and 79.6% respectively. For more, see K. Romeshun and Priyanthi Fernando, Centre for Poverty Analysis, Poverty in the Estate Sector: has it turned the corner?, 07 May 2015, *The Island*, available at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=124227](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=124227) and see also Malaiyaha Makkal (Up-Country People) and Transitional Justice: A Submission to the Consultation Task Force on Reconciliation Mechanisms, available on file.

<sup>180</sup> The exclusion of the Up-Country community is in fact underlined by the fact that the Estate sector is governed and classified as distinct from the Rural and Urban sectors. The legacy of being governed by companies rather than the state is reflected even today in the restrictions in the Pradeshiya Sabha Act of 1987 on the state and local authorities from providing certain infrastructure development services to Up-Country communities living on Estates.

<sup>181</sup> Discussed elsewhere in this report.

<sup>182</sup> On-going conversations around truth, reconciliation, justice, and reparations have not taken into account the history of systemic violence faced by the community for almost 200 years and side-line questions of economic exploitation and structural violence that has affected the community for far longer than length of the war.

<sup>183</sup> This is despite voting in favour of United Nations Declaration on the Rights of Indigenous Peoples adopted in 2007

<sup>184</sup> Nilgala, Rathugala, Hennanigala and Dambana areas are habitats of Veddha people.

<sup>185</sup> <http://www.asiantribune.com/index.php?q=node/5827>

<sup>186</sup> At the turn of the century the Veddhas were in three Geographical habitats. In 1958 colonization of Uvabintenna Veddhas at Kandegavila was carried out. Uruwarige Tissahamy the Vedda Chief at that time and his family resisted colonization and continued to live in the village in Kotabakina in Dambana. In 1980, Maduruoya which was close to Dambana was declared as a forest reserve, which has been the traditional hunting grounds of Veddhas. In 1982, Kandeganvila Veddhas were relocated in Hennanigala in Mahaweli System 'C' the area of major irrigation system in SL. The Mahiyangana – Padiyathalawa road built in 1960's separate the Bintenne from Wellassa. [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=108756](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=108756)

<sup>187</sup> <http://kataragama.org/research/wanniyalaeto.htm>

<sup>188</sup> SL recognizes caste-based discrimination as a punishable offence under the Social Disabilities Act of 1957.

<sup>189</sup> Silva. KT, Sivapragasam. P and Thanges. P (2009) 'Caste Discrimination and Social Justice in SL: An Overview, Working Paper Series, Vol III, No. 6 Indian Institute of Dalit Studies, New Delhi. See also Lall, A (2016) 'Don't tell them where we live' Caste and access to education in Northern SL' Working Paper 49, Secure Livelihoods Research Consortium.

<sup>190</sup> Lall, A (2016) 'Don't tell them where we live' Caste and access to education in Northern SL' Working Paper 49, Secure Livelihoods Research Consortium.

<sup>191</sup> Lall, A (2016) 'Don't tell them where we live' Caste and access to education in Northern SL' Working Paper 49, Secure Livelihoods Research Consortium

<sup>192</sup> Silva. KT, Sivapragasam. P and Thanges. P (2009) 'Caste Discrimination and Social Justice in SL: An Overview, Working Paper Series, Vol III, No. 6 Indian Institute of Dalit Studies, New Delhi.

<sup>193</sup> Lall, A (2016) 'Don't tell them where we live' Caste and access to education in Northern SL' Working Paper 49, Secure Livelihoods Research Consortium.

<sup>194</sup> Vagrants Ordinance (1842)

<sup>195</sup> Brothels Ordinance (1889)

<sup>196</sup> Section 360C of the Penal Code (Amendment) Act, No 16 of 2006.

<sup>197</sup> The concept of consent and understandings of exploitation is at the heart of this conflation. As a result of conflating sex work with trafficking, migrant sex workers are particularly targeted. Authorities target migrant sex workers ostensibly as victims of trafficking. However, many migrant sex workers report harassment by officials. These do not apply universally but discriminate against female, male and



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transgender sex workers from economically disadvantaged backgrounds. As these restrictions make it increasingly difficult to travel, sex workers need the assistance of third party agents to facilitate travel abroad. Dependency on brokers increases the cost of migration and exposes sex workers to possible fraud and extortion. Sex workers thus are highly vulnerable to exploitation when they attempt to travel.

<sup>198</sup> Women and Media Collective. (2017) SL Shadow Report to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW). In 2013, Saudi Arabia executed SLn housemaid Rizana Nafeek who was sentenced to death on the charge of murdering the son of her Saudi employer despite calls from international human rights groups to spare her life. 17 years of age when she went abroad on a forged passport prepared by recruiting agents (a common occurrence in SL), Rizana retracted a confession that she said was made under duress. Despite this, she was incarcerated in Dawadmi prison since 2005. She had no access to lawyers and competent interpreters during her interrogation and trial. Rizana had no access to legal counsel until after a court in Dawadmi sentenced her to death by beheading in 2007.

