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Association Bharathi CCFT Submission for the UPR on Sri Lanka

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Related to: Sri Lanka
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SUMMARY

Sri Lanka accepted the vast majority of the recommendations following its UPR in 2012 but has failed to implement most of them.

Although it's been seven years since the war ended in 2009, still the scars of the three decade old war is very much alive.

The year 2009 saw the conclusion of a 30-year long civil conflict which resulted in a legacy of human rights abuses. A comprehensive account of serious violations and abuses of human rights and related crimes covering the period from 21 February 2002 to 15 November 2011 was released in September 2015, following the OHCHR Investigation on Sri Lanka which was mandated by the Human Rights Council in March 2014.¹

This report was released in the context of a changing political climate in Sri Lanka, following the presidential election of Maithripala Sirisena in January 2015, a transition further consolidated following parliamentary elections later that year. Following the publication of the aforementioned report and as part of

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"Ce qui m'effraie, ce n'est pas l'oppression des méchants ; c'est l'indifférence des bons." Martin Luther King

an ambitious reform agenda, the Government of Sri Lanka (GoSL) co-sponsored resolution 30/1 at the UN Human Rights Council in September 2015 mandating reconciliation and transitional justice mechanisms.

At present Sri Lanka is undergoing a process of transitional justice, with the GoSL pledging to implement four mechanisms to facilitate transition; namely, an Office of Missing persons; an office for reparations; a special judicial mechanism; and a commission on truth, justice, reconciliation and non-recurrence. Nevertheless, an effective implementation of these mechanisms is yet to be realized as the entire process is currently in its primary stages, which has meant that little or no change has been felt by war-affected communities in the North and East of the country.

Since the government has failed to fully implement any of the pledged promises of the Resolution 30/1 cosponsored by the GoSL at the 30th Sessions UN Human Rights Council in 2015, within given period of 18 months; the period of implementation was extended to another two years at the 34th Session of the UNHRC in March 2017. Tamil civil society, human rights activists and affected communities vehemently opposed the extension of duration as the past experiences as well as the current statements put out by the President, Prime Minister and other government ministers only proves that justice will not be served to the victims of war crimes and crimes against humanity.ⁱⁱ Many deem such heinous crimes committed by the State security forces within a short span of six months as genocide.

The Office of the Missing Persons (OMP) which was rushed through Parliament does not consist of a judicial mechanism and it lacks authority to carry out investigations. Right to Information Act will not be applicable when it comes to OMP and therefore, the reason for the formation of such a weak office is to ensure protection of the security forces. This has been clearly stated in the FAQs on OMP of the Secretariat for Coordinating Reconciliation Mechanisms' official website.ⁱⁱⁱ

There is reliable information that steps are being taken to repeal the PTA with a proposed Counter Terrorism bill which is deemed as even more severe is yet to be publicly shared. Human rights groups noted that the new piece of law, if adopted, could give the government an opportunity to crush any dissent and any opposition by labelling it as 'terrorism'.^{iv}

Therefore, such moves by the State only proves that the draconian legislations such as PTA and ER is very much alive despite assurances given by the government to the international community stating that the PTA is no more in operation.^v

Apart from the above, there's no steps being taken to resolve the internal displacement of the Tamil communities in the North and East or release the residential and cultivation lands taken over by the military. The GoSL has shown no concern over the heavy military presence in the North and East and therefore, the affected communities continue to suffer.

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Security of women and Militarization in the North East

Women's rights and security continues to deteriorate in Sri Lanka, especially in the North and East and a culture of impunity has been entrenched within the State structure. The war created a climate of insecurity, which was attributable in part to decades of militarization and the resulting breakdown of democratic norms and the rule of law.

