Human rights situation of Malayaha Tamil community in Sri Lanka

Joint submission by
“UPR 2017 Sri Lanka Malayaha Tamil Rights Coalition” (SLMTRC)

The Sri Lanka Malayaha Tamil Rights Coalition (SLMTRC) is a primarily a group of organizations representing and working with Malayaha Tamil community in Sri Lanka based mainly in the hill country where plantations are located, plus a few national level organizations based elsewhere in the country that has been concerned about and advocating for rights of the Malayaha Tamil community, that came together to prepare a joint submission to contribute towards the UPR process of Sri Lanka in 2017

Contact address:
237//22 Vijaya Kumaratunga Mawatha, Colombo 5, Sri Lanka
Email: ruchi@gmail.com

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This report has been submitted as an outcome of a collective process of 20 civil society organizations which represent and working with the Malayah Tamilar community who are also identified as Hill Country Tamil and Plantation Tamils in Sri Lanka. The Malayah Tamilar community is one of the most discriminated communities in Sri Lanka but their issues have not been highlighted and received due attention in neither national nor international human rights discourses. Whilst being a part of the collective civil society report submitted to the UPR in 2017 this separate submission will be made to highlight the current situation of the Malayah Tamilar community and to request specific attention given for the issues discussed.

1. Sri Lanka’s Malayah Tamilar Community has a tragic history of pervasive discrimination, exploitation and violence. Originally brought from India in the 1820s to work in Sri Lanka’s plantations in conditions of slavery during colonial times, the exploitation of their labour continues to this date. The postcolonial state played a primary role in perpetuating and entrenching discrimination, firstly, by the enactment of the Citizenship Act\(^\text{ii}\) to render the majority of the ‘Indian Tamils’ stateless and disenfranchised.\(^\text{iii}\) Even though the state claims that corrective measures were taken and the statelessness is now zero,\(^\text{iv}\) the effects are intergenerational and severe. To this date, the poverty-stricken community continues to be an invisible entity, allowed to be exploited by private and State owned companies for national and private profits, with little benefits transferred to the community.\(^\text{v}\) In this report we aim to highlight various forms of deprivations endured by the community, including the exploitation of their labour, especially of women and forms of violence they are subjected to.

**Recommendation:**

i) **Repeal the Citizenship Act no. 18 of 1948 and introduce a new Citizenship act to avoid to name different type of citizenship by incorporating Act no. 16 of 2003 and Act no 05 of 2009 amendments**

ii) **The Department of Census and Statistics must provide the community with the option of identifying themselves as Malayaha Thamilar rather than identifying as ‘Indian Tamils’**.

2. The present Pradeshiya Sabhas (PS) Act was based on previous Village Councils Act of 1871, which excludes estate residents being served from its funds. Clauses 2(1), of section 33, 18 (xiv), 18 (xxii) and 134 (4) of the present Pradeshiya Sabha Act No.15 of 1987, states that every Pradeshiya Sabha can administrate only rural areas. The estate residential areas that are part of the estate business enterprises are considered as private entities and therefore there are no clear parameters on how PS can support them. PSs do not have the mandate to impose rates and taxes on estate residents, residential buildings and their properties because those are considered as built-up localities of estate enterprises. However, plantation settlement residents do contribute to Pradeshiya Sabhas through taxes and court fees. Since 1994 onwards, the plantation community has elected representatives to the Pradeshiya Sabha, who have faced legal constraints in attending to the needs of their voters, which undermines basic democratic values. Hence, estate residents are still treated as mere voters without entitlement to many services from local authorities.\(^\text{vi}\)
Recommendation: The Cabinet has already approved to bring an amendment to section 33 of Pradesiya Sabha Act 15 1987 on 06-01-2016. However no formal action has been taken to make this amendment thus far. We recommend to bring an amendment to section 33 of the Pradesiya Sabha act no 15 1987 to bring the estate settlements and estates roads which come under Regional Plantation Companies, Janatha Estate Development Board, Sri Lanka State Plantation Corporations, Land Reform Commission under the purview of Pradesiya Sabhas to implement infrastructure developments by utilizing funds allocated to the Pradesiya Sabhas and Divisional Secretariats.