<sup>199</sup> Women and Media Collective 2017

<sup>200</sup> The circular also sets a minimum age requirement higher than 18 years for female migrant hopefuls: Saudi Arabia – 25; Other Middle-East Countries – 23; Other Countries – 21. It makes it mandatory for the local government official to issue a *Family Background Report* (FBR). This effectively bans women with children under the age of five or with disabilities from migrating overseas while others can migrate only “if the safety of children can be assured”.

<sup>201</sup> Women and Media Collective. (2017). SL Shadow Report To the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW)

<sup>202</sup> There is a common illegal practice of local recruiters keeping passports in their possession in the event of a visa applicant, changing her mind about migrating (for example, following the training period where she is informed of what is to be expected abroad or even in the instance that a child suddenly falls sick). Recruiting agents in such instances are prone to saying – ‘we have spent this amount for your health tests and processing of papers - now you must go abroad through our agency’. If she refuses the common practice is that the agency keeps her passport and demands a large sum of money if she wants it back. They also threaten to blacklist the migrant. This particular issue is not highlighted enough.

<sup>203</sup> Data from the 2012 national census shows that in Mullativu 44.5% and 24.4% in Killinochchi were living in temporary shelter.

<sup>205</sup> Legal documents are also denied on the basis of inadequate background documents. Many returnees find difficulties in obtaining the essential documents such as birth certificate, marriage certificate, death certificates due to various reasons such as unregistered/unavailable birth certificates of the parents; unregistered/unavailable marriage certificates of the parents; unavailability of legal marriage certificates, (despite evidence of a customary marriage; unavailability of grandparent's birth certificate; inability to obtain consular birth certificates; and mistakes in birth, death and marriage certificates.

<sup>206</sup> Though the Sri Lanka recognises the right to citizenship, many returnees face extreme delay in obtaining their citizenship application, a penalty (Rs.25,000/- penalty for registration of citizenship above 21 years) is charged. For the persons below 21 years old, late registration penalty (Rs.5,000/- + Rs.500/- for every year of delay) is levied if they don't possess UNHCR's return document. The state refuses to waive these penalties though there has been direct and indirect advocacy seeking the same from UNHCR, Organization for Eelam Refugees Rehabilitation and several other groups.

<sup>207</sup> Most returnees have no shelter and are unable to access their land upon return due to military occupation and the loss of title documents/permits or are compelled to return to land that are unsuitable for settlement. The inability to occupy their land renders returnees vulnerable and they are forced to live with friends and relatives as is the case now or in welfare centres which was the case until 2012.

<sup>208</sup> Returnees don't receive housing within a reasonable time and there are no special criteria to assess their needs.

<sup>209</sup> Returnees face difficulties in finding employment opportunities in both private and public sector. There is less vocational employment opportunities for youth and absence of career guidance support. Absence of support to restart and engage in traditional occupation, deprivation of agricultural land, Non-access to fishing license and exorbitant rates of interest and compulsory requirement of public sector employees to be guarantors for livelihood loans have been some of the challenges that hinder the livelihood prospects of the returnees.

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<sup>210</sup> There is also difficulty in having their educational qualifications recognised in Sri Lanka, and students are ineligible for state universities. Upon return, those, who have earned their academic degrees and diplomas, face the risk of their education being unrecognized as many students earn their graduation from the Universities / Deemed Universities and Poly-Technical Universities that are listed neither in the Common Wealth Book of Universities nor the World Book of Universities. Having returned with no resource, they struggle to afford charges - traveling to Colombo and obtaining equivalency for the academic certificates including converting Diploma certificates into National Apprentice and Industrial Training (NITA LKR.35,000/- per certificate); and pay Rs.2500.00 to obtain an equivalent certificate for a University degree.

Though equivalent certificates for the 10th and 12th standard (High School) are provided, it is issued without the mention of candidate's name and therefore, the candidate is expected to do a verification. It is also important to note that refugee returnees are considered ineligible for the selection into the Universities as the system does not take into consideration their particular circumstances.

<sup>211</sup> There has been improved coordination on detention issues and, most importantly, UNHCR's primary counterpart, the Department of Immigration and Emigration, has now been moved under the Ministry of Public Order and Christian Religious Affairs (after previously being under the Ministry of Defence).

<sup>212</sup> Asylum seekers are turned away at the airport with no hearing, sent back to the conditions they sought to flee, with no recourse to the law and without an opportunity to present their case. In refusing to take responsibility for refugees and asylum seekers, the government of Sri Lanka is contravening many international obligations signed and ratified over the course of Sri Lanka's history. Sri Lanka is bound by a number of international conventions, some as a signatory and others as a ratified State party. These include the International Covenant on Civil and Political Rights, the International Convention on Economic Social and Cultural Rights, the Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, the Convention Concerning Discrimination in Respect of Employment and Occupation, Convention against Discrimination in Education, the International Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women.