

# EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



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## NGO Submission

**Human Rights Council Universal Periodic Review (Second Cycle) on Sri Lanka  
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### **Information on the Situation of the Women in the North and the East of Sri Lanka**

Submitted by:

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The European Center for Constitutional and Human Rights (ECCHR) is an independent non-profit human rights organization, registered in the municipality of Berlin-Charlottenburg (Germany) since 2007. It works with a team of international lawyers and internationally recognized experts. ECCHR is devoted to protecting individuals and groups whose human rights have been or are at risk of being violated by state or private agents. ECCHR's programs are designed to address violations of internationally recognized crimes, such as war crimes and crimes against humanity, by using various legal mechanisms to hold the perpetrators accountable and to compensate the victims of these crimes. ECCHR looks for ways to pursue gender-specific proceedings in order to dismantle fixed gender stereotypes and the discrimination they facilitate. The concept of strategic litigation is used to achieve best results and create public awareness and concern regarding the rehabilitation of conflicts. Since 2010 ECCHR works on strategies to combat impunity of gender based violence. In January 2011 ECCHR submitted a report during the 48<sup>th</sup> Session to the CEDAW Committee on women and conflict in Sri Lanka. ECCHR has been consistently informed about the ongoing gender-based violence in the North/East and develops jointly with local groups and activist further steps how to hold perpetrators accountable and to stop grave women's human rights violations. ECCHR's application for ECOSOC status is pending.

## Introduction and Methodology

1. This submission, prepared according to the general guidelines for the preparation of information under the universal periodic review (UPR) (A/HRC/DEC/17/119), re-iterates the discrepancy between the situation of women's human rights, particularly in the North and the East of Sri Lanka, and the Sri Lankan government's obligations arising from several ratified United Nations Conventions. Women's needs in the North and the East continue to be marginalized from the conflict resolution processes. There are no accountability measures for past grave human rights violations committed by the parties to the conflict, both the Liberation Tigers of Tamil Eelam (LTTE) and the Sri Lankan military. Today gender-based violence in North and East Sri Lanka is increasing due to the high levels of militarization, the military position of power enabled by the *Prevention of Terrorism Act 1979*, and the culture of impunity that exists in Sri Lanka. ECCHR strongly emphasizes the Working Group on the UPR's recommendations (A/HRC/8/46), in addition to those of the Committee Against Torture (CAT Committee - CAT/C/LKA/CO/3-4) and the Committee on the Elimination of all Forms of Discrimination Against Women (CEDAW Committee - CEDAW/C/LKA/CO/7) and respectfully requests that these recommendations are taken into account during the UPR second cycle on Sri Lanka.

### I. Framework

2. Since the previous UPR of Sri Lanka the government of Sri Lanka has shown little effort to implement the recommendations outlined in A/HRC/8/46 regarding gender-based violence. Its implementation of international obligations, legislation and policy measures are not consistent with these recommendations.

3. Sri Lanka accepted during the last UPR the recommendation of the Czech Republic *to ensure the full incorporation and implementation of international human rights instruments at the national level, in particular (...) CAT* (A/HRC/8/46, para. 82, A.8) and *to continue its efforts for the full implementation of international human rights instruments to which it is a party* (Marocco - A/HRC/8/46, para. 82, A.10).

4. As Sri Lanka has signed and ratified numerous international human rights treaties including CEDAW<sup>1</sup>, the Optional Protocol to the CEDAW<sup>2</sup> and CAT,<sup>3</sup> it is therefore bound to abide fully by their terms.

5. According to document A/HRC/8/46, para. 82, A. 27, A. 28, A. 29 Sri Lanka accepted to adopt measures *to investigate, prosecute and punish those responsible for serious human rights crimes* (Sweden) and *to ensure the effective implementation of legislative guarantees and programmes for the protection of witnesses and victims* (Austria), it agrees *to take all necessary measures to prosecute and punish perpetrators of violations of international human rights law and humanitarian law* (Greece).

6. According to A/HRC/8/46, para. 82, A. 36, A. 37 and A. 38 Sri Lanka agreed to *give special attention to the right of the women further* (Algeria) and *to continue to strengthen its activities to ensure there is no discrimination against ethnic minorities in the enjoyment of the full range of human rights, in line with the comments of the CEDAW Committee* (Mexico).

7. Sri Lanka accepted the recommendation in paragraph A.39 (c) (Mexico) to implement various recommendations to ensure that emergency laws and measures to combat terrorism shall comply with

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<sup>1</sup> Sri Lanka signed on 17 July 1980 and ratified on 5 October 1981 with no reservations,

[http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSO&tabid=3&mtdsg\\_no=IV-8&chapter=4&lang=en#Participants](http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSO&tabid=3&mtdsg_no=IV-8&chapter=4&lang=en#Participants).