3. People face difficulties in obtaining services, assistance, welfare facilities from Local government authorities, Prashia Saba, Provincial Councils and Grama Niladhari Divisions (GND) as sufficient GND are not established to serve the Tamil People in Plantation Sector, thus excluding them from administrative services of the Government. There are gross disparities in population between Grama Niladhari divisions across the country. Therefore, the Plantation Community is disadvantaged once again because the fund allocation is per GN division and not based on size of population. It is well known that some GN divisions in plantation areas especially Nuwara Eliya are geographically vast and also have a larger resident population than others (In Sri lanka there are divisional secretariats and Pradesiya Sabhas consist of 7000 to 10000 population. But in the Nuwaraliya districts only two Pradesiya sabhas is existing with four hundred thousand populations)

Recommendations:

i) The Government should reconsider the delimitation of local government boundaries in plantation areas to ensure increased political representation of the people and effective and equitable service delivery. The recently appointed delimitation committee has recommended to establish 10 Pradesheeya Sabhas in Nuwaraeliya District. This recommendation should be implemented.

ii) Ensuring proper devolution of power for local authorities and Provincial Councils through the new constitution in Sri Lanka. Provide constitutional recognition for Malayaha Tamilar community as a separate national ethnic group.

4. The ongoing, however limited, conversations about truth and justice have not taken into account the many lives that were lost over 200 years due to various acts of systematic violence. For example, the Malayaha Tamilar people who fled to Vanni during forced deportation were inflicted with brutal violence and killings. Even during the thirty-year long war, many of them were massacred and some are missing to date, while some others are still in in prisons as political prisoners.

Recommendations: The Transitional justice and reconciliation processes should take into consideration the plights of the Malayaha Tamilar community and ensure their rights, especially of those who have been affected by the war.
5. Workers’ rights - **Plantation work has undergone casualization; poverty and deprivation are keeping workers in precarious forms of employment** - Sri Lanka’s plantations, significant in their contribution to the national economy, have undergone drastic casualisation and reduction of permanent jobs after their privatisation in 1992, almost resembling conditions during the colonial times.\(^{viii}\) Since privatisation, men were encouraged to get pre-mature retirement, and more poor women, with minority ethnic Tamil identity, were transformed into workers in the estates within informalised conditions.\(^{ix}\) There is also the recruitment of older workers, and workers on a part-time basis; they work for low wages, with no bargaining power, and no formal protection.\(^{x}\) Amidst this burgeoning casualization of work, there has not been any favourable measures by the state to ensure permanent work for these workers. State initiatives to ensure at least minimum levels of decent working arrangements are inadequate.

6. Gender based discrimination and exploitation continue in the plantations. These workers are amongst the poorest in the country, and significantly lack access to land, health, education, adequate housing, drinking water and sanitation compared to the rest of the country. While there has also been a decline in plantation work, harsh conditions of poverty are forcing people to find other forms of, similar or more severe, informalised work such as domestic work within the country or overseas. To this end, the state’s lack of initiative to address the entrenched poverty and deprivation further entrap these workers in informality and precariousness.

7. Plantation workers’ current daily wage of 620 LKR is inadequate for household needs; especially as work is not always offered or undertaken for 25 days per month. With the privatization of plantations in 1992, plantation companies have got authority in deciding the salaries of the workers. Either by design or through omission, recent Collective Agreements have not been extended (as customary) through Government Gazette notifications beyond the parties to it and to the sector as a whole i.e. to non-Regional Plantation Company estates. This has created discrimination in payments between workers in Regional Plantation Companies (RPC) and on sole proprietor (or smallholder) estates.\(^{xi}\) (B. Skanthakumar, November 2016).

