

Joint Civil Society Report for Universal Periodic Review of Sri Lanka February 2008

Introduction

1. This submission resulted from a series of consultations amongst civil society organizations. It focuses on the role and responsibility of the Government of Sri Lanka (GOSL) in the protection of the human rights of all its citizens. We note the systematic and widespread human rights violations of non - state actors, especially the LTTE, but have focused on the GOSL as it is the GOSL that is a member of the Human Rights Council and subject to the UPR process. We also note that we are unaware of any consultation to date, by the GOSL with civil society regarding the UPR process.

The Culture of Impunity

2. The human rights situation in Sri Lanka has deteriorated sharply over the past two years and since the country became a member of the Human Rights Council.
3. The Sri Lanka Monitoring Mission (SLMM) noted approximately 4000 conflict related killings in the 15 months prior to 22 February 2007.ⁱ Three human rights groups, in a non-exhaustive working document, reported 1212 killings and disappearances (662 killings and 540 disappearances) in the country between January and August 2007, an average of five violations per day.ⁱⁱ The North East Secretariat on Human Rights (NESoHR) reported 486 disappearances and 775 killings for 2007.ⁱⁱⁱ The Asian Human Rights Commission (AHRC) reported 53 killings and 53 disappearances in the month of October 2007, 63 killings in November 2007.^{iv} Human Rights Watch reported that the National Human Rights Commission had recorded roughly 1,000 cases in 2006, plus nearly 100 abductions and “disappearances” in the first two months of 2007.^v
4. The Presidential Commission on abductions, disappearances and attacks on civilians headed by Hon. Mahanama Tillekeratne has not made any report public, but in a media interview Mr. Tillekeratne indicated that 430 people had been killed between Sept 2006 – Feb 2007, and that 2020 people had been reported as disappeared or abducted for the same period, out of which he claimed 1134 had been found alive and the fate of 886 unknown.^{vi}
5. Flagrant violations of international humanitarian law including targeting of civilians, attacks on places of worship, hospitals and schools, and forced resettlement of IDPs have increased over the past two years. Consistent attacks on humanitarian workers and the killing of over 50 Sri Lankan aid workers in the 2006/2007 period led Sir John Holmes, the most senior humanitarian official within the UN system to visit Sri Lanka, to call this island one of the most dangerous places in the world for humanitarian workers.
6. The source of major human rights violations in Sri Lanka is the 30 year old ethnic conflict and the primacy accorded to its settlement through war. Few perpetrators of gross violations of human rights committed in this period have been brought to justice. Some remain in high public office even today.

7. On 16 January 2008 the GOSL unilaterally withdrew from the Ceasefire Agreement (CFA). This resulted in the removal of the SLMM and an end to its recording of human rights and other violations of the CFA. The GOSL's collaboration with the Tamileela Makkal Viduthalai Pulikal (TMVP), and its electoral alliance with them for the forthcoming local government elections, further compounds the challenge of human rights protection and human security.
8. In this climate of conflict and impunity, dissent of all types is met with denial of the issues, and with violence. Over the past year, several demonstrations of students and workers have been subjected to teargas and water cannon attacks. The Supreme Court has declared some strikes to be illegal and brought pressure to bear on trade union leaders.^{vii} Journalists and social activists have also been subject to assault, intimidation and threats including death threats on a regular basis, to the point that leading political figures, media persons and activists have fled the island. The general climate of fear and impunity has created an environment in which those who are victimised by the situation do not come forward with claims for justice and redress. Witnesses are routinely intimidated and therefore unwilling to testify, leading to a situation of impunity for even the gravest rights violations. Promised victim and witness protection legislation has yet to be passed.
9. While we acknowledge that the government has to deal with a volatile security situation, its responses cannot violate the country's obligations under the international instruments it has ratified and endorsed.
10. **The government has consistently ignored and refuted calls by national human rights defenders, by the international community and by various human rights experts including the High Commissioner for Human Rights to allow international monitoring of the human rights situation and for the establishment of a field office of the OHCHR in Sri Lanka. This is despite Louise Arbour's statement that one of the major shortcomings in human rights protection in Sri Lanka is the absence of reliable and authoritative information on rights abuses.**
11. A 2006 Supreme Court decision undermined the commitments of the government under international human rights law by holding that the ratification of the First Optional Protocol to the ICCPR by the Executive was unconstitutional.

Killings and Disappearances

12. The gravity of the situation is borne out by figures mentioned above, almost all of which remain unresolved. The National Human Rights Commission has not put out any figures, although some of its branches have released some information to the public through the media.
13. Based on information in these reports, it is clear that almost 80% of the victims are Tamils. The Jaffna peninsula accounts for the largest number of disappearances and killings. Most of the killings and disappearances in Jaffna have place within high security zones and during curfew hours, implicating GOSL forces.

