

LST REVIEW

Volume 23 Issue 304 February 2013



Sri Lanka at the Universal Periodic Review, United Nations, 2012; Submissions and Reflections

LAW & SOCIETY TRUST

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Editor's Note... ..

At the request of readers of the *LST Review*, this Issue publishes extracts of the state party report submitted by the Government of Sri Lanka at the 14th session of the Working Group on the Universal Periodic Review (UPR), held in Geneva in late 2012 along with two civil society reports tabled before the session.

Unfortunately due to space constraints, the Issue is not able to contain the full government report with its status update on the implementation of government pledges or the lengthy footnotes appended to the civil society submissions.

The main thrust of the state party report is its focus on the National Action Plan for the Promotion and Protection of Human Rights (NHRAP) along with plans to implement recommendations of the Lessons Learnt and Reconciliation Commission (LLRC). Elements of the latter include the constitution of a Board of Inquiry by the Army to investigate *inter alia*, civilian casualties at the close of the conflict in the North and East. The lapsing of the emergency regulations is also mentioned.

Yet the clearly contradictory nature of many of these post-war democracy guarantees cannot be bypassed. While the absence of active war in the country is a positive factor along with the rehabilitation of former fighters of the Liberation Tigers of Tamil Eelam (LTTE), the overwhelming presence of the military in the administration of the Northern peninsula in particular renders the Government's claim that civil administration is 'fully functional' in this Province, distinctly problematic.

Similarly, the assertion that the recommendations of the LLRC are being implemented belies the fact that such implementation is actually highly selective. For example, a pivotal recommendation of the LLRC that the Department of the Sri Lanka Police should be delinked from the Ministry of Defence, continues to be pointedly ignored. Indeed, the Army Board of Inquiry referred to in the UPR state party report has gone so far as to declare that such a de-linking was not needed, in its interim report. Further, even though the proclaiming of emergency regulations under the Public Security Ordinance (1947) has lapsed, the Prevention of Terrorism Act (PTA, 1979) continues in full force and is even utilised to encompass criminal matters that would ordinarily have been dealt with under Sri Lanka's Penal Code and Criminal Procedure Code.

Moreover, it is a matter of extraordinarily acute timing that, just a few months after the Government of Sri Lanka announced its commitment to 'constitutional governance' and its obligation to respect the jurisdiction of the Supreme Court, the 43rd Chief Justice of Sri Lanka was impeached by a Parliament dominated by the ruling party, in a process that was neither fair nor just. Cumulatively therefore, the contrast between grandiloquent promises at the UPR session and actual government practice could not have been more stark.

The two civil society reports that the Issue publishes contains a summary of wider concerns impacting on Sri Lanka's pledges before the UPR and provides a counterpoint to the Government's stand. They examine Rule of Law issues with particular focus on the 18th Amendment to the Constitution, lack of safeguards resulting in arbitrary detentions, denial of access to surrendees, continuing practices of torture and assault/intimidation of human rights defenders. Other issues focussed on are the grave threats to free expression rights by the media and human rights defenders, restrictions on freedoms of association and assembly, humanitarian issues and state accountability in regard to enforced disappearances, abductions and extra judicial killings. A specific part of these concerns relate to protection of women's human rights including crimes of rape, murder and trafficking. Women's ownership of land meanwhile continues to be a problem. Several recommendations are detailed in both these reports.

On its own part, it is interesting that while 110 recommendations presented by states during the UPR session mainly relating to 'soft' and vaguely defined action to improve protection of human rights and governance, were accepted by the Sri Lanka Government, 94 other recommendations which may be looked upon as 'hard core' were emphatically rejected. These included the full and rapid implementation of all the recommendations of the LLRC, repeal of certain provisions of the PTA and somewhat bizarrely, recommendations relating to adopting a law on witness protection despite the fact that such a bill is currently in the Department of the Legal Draftsman. Unsurprisingly, ratifying several international treaties that would ensure heightened scrutiny of Sri Lanka's human rights record including the Statute on the International Criminal Court (ICC) were also rejected.