**Recommendations:**

i) **A living wage should be paid calculated based on international methodology.**
   Provisions of collective agreements, and existing labour laws should be enforced.

ii) **Collective Agreements must be enforced by the Labour Department, without exception to all workers and to all employers.**

iii) **The Government must revert to its earlier practice and extend the Collective Agreement to all plantations, regardless of the form of ownership.**

8. **Poverty and social security** - As the data below illustrates, the household poverty head count is highest in the estate sector. It is only after 2009/10, that the trend in reduction of estate sector poverty has been sharp and subject to controversy. In previous decades, it has been three times higher than at present. In 2002, the poverty head count on the estates was 30 percent,
which was 7 percentage points over the national average. Even this, was an improvement on 1995-1996, when it had been 38 percent or 9 percent above the national average.xii

**TABLE 2.1: POVERTY HEAD COUNT AND MONTHLY HOUSEHOLD INCOME**

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>URBAN</th>
<th>RURAL</th>
<th>ESTATE</th>
<th>ALL- ISLAND</th>
</tr>
</thead>
<tbody>
<tr>
<td>POVERTY HEAD COUNT INDEXxiii</td>
<td>2.1%</td>
<td>7.6%</td>
<td>10.9%</td>
<td>6.7%</td>
</tr>
<tr>
<td>MEAN MONTHLY HOUSEHOLD INCOMExiv</td>
<td>Rs69,880</td>
<td>Rs41,478</td>
<td>Rs30,220</td>
<td>Rs45,878</td>
</tr>
</tbody>
</table>

However, despite some positive changes among the divisional secretariat divisions with the highest poverty head-count are where plantation communities are settled in e.g. in Badulla, Ratnapura, Kegalle, Kandy, Matale, and Nuwara Eliya districts (in decreasing order).xv This conveys the concentration of poverty within the Plantation Community. A recent World Bank study estimates that at least 25 percent of the Sri Lankan population is nearly-poor, and their experience of life is closer to the poor than the non-poor.xvi The report also notes that 10.7 percent of the poor population live in the districts of Nuwara Eliya and Badulla, which is where many estates are located.xvii Urgent action is needed to raise household income levels, to eliminate the structural violence of poverty, and to ensure decent and dignified lives for the Plantation Community (B. Skanthakumar, November 2016).

Plantation Community is excluded from poverty alleviation programmes like Samurdhi/Divineguma which offer loans; trainings; livelihood technical assistance; promotion of products of income generating projects etc.xviii

**Recommendations:**

i) Expand coverage of Samurdhi/Divineguma to eligible Plantation Community households by raising the beneficiary income threshold to a more realistic level; and by revising the selection criteria to include non-income based indicators of vulnerability.

ii) Appoint Samurdhi officers from within the Plantation Community itself, to diversify employment opportunities and to provide their services in the Tamil-language.

9. Housing - Nearly 60% of the Estate sector live in ‘line rooms’xxix, 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. xx 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.

Estate sector families live in houses provided by the estates free if one family member works in the estate. Whilst this reduces the expenditure of the household (in comparison to urban households) and increases disposable income, living in poor quality line rooms does stigmatize and alienate them from the rest of the society. In addition, relative to the rest of the households in Sri Lanka, estate households report lower access to toilets exclusive to the household and access to drinking water within the premises (Table 2). They also appear to perceive that the quality of water they drink is relatively unsafe.

10. Land - Land and housing issues in the plantation sector also needs to be addressed, as the majority of the households reside in line rooms provided by the plantations, both State and privately owned. Recent and potential landslides in populated areas have refocused attention on this issue and the current government has pledged its support to commence a programme of land rights and safe housing for this sector. But this program is supposed to provide 7 perch land for the families who are working in the plantations at the moment. Some 180, 871 of this number are in labour grade occupations on the plantations operated by private companies and state corporations. While only 20 percent (and falling) are currently directly employed in plantation production; hence this program will not provide a solution to the issues of land and housing rights of around 80% who are currently not working in plantations.