Other Conflict Related Violations

14. In the context of the conflict, the issue of forced recruitment of children by the Liberation Tigers of Tamil Eelam (LTTE) and by the TMVP is well known, although largely unaddressed due to the on-going conflict. As at December 31, 2007, underage recruitment by the LTTE stands at 6248 cases reported to UNICEF, while there are 453 cases attributed to the TMVP, despite repeated commitments by both groups to release the children involved.
15. Many reports have claimed TMVP complicity with the security forces, pointing to the fact that many TMVP camps are located in close proximity to army camps, and that TMVP cadre are often seen walking in and out of them. Yet, the government has yet to carry out an independent investigation into reports of child recruitment by the TMVP in areas fully under its control. Comments made by Ambassador Alan Rock, the special envoy of the UN Special Representative on Children and Armed Conflict, in this regard, during his visit to Sri Lanka in 2006, met with vehement denials from government sources.
16. Imposition of new regulations on issuing work permits and visas for expatriates working in the humanitarian sector as well as restrictions on access to conflict-affected areas have seriously affected the functioning of the agencies mandated with protection and care of internally displaced persons.
17. The special powers granted to the armed forces because of concerns regarding “national security” have led to a range of human rights abuses in areas outside the arena of the conflict, demonstrating the general breakdown of law and order in the country. The indiscriminate issue of small arms to civilians in the south and the establishment of semi-legal vigilante units (so-called Civil Defence Units) empowered to carry out surveillance and investigation of any incident or individual suspected to be a threat to “national security,” terrorizes the civilian population throughout the island.
18. Many incidents of torture and deaths in police custody, killings of known criminals in “encounter” situations and Police connivance with criminals have been reported but not investigated. Although Sri Lanka ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1994, and introduced national enabling legislation in the same year, torture and cruel and inhuman treatment is endemic across police stations and detention centres and in practice very few convictions have been obtained. The use of torture in state institutions was documented by both the UN Committee against Torture in 2005 and by the Special Rapporteur on Torture, Manfred Nowak after his visit to Sri Lanka in October 2007.

Minority Issues:

a) The plantation Tamil community

19. The 2001 Census indicates that the Tamil community living and working primarily in the tea plantations of the hill country in Sri Lanka constitute over 6 % of the total population of the island. The Citizenship Act No. 35 of 2003 was designed to grant citizenship to stateless persons of Indian origin. However, many in the community still face many instances of discrimination, for example in terms of their voting rights, due to requirements for documentary proof of registration that they cannot fulfil. This also restricts the mobility of the plantation Tamil community, rendering young men in

particular vulnerable to arbitrary arrest and detention under the Prevention of Terrorism Act (PTA), despite the minimal involvement of the plantation Tamil community in the politics of the Tamils of the north and east. The absence of Tamil speaking government and Police officials in plantation areas also makes day-to-day interactions with government authorities difficult.

20. A 2007 World Bank report stated that 30% of the plantation sector live under the poverty line, 13% are in receipt of state welfare assistance. The plantations are managed by private companies, and issues of wages and workers' welfare are determined under Collective Agreements signed between plantation trade unions and the employers' federation. The role of the government's Department of Labour is minimal in these negotiations. A key demand of the workers for a monthly wage has never been recognized. Women on the plantations also face forced sterilization, promoted in some cases by the management.

b) Northern Muslims

21. The Muslim community in Sri Lanka has also been embroiled in the conflict between the LTTE and the government, especially since the LTTE expelled almost 75,000 Muslims from the Northern Province in October 1990, with 48 hours notice. This community of northern Muslims has remained as IDPs in different locations in the south, mainly in Puttalam, in the North-Western province, facing a range of problems due to the uncertainty of their future and the lack of resources. Women of the displaced northern Muslim community face violence as well as restrictions on their freedom, due to the influence of the orthodox Muslim host community. Seventeen years of displacement have also meant an entire generation has been born as IDPs and face many difficulties in gaining access to education and other services. Core issues such as right to return, right to alternatives to return and right to live with dignity and respect in the places of displacement, have yet to be addressed.