<sup>2</sup> Accession on 15 October 2002 with no reservations; [http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSO&tabid=3&mtdsg\\_no=IV-8-b&chapter=4&lang=en#Participants](http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSO&tabid=3&mtdsg_no=IV-8-b&chapter=4&lang=en#Participants).

<sup>3</sup> Sri Lanka accession on 3 Jan 1994 with no reservations, [http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSO&tabid=2&mtdsg\\_no=IV-9&chapter=4&lang=en#Participants](http://treaties.un.org/pages/ViewDetails.aspx?src=UNTSO&tabid=2&mtdsg_no=IV-9&chapter=4&lang=en#Participants). Please note that Sri Lanka is not a party to the Optional Protocol to the CAT

international human rights law. However it reiterated that *since article 4 (1) of the ICCPR permits States to derogate from obligations in times of public emergency which threaten the life of the nations and the existence of which is officially proclaims, all practicable measures including those necessary to combat terrorism would be put in place in conformity with its obligations under international law. Such measures will be strictly to the extent that is required for the exigencies of the situation* (A/HRC/8/46/Add.1 para. 17).

8. Pursuant to article 2 of CEDAW, Sri Lanka must condemn discrimination in all its forms, particularly gender-based violence (CEDAW Committee, General Recommendation No. 19)<sup>4</sup>. This includes the respect, the protection and the fulfillment of the right to non-discrimination of women. Although gender-based violence increases due to high levels of militarization, the military position of power enabled by the Emergency Regulations, which were lifted in August 2011, the Prevention of Terrorism Act remains in place.

## II. Failure to Promote and Protect Women's Human Rights on the Ground

9. Sri Lanka does not promote and protect women's human rights on the ground especially in the North/East of the country. It violates CEDAW and has not implemented the recommendations outlined in A/HRC/8/46, para. 82 despite voicing support for them at the last UPR.

### 1. Culture of Impunity

10. Sri Lanka has not implemented the recommendations of either the CEDAW Committee or the CAT Committee, which require a condemnation of any form of discrimination and therefore a comprehensive investigation of war-time rape. Further, it has ignored the recommendations outlined in A/HRC/8/46, para. 82, A. 27, A. 28, A. 29.

11. The Government of Sri Lanka continues to violate its obligation to condemn discrimination against women (Article 2 CEDAW) as it pursues a culture of impunity of gender-based violence. Article 2 of the CEDAW is central to the objectives and purpose of the Convention. State Parties are obliged to condemn all forms of discrimination (direct and indirect) against women and pursue policies to eliminate it. To this end, states should implement strategies outlined in article 2 (a) to (g) aimed at, for example, combating violence against women and addressing prevailing gender relations and harmful gender stereotypes in social structures, attitudes and legislation. State Parties must identify women as rights-bearers with particular emphasis on women who are most marginalized and who suffer from various forms of intersectional discrimination. In particular, article 2 (b) requires the adoption of appropriate legislative measures prohibiting discrimination, including sanctions. Together with article 2 (c), states must ensure the availability of remedies for women who are subject to any form of discrimination.<sup>5</sup> Remedies come in different forms but may include reparations aimed at "bringing to justice the perpetrators of such violations", which is a central tenet that a ratifying state must promote (CEDAW Committee, General Recommendation No. 28<sup>6</sup>). Article 2 (c) requires the effective judicial and other protection of the enjoyment of fundamental rights and freedoms on an equal basis with men. This does not just mean the appropriate and effective complaint procedures and criminal law enforcement process regarding gender-based crimes, but also the effective and practically available remedy.<sup>7</sup> Moreover, pursuant to article 2 (c) a State Party is obliged to address systematic issues that may have led to the violation.<sup>8</sup>

<sup>4</sup> CEDAW Committee, General Recommendation No. 19, A 47/38, 29 January 1992.

<sup>5</sup> Byrnes, Article 2, in: M.A. Freeman *et al.*, *The UN Convention on the Elimination of All Forms of Discrimination Against Women – A Commentary* (2012) (Article 2), p. 83.

<sup>6</sup> CEDAW Committee, General Recommendation No. 28, CEDAW/C/GC/28, 16 December 2010, para. 32.

<sup>7</sup> Byrnes, Article 2, p. 84.

<sup>8</sup> Byrnes, Article 2, p. 85.