Though unemployment and under employment in the plantations have been increasing, people have been prevented from developing alternative livelihoods due to the lack of access to agriculture land and other resources. Thought the Sri Lankan constitution has ensured the people’s right to engaging in work of their choice, plantation workers have not been able to exercise this as a right because of the lack of access to land and other resources, services and skills.

Recommendations:

i) The Government should provide at least a 20 perch land for housing for all families living in plantation areas. Joint ownership (between both spouses) should be promoted when the ownership of land is given to each family.

ii) Uncultivated and abandoned land should be distributed among unemployed youth in plantation areas and necessary support should be given to build their agriculture based livelihoods.

iii) A land commissioner should be appointed for plantation areas and the overall National Housing Plan should include provisions to establish plantation villages.

11. Food Security – While there is some progress of the nutrition and food security situation in Sri Lanka, there are “high levels and disparity of malnutrition and micronutrient deficiencies”. As studies suggest war-affected districts, the estate sector, and some areas in the north and southeast “represent the worst levels of undernutrition”. Chronic food insecurity is found amongst poor households in most parts of the plantation sector including
Ratnapura, and parts of the Central and Uva provinces. As shown in the below table the nutrition indicators are still worst in estate sector in Sri Lanka.

**TABLE 3.2: HEALTH AND NUTRITION INDICATORS ACROSS SECTORS**

<table>
<thead>
<tr>
<th>HEALTH &amp; NUTRITION</th>
<th>URBAN</th>
<th>RURAL</th>
<th>ESTATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>BIRTH WEIGHT &gt;2.5KG(^{\text{xvi}})</td>
<td>12.8</td>
<td>16.4</td>
<td>31.0</td>
</tr>
<tr>
<td>INFANT MORTALITY RATE (PER THOUSAND LIVE BIRTHS)(^{\text{xxvii}})</td>
<td>10</td>
<td>19</td>
<td>29</td>
</tr>
<tr>
<td>UNDER-FIVE MORTALITY RATE(^{\text{xxviii}})</td>
<td>19</td>
<td>23</td>
<td>33</td>
</tr>
<tr>
<td>HEIGHT FOR AGE OF CHILDREN: STunted (AS PERCENTAGE)(^{\text{xxix}})</td>
<td>13.8</td>
<td>16.2</td>
<td>40.2</td>
</tr>
<tr>
<td>WEIGHT FOR HEIGHT: SEVERELY WASTED (AS PERCENTAGE)(^{\text{x}})</td>
<td>3.7</td>
<td>3.2</td>
<td>3.8</td>
</tr>
<tr>
<td>WEIGHT FOR AGE: MALNOURISHED (AS PERCENTAGE)(^{\text{xxxi}})</td>
<td>16.5</td>
<td>21.2</td>
<td>30.1</td>
</tr>
<tr>
<td>PREVALENCE OF MODERATE ANAEMIA IN CHILDREN 6-59 MONTHS (AS PERCENTAGE)(^{\text{xxxi}})</td>
<td>10.7</td>
<td>10.8</td>
<td>11.6</td>
</tr>
<tr>
<td>PREVALENCE OF MODERATE ANAEMIA IN NON-</td>
<td>6.5</td>
<td>4.1</td>
<td>10.4</td>
</tr>
</tbody>
</table>
Recommendations:

i) Awareness-raising programs of healthy food habits and dietary preferences, must be conducted at homes, schools, and in the community by family health volunteers and community-based organisations.

ii) Extension of the health awareness programs must be initiated by the Health and Social Service Ministries to plantation areas.

ii) Women who return to work after maternity leave should be assigned to fields nearer creches and child development centres to enable them to feed their infants; these facilities should be set up in a way which ensures the health, hygiene and overall wellbeing of children.