Legal Framework

22. Several of the present Emergency Regulations provide powers to the state to legitimately restrain or prohibit democratic activities and dissent in the interests of national security and the suppression of terrorism. The language used allows criminalization of a range of activities of groups holding an alternative or critical view point. The Regulations also contain elements of immunity for members of government forces who act in good faith in the discharge of their duties, strengthening the culture of impunity. Cases of arrest and detention of media personnel and mainly Tamil civilians under Emergency Regulations in 2006 and 2007 have highlighted the arbitrary nature of these arrests and detentions and involve blatant abuse of powers by security forces.
23. The PTA was suspended under the Ceasefire Agreement between the GOSL and the Liberation Tigers of Tamil Eelam (LTTE) in February 2002. However, in 2006 and 2007 Emergency Regulations containing language and sentiments similar to the PTA were promulgated. With the abrogation of the CFA, there are fears that the PTA will be reactivated. Unlike the Emergency Regulations which require a monthly debate and vote in Parliament, the PTA is part of the existing legal framework.

24. The International Covenant on Civil and Political Rights Act (ICCPR Act) 2007 is a clear example of the manner in which the government pays lip service to human rights. The Act, which does not include the most significant rights contained in the ICCPR nor add substantially to the Fundamental Rights Chapter in the Constitution, was clearly aimed at satisfying requirements set out by the European Union to qualify as a beneficiary country for its General System of Preferences scheme (Special Incentives Arrangement for Sustainable Development and Good Governance).

An Absence of Credible and Independent Institutions

25. The progressive decline in the independence and effectiveness of most democratic institutions in Sri Lanka is well illustrated by the downgrading of the National Human Rights Commission by the International Coordinating Committee in 2007.

26. The NHRC was created in 1996 with a mandate to perform a broad range of functions from investigating human rights violations to advising government on appropriate legislative and administrative procedures. However, in the past two years, as the human rights situation has worsened, the NHRC has chosen to be a silent spectator. The credibility of the NHRC has also been affected by the irregularity in the appointments of its members. They, together with key state appointments and members of other independent commission are to be appointed on the nomination of the Constitutional Council as stipulated in the 17th Amendment to the Constitution. However, in what amounts to an intentional violation of the Constitution, the president has not constituted the Council but unilaterally appointed members of his choice to the HRC and other commissions, instead.

27. The standard response of the government in the face of criticism of human rights abuses has been the creation of a multiplicity of ad hoc institutions, Committees and Commissions of Inquiry, which have been ineffective in bringing perpetrators to book, and have done nothing to deter violations.

28. The most recent is the Commission of Inquiry established to investigate and report into 16 specific human rights violations committed over the past two years, which was set up in November 2006. One year since its creation, the Commission has only been able to commence inquiry into two incidents. Its methods of work have been criticized by its observer body, the International Independent Group of Eminent Persons (IIGEP), as failing to conform to international standards for inquiries of this nature.

Media Freedom

29. Media freedom has been heavily restricted with imposition of stringent limitations on reporting on the war, and media persons and institutions have been subject to a range of acts of violence and intimidation including assassination and assault, arson and intimidation. Eleven journalists and media workers were killed in 2006/2007 and the international press freedom community has described Sri Lanka as one of the countries least safe for members of the media profession.

Women's Rights

30. Almost 10 years ago the state published draft legislation to establish an independent Commission on Women. Although the draft Bill has been before the Cabinet for several years, the law has yet to be passed by Parliament.
31. Although women constitute the larger part of the labour force engaged in the three top income-generating employment sectors – the manufacturing industry, the plantations and as migrant workers – there are few frameworks in place to prevent them from being exploited and exposed to violence. In general, acts of violence against women are growing, as are restrictions on women’s freedom of choice on a range of issues ranging from form of dress and choice of marriage partner to choices relating to her reproductive and sexual practices. Abortion is criminalized. The denial of access to legal termination of pregnancy for women and girls who are victims of rape and incest condemns children into motherhood by law.

Child Rights

32. The situation of child rights is also a matter of grave concern. Many instances of children subjected to severe physical and sexual abuse by family members, teachers, members of the clergy and others who have power over them are reported. However, the National Child Protection Authority (NCPA) and the Women and Children’s Desks of the Police are inadequate to cope with the needs of these under-age victims, while the Homes maintained by the Department of Child Care and Probation Services are over-crowded, under-staffed and lack facilities.

The Law Making Process

33. The law making process in Sri Lanka is one of secrecy and manipulation with little consultation and transparency in the drafting and enactment of laws and regulations and with no space for open debate and alternative views. In many cases legislation is presented in Parliament as an “Urgent Bill”, curtailing space for the public to challenge legislation with the potential to violate fundamental rights.