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Extracts of National Report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21*

Sri Lanka

I. Introduction**

1. Sri Lanka is pleased to submit its national report for the 14th Session of the Working Group. As consistently maintained Sri Lanka considers the UPR to be the most appropriate forum at which human rights related matters pertaining to a country should be discussed, together with voluntary engagements under the human rights treaties and interactions with special procedures mechanisms. This is despite two unhelpful attempts to needlessly draw attention to the situation in Sri Lanka in the Council in 2009 and again this year. These ill-conceived, unwarranted, unnecessary and intrusive attempts did not result in any tangible benefits for the Sri Lankan people over and above what the Government of Sri Lanka (GoSL) set out to do and has been able to achieve for them. Sri Lanka regularly briefs the Council on gains made, challenges faced and future plans vis-à-vis the human rights situation in the country. Participation in the new interactive, collaborative and inclusive mechanism, the UPR, must be viewed as part of that ongoing effort.

2. Sri Lanka today is a stable, united and forward-looking country. Our polity has enjoyed being constitutionally governed and being part of a vibrant democracy for over 64 years as an independent nation. The nation has achieved peace and social tranquility by the military defeat of one of the worst manifestations of terrorism the world has seen in recent times – the Liberation Tigers of Tamil Eelam (LTTE). The humanitarian operation ensured for the people of the North and East their right to live in dignity and restored democratic freedoms. It also ensured for the rest of the country freedom from fear of terrorist attacks. Sri Lanka is now consolidating gains made in economic, political, social and cultural spheres and our potential for advancement has increased exponentially. Equity in economic development,

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** Ed. Note- due to lack of space, the *LST Review* is unable to carry the footnotes to this Report.

eliminating regional disparities, and guaranteeing equality of opportunity for every Sri Lankan no matter where they live, their ethno-cultural background, the language spoken or religion professed, remain the national priority.

3. Sri Lanka's multi-ethnic, multi-religious, multi-lingual and multi-cultural character which has been preserved in the face of conflict and terrorism, equips us to face the unique challenges and opportunities ahead.

4. Sri Lanka's Constitution gives pride of place to Fundamental Rights in Chapter III which provides exclusive jurisdiction to the Supreme Court to ensure expeditious legal remedy. Article 3 recognizes that the sovereignty of the people is inalienable and includes the powers of government, fundamental rights and franchise. Article 4 (d) casts a positive obligation on the Executive, the Legislature and the Judiciary to respect, secure and advance fundamental rights. The Constitution *inter alia* recognizes the right to freedom of thought, conscience and religion, freedom from torture, or cruel, inhuman or degrading treatment or punishment; right to equality, freedom from arbitrary arrest, detention and punishment; prohibition against retro-operative penal legislation; freedom of speech, assembly, association, occupation and movement. The rights to freedom of thought, conscience and religion and the right to freedom from torture are enshrined as absolute and non-derogable rights.

5. Sri Lanka accords the highest priority to active participation in the multilateral treaty framework relating to human rights and is party to seven core human rights treaties. The international Conventions subscribed to by Sri Lanka have been given effect to in accordance with the constitutional process through specific constitutional provision, the enactment of substantive legislation and through subsidiary legislative instruments. Sri Lanka also continues to actively engage with the OHCHR and an invitation was extended in 2011 to the UN High Commissioner for Human Rights to visit the country.

6. Despite nearly 30 years of conflict against terrorism, we successfully sustained the wellbeing of our people. This has been confirmed by the UNDP's Human Development Report (2011) which has given Sri Lanka a value of 0.691 in its human development index. This has been achieved by the consistent investment in public services such as health, education and the provision of economic opportunity, including the provision of public services and the payment of salaries to public servants, even in areas that were unlawfully occupied by the LTTE.

7. Notwithstanding their military defeat and being proscribed in 32 countries, the LTTE's international network and sympathizers continue to espouse the agenda of destabilization and separatism. Their attempts to misinform host governments, opinion makers including media and the Sri Lankan expatriate community by blatant falsehood, propaganda and misinformation, proceed unabated. Their financial and other links with international criminal organizations continue to pose a threat to Sri Lanka and the international community. The substantial resources they possess enable them to sustain a vicious campaign of disinformation, and destabilize peace efforts with a view to undermining the reconciliation process.

II. Methodology and Consultation Process followed in the Preparation of the National Report

8. The need for the protection and promotion of human rights was duly recognized in the very special place that human rights were accorded in the Constitution. This provision sensitized the people to their rights as citizens of the country. However, the internecine conflict prevented the full development of these rights as envisaged. Sri Lanka, in recognition of the need to give full effect to human rights, pledged at the UPR of 2008, a National Action Plan for the Promotion and Protection of Human Rights (NHRAP), giving full effect to the intent of the framers of our autochthonous Constitution. The Lessons Learnt and Reconciliation Commission (LLRC) established in 2010 further buttressed this process.