Similarly, in a report studying the experiences of Tamil women in the post-war period, it was discovered that many women who leave the home for income generating activities or, even basic daily activities, routinely face sexual harassment and abuse, in part due to the pervasive military presence. They elaborated that the reduction in women's agency following the disappearance of the LTTE, which categorically prohibited sexual and gender-based violence against women, put women at a higher risk of sexual and gender-based violence both by security forces as well as within the community. This has in turn fueled extreme insecurity amongst women, increased rates of teenage marriage and pregnancy, and escalated coerced and opportunistic transactional sex work. Reports of violence and harassment against women have been levelled against security forces on a consistent basis. Within the community, reports suggest that men face increased economic and social disempowerment as a result of a highly militarized and controlled environment. Many men resort to alcohol to deal with their frustration, which compounds the problem of rampant sexual and gender-based violence against women within the communities. Additionally, the breakdown in social networks of some men, particularly those who were held in detention for long periods of time, has contributed to their propensity to engage in intra-community sexual and gender-based violence.^{vi}

Following her visit to Sri Lanka, Rita Izsák-Ndiaye, UN Special Rapporteur on minority issues, stated that the Tamil women in the North and East continue to suffer from the scars of the conflict, either as war widows, families of the disappeared, or as former combatants. The number of female-headed households is high, and it comes with particular vulnerabilities and social stigma which makes basic survival difficult and renders them exposed to further exploitation. There is a dire need for targeted psychosocial assistance for these women, as well as ensuring that their voices are systematically heard and reflected justice process. Women who are displaced also face particular challenges. She added that the war affected communities in the northern and eastern parts of the country, where majority of the Tamils are concerned highly about militarization, release of prisoners and issues of land return frequently and prominently featured.^{vii}

Military involvement in economic activities and trade have reduced the opportunities for income and employment of war affected communities in the North and East, which includes construction work cultivation and trade.

In the current context too people continue to fear military presence and it is negatively felt in many spheres of life, often affecting their livelihood. Worrying allegations of intimidation and harassment were also have been recorded. With

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the Army's ethnic make-up being almost entirely Sinhalese, and its disproportionately heavy presence in the Northern province, the military is seen as an occupational force, which is believed to continue stigmatizing the Tamils as militants.

UN Rapporteur for Minority Issues also stated that while a proper mapping exercise takes place of all the lands currently occupied by the military, lands currently not in use or whose use cannot be adequately justified for military purposes must be returned without delay to their rightful owners in a condition that is usable.^{viii}

Protracted displacement has also led to many conflicts, including between and within minority groups, also due to tensions between host communities and those displaced. Steps must be taken to address and resolve these conflicts.

Following are some of the issues in detail:

Gender based violence and sexual crimes

There has been a significant increase in violence against women and children in war affected areas in the North and East. School children, especially female children are unable to return home safely without facing various forms of sexual harassments. According to the Police Report released in 2015, a total of 135 female children under the age of 16 were sexually abused in the North and East. ^{ix}Incidents of women being attacked and murdered are increasing. An expecting young mother of seven months was raped and murdered in the Jaffna district at beginning of this year.^x Reasons for such increase in sexual crimes is the absence of law and order, failure by the police to take action to produce the perpetrator before the court and lack of protection for victims and witnesses. In addition, unavailability of State sponsored safe houses for women in the in the North and East and lack of documentation and data on incidents of gender based violence and sexual crimes in order to raise wider awareness are also contributing factors for such increase. Although Sri Lanka has ratified CEDAW, no action has been taken to propose a draft legislation in line with its international obligations. Therefore, the State must draft a legislation comprising CEDAW General Recommendation 19 and Resolution 1325 in order to eliminate violence against women.

Resettlement is not carried out fully in the North and East and Military occupation

Resettlement has not taken place fully in military occupied areas. Areas such as Keppapilavu, Mullikulam is fully occupied by the military and the people of the said areas have been resettled in so called development villages in forest areas. Movements of security forces and intelligence have increased in the said areas. Similarly, the people who were resettled in areas like Valavai and Mavittapuram of the Vallikamam North are living amidst military camps. Nearly 100 families who were living in temporary shelters in Jaffna were resettled in a different area called Nallinakkapuram (Reconciliation Village) created by the military. There's

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heavy military presence in the area. A total of 4835 persons of 1224 families are living in temporary camps in the Jaffna district. A further total of 28, 492 persons of 7123 families are living with friends and relatives. The Navy refused permission for 184 families of Iranatheevu Island in Kilinochchi to resettle in their land. Apart from the above there are hundreds of acres of private and public land which is under the control of the military. The military has taken over 39 acres of private land belonging to 23 persons in Neduntheevu. Further, in the same area they have taken over 05 acres of land belonging to government departments and public and also occupied 20 building belonging to government organizations and public. There are 12 fresh water wells in the Sarapiddy area and the Navy alone is utilizing these wells. 72,000 liters of water is being used for their consumption as they draw water 6 times per day in a bowser that holds 12,000 liters.