Discrimination and Criminalization of Marginalized Groups

34. Criminalization of sex work drives commercial sex workers underground and exposes them and those who associate with them to a high risk of contracting HIV/AIDS and other sexually transmitted infections. Consensual sexual activity between adults of the same sex also remains a crime under Article 365 and 365A of the 1883 Penal Code. This means that LGBT (Lesbian, Gay, Bisexual and Transgender) individuals are denied access to health services, education and employment and the ability to participate in social and public life. Similarly due to stigma and discrimination, those who engage in sex work, as well as those who live with HIV/AIDS, are denied treatment, access to and participation in the above services and spaces. Hate speech and the marginalisation and wide-spread persecution of these communities by private individuals and by the police remains prevalent and state actors often ignore or fuel the discrimination and abuse.
35. Targeting and persecution of LGBT persons has led to several individuals leaving the country to seek asylum elsewhere. Internally displaced LGBT individuals are made especially vulnerable during the conflict, as they are often specifically targeted and exposed to sexual abuse. LGBT individuals belonging to minority groups suffer a double burden when they are rejected by their own community due to their sexual orientation.

The state seems to ignore human rights violations directly attributed to the sexual orientation or gender identity of a person, and LGBT Sri Lankans largely suffer in silence due to criminalization of same sex sexual behaviour, which fuels negative stereotyping of the LGBT population as well as wide-spread discrimination against them.

Torture in Sri Lanka

36. Although Sri Lanka ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in 1994, and introduced national enabling legislation in the same year, torture and cruel and inhuman treatment is endemic across police stations and detention centres and in practice very few convictions have been obtained. The use of torture in state institutions was documented by both the U.N Committee against Torture in 2005 and by the Special Rapporteur on Torture, Manfred Nowak after his visit to Sri Lanka in October 2007.
37. In 2007, 48 cases of police torture were reported in GOSL controlled areas, while 107 cases of torture in the North and East were reported to a single NGO. The injuries to persons in most instances have been serious enough to warrant hospitalization. Though complaints have been made to the police, the National Human Rights Commission and other national mechanisms, there have been no serious investigations into any of these allegations, that could lead to prosecution under the Convention Against Torture Act, Act No. 22 of 1994. Those working against torture have noted that in 2007, the Special Inquiry Unit of the Criminal Investigation Division investigated no allegations of torture in police custody.
38. Detainees are denied confidential communication with their legal counsel during visits in detention centres. Interviews take place in the presence of law enforcement personnel, contributing to the dearth of reporting of custodial torture.

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1. Association of Family Members of the Disappeared
2. Association of War Affected Women
3. Centre for Human Rights and Development
4. Centre for Policy Alternatives
5. Centre for Society and Religion
6. Centre for Women and Development, Jaffna
7. Christian Alliance for Social Action
8. Citizens' Committee, Puttalam
9. Community Trust Fund, Sri Lanka
10. Ecumenical Association of Third World Theologians, Sri Lanka
11. Equal Ground, Colombo
12. Families of the Disappeared
13. Father J. J. Bernard
14. Free Media Movement
15. Gampaha District Human Rights Committee
16. Dr. Mario Gomez
17. Home for Human Rights
18. Human Development Organisation, Kandy

19. INFORM Human Rights Documentation Centre
20. International Friends for Global Peace, Colombo
21. International Movement Against Discrimination and Racism
22. Law & Society Trust
23. Muslim Information Centre – Sri Lanka
24. Research and Action Forum for Social Development
25. Rights Now – Collective for Democracy
26. Right to Life Human Rights Centre
27. Transparency International Sri Lanka
28. United Federation of Labour
29. Women and Media Collective

ⁱ See SLMM press release dated 22 February 2007, available at

http://www.slmmlk/press_releases/CFA%205%20years.pdf

ⁱⁱ Working document released by the Civil Monitoring Commission, Free Media Movement and Law & Society Trust, dated 31 October 2007, available at www.lawandsocietytrust.org. Attached.

ⁱⁱⁱ NESoHR Annual report on Human Rights, 5 January 2008, at

http://www.nesoht.org/files/2007_Annual_Report_on_Human_Rights.pdf. Detailed monthly reports with names of victims, places and dates of incidences also available at www.nesoht.org

^{iv} See AHRC urgent appeals: dated 13 November 2007 available at

<http://www.ahrchk.net/ua/mainfile.php/2007/2661>, 22 November 2007, available at

<http://www.ahrchk.net/ua/mainfile.php/2007/2671/> and 20 December 2007 available at

<http://www.ahrchk.net/ua/mainfile.php/2007/2702>

^v See chapter V of the Human Rights Watch report, “Return to War”, dated 6 August 2007, available at

http://hrw.org/reports/2007/srilanka0807/5.htm#_ftnref84

^{vi} See news report at http://www.bbc.co.uk/sinhala/news/story/2007/06/070628_mahanama.shtml

^{vii} See attached ILO Freedom of Association Case No. 2519 – Document No. 0320073482519