9. In the formulation of this national report, a broad and inclusive process of consultation involving Government focal points and civil society representation was followed. The substantive basis of consultation were issues pertaining to the implementation of the recommendations accepted and pledges made in 2008 as well as other matters of immediate concern. In this context, stakeholders were invited to raise matters of relevance and submit written representations to be considered by the Government. This consultative process is ongoing.

10. The formulation and implementation of the NHRAP is an integral part of Sri Lanka's national report, which, *inter alia*, sets out, in a time-bound manner, the measures being adopted in the protection and promotion of human rights, taking into consideration the recommendations of special procedures mechanisms, treaty bodies as well as national priorities. Government focal points and civil society representation were invited to participate in the formulation of the NHRAP from inception. Drafting committees that prepared the initial version of the NHRAP were, by and large, constituted from Government and non-government personnel on the basis of equal representation.

III. Developments Since the Previous Review

A. Humanitarian Operation (2008/2009)

11. The GoSL repeatedly attempted to engage the LTTE in peace talks with a view to arriving at a negotiated settlement. On each occasion, the LTTE used cessation of hostilities to rearm, regroup and strengthen its offensive capabilities. A peace process facilitated by the Norwegian Government in 2002 was still nominally in place in July 2006, when the LTTE's many transgressions of the ceasefire agreement culminated in its closure of a vital sluice gate at Mavil Aru in the Eastern Province. This cut off access to water for thousands of people (9,510 Muslims, 8,013 Sinhalese and 4,439 Tamils living in 20 villages), and to vast tracts of irrigable land, resulting in an immediate and grave threat to human livelihoods and existence.

12. Faced with the prospect of an imminent humanitarian disaster, the GoSL launched a limited military operation to restore access to water. While this operation was underway, the LTTE launched attacks on Security Forces positions in the North and East of Sri Lanka. Given the immediate threat to civilian lives,

the GoSL launched the Humanitarian Operation to free the people of the North and East from LTTE control and liberate all its citizens from terror.

13. The GoSL acted with restraint to protect civilians throughout the Humanitarian Operation. A “zero civilian casualty” policy was adopted, and every precaution taken to minimise collateral damage during the fighting. As the operation progressed, an increasingly isolated and desperate LTTE leadership surrounded itself with a human shield comprising many thousands of civilians for self preservation. After the liberation of Kilinochchi in January 2009, the GoSL made every effort to encourage the movement of civilians to government-controlled areas including conveying messages through the UN and the ICRC. However, the LTTE forcibly prevented most attempts by the civilians to escape.

14. The GoSL did not, at any stage, corral the civilian population in the Wanni. The forced movement and corralling of civilians was an act of the LTTE, which blatantly used civilians as a human shield.

15. For the purpose of protecting civilians held by the LTTE, the GoSL identified areas of large civilian concentrations and instructed Security Forces to avoid firing into such areas. This was how the “No Fire Zone” (NFZ) came into being. The assertion that Security Forces declared areas NFZs and forced people into them is a gross distortion. A NFZ was identified to provide a reference point for Security Forces to take precautions in planning operations. These zones were readjusted having regard to the movement of civilians under LTTE compulsion. Announcements on radio and through loudspeakers, airdropped leaflets, and requests conveyed through international agencies were used to inform civilians of safe locations and encourage them to escape from the conflict area. Through an abundance of caution, Unmanned Aerial Vehicles (UAVs) were deployed over these areas to make an accurate assessment of the ground in which civilians were held. Nearly 300,000 civilians were successfully rescued from LTTE captivity during the operation.

16. Recognizing the requirement to cater to the needs of civilians caught up in the conflict, the GoSL appointed a Commissioner General of Essential Services (CGES) and also established the Consultative Committee on Humanitarian Assistance (CCHA). What is important to note is the collective nature of the CCHA which was partnered by stakeholders, across the board, including the international community, who decided on key issues and their implementation pertaining to the delivery of humanitarian assistance, particularly the supply of food, water and medicine and the evacuation of the sick and wounded. The principal facilitators were the ICRC and the WFP. The CCHA met on 28 occasions and continued until May 2009 and proved a unique example of how humanitarian coordination between government and international partners can operate in a conflict situation to ensure that humanitarian assistance needs are met.