iii) The mid-day meal programme in government schools should be extended beyond Grade 5. This will not only help improve nutrition of older children, it could also be an incentive for enrolment to school and continuation of education beyond Grade 5.

iv) Support the expansion of home gardens within the estates to grow vegetables, fruits, well as dairy and poultry farming to increase availability and lower cost nutritious meals to improve the diet of plantation communities.

v) Nutritional supplements for children should be extended beyond the pre-school age of 5; and the previous program by the World Health Organisation which ended in 2013 should be revived or carried forward by the government.

vi) One month holiday should be given to the spouse (Husband) plus salary after child birth.

12. Women in plantations - Women in the plantation sector are the power force behind their household economy and the overall plantation economy. The strength of the women workforce has been highest in the plantation districts (Nuwara Eliya 51.7%, Badulla 50.3%) . The gender segregation of labour in the plantation sector highlights the discrimination and exploitation of women workers as they face clear barriers in going beyond basic manual labour work to managerial and supervisory roles unlike men. In consequence, this constrains women within the plantation sector, primarily rubber and tea estates and restricts them from getting better opportunities in earning a living (World Bank, 2007). Conveniently, the constraints on women provide plantation owners with an immobile workforce unable move on to better economic and employment opportunities.

Although more than half of the plantation work-force are women, they are concentrated in field jobs while men predominate in positions of responsibility including for women’s work. When there are few or no women authority figures, women workers are uncomfortable in voicing their difficulties and grievances to management. In the absence of women in leadership...
positions, the estate management thinks of male union leaders as the voice of women workers\textsuperscript{xxxv}.

Recommendations:

i) Among other measures, particularly improvement of education of girls and women- the status of women can be changed by improving their position in the workplace. Their incomes should rise; the status of their job roles should be improved.

ii) Enable women workers to acquire skills and qualifications for lower and middle-management positions through tailored short courses at the National Institute of Plantation Management. An honorarium should be paid to trainees to encourage enrolment and retention.

14. Access to health and education - over 93\% of Plantation Community children who should be in school are enrolled between Grades 1 and 5. However, as the table below illustrates, the gap begins to widen again after primary school; and is particularly alarming in the senior classes where children prepare for the Ordinary Level examination. Far too many children resident in estates are dropping out of school around the ages of 15 or 16.\textsuperscript{xxxvi}

<table>
<thead>
<tr>
<th>SECTOR</th>
<th>GRADES 1 – 5</th>
<th>GRADES 6-9</th>
<th>GRADES 10-11</th>
<th>GRADES 12-13</th>
</tr>
</thead>
<tbody>
<tr>
<td>URBAN</td>
<td>95.9</td>
<td>92.3</td>
<td>86.2</td>
<td>45.8</td>
</tr>
<tr>
<td>RURAL</td>
<td>95.3</td>
<td>93.3</td>
<td>81.4</td>
<td>39.7</td>
</tr>
<tr>
<td>ESTATE</td>
<td>93.1</td>
<td>83.5</td>
<td>53.8</td>
<td>12.8</td>
</tr>
</tbody>
</table>

15. Most of the education and health facilities, including child development centres, dispensaries etc are still being managed by the plantation companies through plantation human development trust. There is a significant disparity in the quality of services provided by them when compared to the government services in other areas. Most Government controlled hospitals and schools also don’t have adequate resources including teachers.

16. Of the schools within the plantations, of which there were 843 (mainly in the Central, Uva, Sabaragamuwa and Western provinces) as of 2013, only 20 are Type 1AB; 112 are Type 1C (Advanced Level Arts and Commerce streams only); 256 are Type 2 (up to Ordinary-Level) and 440 are Type 3. Over half of the schools are Type 3, which only offer education up to Grade 5. There is also a serious shortage of qualified teachers, especially on mathematics, science and english subjects, and of national schools/technical colleges/ college of educations &universities for the Malayaga Tamilar community.