12. Women in North and East Sri Lanka have suffered for decades from the civil war and continue to face daily human rights violations. There are many barriers facing these women when accessing justice. These barriers include:

- Societal stigmatization of women who are victims of gender-based violence; especially forcibly recruited former LLTE female combatants; who are often suspected of being victims of gender-based violence and face double stigmatization as a result;
- The high militarization in the North and East facilitated by the Prevention of Terrorism Act, which empowers members of the police and military to search and question Tamil women suspected for their association with the LTTE creating a climate of intimidation;
- The perpetrator's position of power: Many victims are reluctant to report gender-based violence, particularly when the perpetrators are members of the military or police for fear of intimidation and retaliation;
- The endemic culture of impunity of perpetrators of gender based violence; consequently, if persons from the state run authorities in charge of investigating crimes (e.g. police, military) are the alleged perpetrators of gender-based crimes, there is no legal protection or effective and practical available remedy for women.

13. In failing to investigate, prosecute and punish violations of women's human rights, Sri Lanka is violating article 2 (b) and 2 (c) of CEDAW as it has failed to respect, protect and fulfill the rights guaranteed in the CEDAW.

14. Every state, which fails to protect women and punish those found responsible for gender-based crimes, accepts and supports impunity. Security Council Resolutions 1325, 1820, 1888, 1889 and the recent 1960, oblige all countries to prevent sexual violence by military staff, and to hold them accountable for these crimes during conflicts.

## 2. Militarization and Prevention of Terrorism Act

15. Due to the high levels of militarization in the North and East facilitated by the Prevention of Terrorism Act, Sri Lanka continues to violate its obligation outlined in article 2 of CEDAW. Additionally, Sri Lanka has not implemented the CAT Committee's recommendation to guarantee legal safeguard for persons suspected or charged with a terrorist or related crime. It further ignores any of the recommendations outlined in A/HRC/8/46, para. 82, A. 36, A. 37 and A. 38.

16. Pursuant to article 2 of CEDAW, state parties must refrain from taking any actions that involve discrimination against women and they must guarantee an atmosphere in which women can enjoy both *de jure* and *de facto* equality. Under article 2 (d) a State Party must refrain from engaging in any discriminatory act or practice and must modify or abolish existing laws, regulations, customs and practices, which constitute discrimination against women (article 2 (f) of CEDAW). The Committee urges State Parties to undertake gender impact analysis of new and existing laws.<sup>9</sup> It further reminds the State Parties consistently to take active steps to address discriminatory attitudes embodied in existing laws and gender stereotypes more generally and to eliminate such prejudices and customary and all other practices (Article 2 and 5 CEDAW).<sup>10</sup>

The high levels of militarization and the continuation of counter terrorism measures, like the Prevention of Terrorism Act, perpetuates a climate of fear and intimidation, where women are vulnerable to gender-based violence, the worst form of discrimination. In a militarized environment, sexual and gender-based

<sup>9</sup> Byrnes; Article 2, p. 91.

<sup>10</sup> CEDAW Committee, General recommendation No. 28, para. 22.

violence are often used by the authorities to reassert gendered and social/political hierarchies.<sup>11</sup> According to a report by Groundviews, a particularly vulnerable group is the Tamil women, previously detained in “rehabilitation camps”, who have been sent back for resettlement to areas with a large military presence where they are frequently required to pass military checkpoints and are subject to constant monitoring<sup>12</sup>. There is confidential information that female ex-combatants have limited mobility and freedom, diminished status in the village; face a higher risk of rape and violence, and almost no recourse to justice. Due to military oppressiveness the female ex-combatants are not allowed to move outside of their district without permission.<sup>13</sup> Women must register with the local military camp and police station, and have to present themselves in person at the military camps once a month.<sup>14</sup>

17. The civil war has resulted in a high rate of female headed households. Many of these families live in makeshift shelters where their security is not sufficient. They are very vulnerable and face violence and harassment, particularly at night. This can be illustrated by the rape of two women in Vishwamadu, Kilinochchi in June 2010.<sup>15</sup> The Criminal Investigation Department and the military frequently visit female-headed households to follow up the reporting. In one example, a young woman (name omitted for security reasons), was called to the Police Station, where a policeman raped her. Due to the fear of retribution and of stigmatization accorded to victims of ethicized rape, the victim did not want to submit an official complaint.