The residential and agricultural lands must be returned to their rightful owners without any further delay and compensation must be paid to the people who have suffered long. Security forces utilizing water resources that belong to the public too must be stopped immediately.

Militarization

Military presence can be seen and felt in the people's daily lives in the North and East. The military interference in economic activities, educational activities, cultural events, family events has become a common occurrence.^{xi} The military runs a total of 22 business centres in the Mannar district. The State contracts for infrastructure work in the North and East are being taken by the forces and they involved such construction work. As a result local construction workers, contractors and the local governments too are affected. A total of 588 preschool teachers are receiving their salaries from the Civil Security Forces under the Military. Militarization not only affects daily lives of the people but also it's a hindrance to their independence. Therefore, we emphasize the importance of demilitarization.

Given the above facts, CHRD sees that the Government of Sri Lanka has no intention of releasing occupied lands in the North and East anytime soon. Therefore, based on the Vienna Declaration as well as Durban Declaration and Programme of Action and also having observed that successive Governments have failed to abide by the Geneva Convention and other applicable norms of humanitarian law; Tamil civil society and affected communities feel the only lasting solution to this prolonging issue would be that the relevant agencies within the UN system must call on the Government of Sri Lanka to let the Tamil people of the island to exercise its inalienable right to self-determination.

RECOMMENDATIONS

- Take immediate measures to demilitarize North and East and hand over lands (occupied by the military for over 25 years) to their rightful owners without any further delay. Also the Tamil people of the North East must be given access to their residential and agricultural lands to engage in economic and livelihood activities

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- The government of Sri Lanka must draft a legislation comprising CEDAW General Recommendation 19 and Resolution 1325 which stress on the elimination of violence against women.
- Continue the gradual release to the civilian populations of the remaining large acres of land currently held by the military in the Northern and Eastern province.
- Continue and step up psychosocial assistance programs to victims of the conflict according to their needs.

Region / Country

South Asia / Sri Lanka

ⁱ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OISL.aspx>

ⁱⁱ <http://www.thesundayleader.lk/2017/01/22/international-judges-dilemma-ctf-report-and-political-stance/>

ⁱⁱⁱ OMP: the Facts, <http://www.scrm.gov.lk/faq-omp>

^{iv} <http://www.thesundayleader.lk/2016/11/13/alarm-bells-ring-over-proposed-counter-terrorism-act/>

^v SRI LANKA: PTA NO LONGER OPERATIONAL- SCRM CHIEF MANO TITTAWELLA. <http://srilankabrief.org/2017/03/sri-lanka-pta-no-longer-operational-scrm-chief-mano-tittawella/>

^{vi} Tamil Women in Post-War Sri Lanka, *supra* note 14, at 5. See, e.g., Our Struggles, Our Stories, *supra* note 23, at 43-64. Tamil Women in Post-War Sri Lanka, *supra* note 14, at 2.

^{vii} <https://lk.one.un.org/news/full-statement-by-rita-izsak-ndiaye-un-special-rapporteur-on-minority-issues-at-the-conclusion-of-her-official-visit/>

^{viii} Full Statement by Rita Izsák-Ndiaye, UN Special Rapporteur on minority issues, at the conclusion of her official visit to Sri Lanka

^{ix} Distribution of Grave Crime Abstract for the Year (2015) by police Division, Sri-Lanka Police, http://www.police.lk/images/others/crime_trends/2015/distribution_of_grave_crime_abstract_for_the_year_2015.pdf (the total was calculated by the reporters)

^x Pregnant woman found dead in Kayts, Times Online, 24 January 2017,

<http://www.sundaytimes.lk/article/1015698/pregnant-woman-found-dead-in-kayts>

^{xi} Civil Military Coordination Jaffna, <http://www.cimicjaffna.com/cimicnewsmenuMain.php>