Recommendations – Take immediate measures to allocate adequate resources to develop the quality of the health and educational services in plantation areas, including the establishment of higher educational institutes for the Malayaha Tamilar community.
17. Language rights – there is a serious shortage of Tamil speaking officers in plantation areas. Due to the preconceived idea that the Malayasha Tamilar community is largely bi-lingual, there is less attention from the government to ensure the national language policy in plantation areas.

18. Cultural rights - The Plantation Community’s heritage includes cultural practices that are unique to this section of Sri Lankan society. These practices descend from their origin in South India and transmitted over two centuries through immigrant workers who crossed the Palk Straits as labourers on coffee and later tea, rubber and coconut plantations of Sri Lanka. However, there has not been any support given from state authorities at local and central levels to propagate this cultural heritage which has been a medium for educating and popularising aspects of the religion and history of the Plantation Community. The cultural forms of the Plantation Communities such as (Karagam, Kimmi, Kavadi, Kamkoothu, Ponnar Sangar and Archunan Thabasu) have not been recognized and are therefore not supported by the Education Ministry in schools nor the Ministry of Cultural and Religious Affairs. The traditional knowledge in the stitching of costumes worn by performers is also on the verge of being forgotten. The Plantation Community itself lacks the infrastructure and resources to sustain and reproduce these practices for future generations beyond their annual religious or temple festivals (tiruvila).

Recommendation - The Ministry of Cultural and Religious Affairs should provide a grant to promote the traditional culture and heritage of the community.

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1 Ambagamuwa United People's Organization (AUPO), Arising Sun, Centre for Social Concern, Christian Workers Fellowship (CFW), Future In Our Hand (FIOH), INFORM Human Rights Documentation Centre (INFORM), Institute of Social Development (ISD), Movement for National Land and Agricultural Reform (MONLAR), National Christian Council of Sri Lanka (NCCSL), National Fisheries Solidarity (NAFSO), Nawauga Social Development Forum, People's Movement for Plantation Community Land Rights, Plantation Community Development Forum, Plantation Women Development Organization (PWDO), Rural And Estate Development Organization, Social Institute for Development of Plantation Sector (SIDPS), United Plantation Workers Union (UPWU), Up-Country Social Development Forum, Uva Sakthy Foundation, UVA Valampuri Up-Country Forum

ii Citizenship Act No. 18 of 1948.

iii 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 Sri Lanka 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 Sri Lanka: The Case of the Tamil Estate Workers, Anthem Press, 42-45.

iv Periodic Report of Sri Lanka submitted under articles 16 and 17 of the ICESCR, due in 2013.

v General Comment No. 20 of 2009.


vii Many people displaced to Vanni in the aftermath of the communal violence targeted at the Upcountry Tamils to drive them away from the island, in 1981. See: Submission by the Malayasha Makkal (Up-Country People) to the Consultation Task Force on Reconciliation Mechanisms, (2016).

viii Symposium deliberations on labour organised by the Law and Society Trust (LST) and the Social Scientists’ Association (SSA) on 16th December 2017.

ix Ibid

x Ibid

xii World Bank (2007), *Sri Lanka Poverty Assessment: Engendering Growth with Equity: Opportunities and Challenges*, World Bank: Colombo, Figure 1, p. ix.
xiv Ibid., p. 136.
xvii Ibid., p. 92.
xix Community members and CSOs participated in consultations did not agree to this number of 60%. As per them more than 75% of the population still lives in line rooms.
x 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%). For more, see K. Rameshun 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.
xiv Those who live and/or are employed by the proprietary estates – individual or family owned landholding under 50 acres (or 20 hectares) in extent – are not separately enumerated and require specific attention.
xvi Ibid.
xviii Ibid., p. 97.
xix Ibid.
xx Ibid., p. 137.
xxi Ibid.
xxii Ibid.
xxiv Ibid., p. 19.