18. Additionally the Prevention of Terrorism Act with its new Regulations from 2011 perpetuates vulnerability and discrimination of women. There are two main pieces of legislation dealing with security issues in Sri Lanka. The Public Security Ordinance Act 1947 (PSO) and Prevention of Terrorism Act. It is from the powers contained in the PSO that the Government of Sri Lanka enacted the *Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005* and the *Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 of 2006*. On 25 August 2011, Sri Lankan President Rajapaksa announced that the remaining Emergency Regulations<sup>16</sup> were not renewed in September 2011. On 29 August 2011, pursuant to section 27(1) PTA<sup>17</sup>, new Regulations emerged. Many of the provisions of the Prevention of Terrorism Act facilitate the situation of insecurity for women in the highly militarized zones, and the sexual abuse of women who have an actual or perceived LTTE association. The Prevention of Terrorism Act, and its regulations, is problematic as it facilitates the following:

- The Act provides authorization for specific security forces to restrict the freedom of movement of a wider range of Tamil women in the former conflict areas<sup>18</sup> and does not allow an effective remedy (Section 11 (5) Prevention of Terrorism Act);
- The Act grants officers of a certain rank wide ranging powers of search and seizure (Section 6 (1)(b)-(d) PTA);

11 Center of Women’s Global Leadership, Information Sheet , #5 Sexual and Gender-Based Violence by State Agents, 2011, <http://16dayscwg1.rutgers.edu/2011-campaign/2011-take-action-kit>.

12 Groundviews, Female ex-combatants of LTTE in post-war Sri Lanka, 24 February 2012 (Female ex-combatants of LTTE), <http://groundviews.org/2012/02/24/female-ex-combatants-of-ltte-in-post-war-sri-lanka/>.

13 Groundviews, Female ex-combatants of LTTE, February 2012.

14 Groundviews, Female ex-combatants of LTTE, February 2012.

15 The Women and Media Collective, Colombo, Sri Lanka Shadow Report to the CEDAW, June 2010, pp. 39 ff.

16 Including Emergency (Miscellaneous Provisions and Powers) Regulation No. 1 of 2005 and Emergency (Prevention and Prohibition of Terrorism and Specified Terrorist Activities) Regulations No. 7 of 2006 enacted under the Public Security Ordinance 1947 (PSO).

17 Section 27(1) PTA states: ‘The Minister may make regulations under this Act for the purpose of carrying out or giving effect to the principles of this Act’. Under the Interpretation Ordinance s.17, rules, regulations and by laws made by any authority under the powers given by a statute cannot be inconsistent with the provisions of any enactment. The Minister in this case is the Prime Minister. The new regulations should have been enacted under the PSO, not the PTA. Thus vital emergency measures have been unlawfully introduced even though the Emergency has lapsed.

18 Section 11 of the PTA gives a Minister the power to prohibit or restrict an individual’s freedom of movement if there is “reason to believe or suspect that any person is connected with or concerned in the commission of any lawful activity”. Restrictions may be imposed in respect of movement outside a place of residence, the places of residence and of employment, travel within or outside Sri Lanka, activities in relation to organizations and involvement in political activities. Section 11 (3) of the PTA clarifies that each order made under Section 11 (1) of the PTA is in force for a period not exceeding three months. Any order issued may be varied, cancelled, or further restrictions or prohibitions imposed, by a notice in writing.

- The Act grants Sri Lankan public officials a degree of immunity with respect to human rights violations (Section 26 PTA);
- The Act allows for increased monitoring and searching of Tamil women for suspected LTTE association, which is particularly problematic when these women are widows or the female heads of households and thus more vulnerable.

Sri Lanka's high military presence in the North and East in conjunction with the Prevention of Terrorism Act and the culture of impunity in Sri Lanka violates article 2 and 5 of CEDAW. Although the government officially stated to scale down the military presence in these areas, new military training camps are under construction. The Government of Sri Lanka has not identified the gender-impact of its counterterrorism-legislation and its enforcement may reassert gendered and social hierarchies. Sri Lanka and its state actors are engaged in several discriminatory acts and practices. The failure to abolish discriminatory legislation and patterns means that Sri Lanka continues to violate its obligation under article 2 (c), (d) and (f) and article 5 of the CEDAW.

### **III. Recommendations**

**19. Fulfill its obligations outlined in article 2 CEDAW and, in so doing, guarantee the investigation, and if warranted the prosecution and punishment, of all serious violations of women's human rights and the protection from all policies and regulations that (directly and indirectly) result in the denial of the enjoyment of women's human rights and fundamental freedoms.**

**20. Provide effective and practically available remedies for victims of gender based violence and access to independent and impartial law enforcement agencies.**

**21. Revoke the parts of the Prevention of Terrorism Act that de-facto discriminates women.**

**22. Accept and implement HRC Resolution A/HRC/19/L.2.**

**23. Implement the CAT Committee's and CEDAW Committee's recommendations.**

**24. Cooperate with the United Nation's Special Rapporteur on violence against women, the Special Rapporteur on the promotion and protection of human rights while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on the issue of discrimination against women in law and in practice and the Special Representative to the United Nation's Secretary-General on Sexual Violence in Conflict.**