17. The conduct of military operations in a manner as to avoid civilian casualties in line with GoSL policy and to rescue as many civilians from a virtual hostage situation, meant that the conflict continued for a longer duration than was necessary. The so called “humanitarian catastrophe” or “bloodbath” that was

predicted by those who had called a halt to the military operations never came to pass and nearly 300,000 persons were rescued.

18. The conclusion of the humanitarian operation on 19 May 2009 gave rise to several post-conflict challenges which GoSL has been addressing.

B. Post Conflict Developments

1. Demining and Resettlement

19. One of the biggest challenges the GoSL faced was the resettlement of approximately 300,000 IDPs. Prior to embarking on the resettlement process, the Government had to ensure that these areas that the IDPs were to be resettled in were free of landmines due to the extensive laying of mines by the LTTE.

20. It is therefore significant that, by the end of July 2012, just three years after the end of the conflict, the GoSL had successfully resettled more than 237,500 IDPs. A further 28,398 have chosen to live with host families in various parts of the country. It should be noted that 7,203 had left the camps on various grounds and did not return while a further 1,380 sought admission to hospitals. 802 IDPs died due to natural causes during the time they were awaiting to be resettled. Only 1,597 families remain in the last functioning welfare village. The GoSL intends to complete the resettlement process by this year. While every effort is being made to resettle persons in their original habitat, in instances in which this is not possible, they will be given alternate land. This process would have been executed much faster if not for the extensive mining of the area by the LTTE approximating to 5,000 sq.km. While 116 sq.km of territory remain to be demined, the demining of remaining land to facilitate the return of IDPs will be completed by the end of 2012. The demining has been done mainly by the Sri Lankan Army with international collaboration including certification of demined areas by the UN.

21. The resettlement process has been voluntary, involving informed choice of the displaced family/person through facilitation of “go and see visits” prior to resettlement. Assistance for construction of housing and livelihood development is also being provided. An initiative by the Government in constructing over 78,000 new houses in the North and East has been launched, including houses constructed with donor assistance. As at July 2012, 27,983 permanent houses have been constructed.

22. Another notable feature of the resettlement process is the family tracing programme initiated in December 2009 which facilitates the reunification of the beneficiary with the immediate or extended family. This programme, supported by UNICEF, also enables family access to the beneficiary.

2. Rehabilitation and Reintegration

23. Remarkable progress has been made with regard to the rehabilitation and reintegration of ex-combatants. It may be noted that from approximately 12,000 persons, at present 636 beneficiaries are

undergoing rehabilitation, and 383 are under judicially mandated custody (remand). As at July 2012, 10,965 persons, which includes 594 LTTE child soldiers have been rehabilitated and reintegrated into society. The GoSL adhered to a policy of not subjecting children to legal proceedings based on the rationale that they were victims and not perpetrators. The child soldiers released were afforded the opportunity of a formal education and reintegrated into their families. 212 youth who were previously pursuing tertiary education were reinducted into the system to follow their undergraduate studies. Elderly persons were also released without being subject to any rehabilitative or legal processes. The rehabilitation programmes are carried out with the assistance of UNICEF, IOM and some NGOs.

24. The offer of participating in a programme of rehabilitation is available to an LTTE suspect, in detention or subject to legal process. The ambit of the programme has been further extended with the induction of rehabilitated ex-combatants in to the Civil Defence Force to participate in development programmes. This programme has been successful to the point that ex-combatants have been included in the national sports pools. Financial provision has also been made as a start-up facility in respect of each beneficiary released.

3. LLRC and the Reconciliation Process

25. The LLRC, appointed on 15 May 2010, submitted its Report and recommendations which was presented to the Parliament on 16th December 2011 and was made available to the public. This Report which is in the English language will be available in the Sinhala and Tamil languages.

26. Action was initiated to implement many LLRC recommendations prior to a formalized plan of implementation being devised. Some of the areas in which gains have been made include resettlement of IDPs; demining; rehabilitation of ex-combatants; implementation of the language policy; recruitment of Tamil speaking police officers; removal of the military from assisting in civil administration in the North, making available land previously used for security purposes for resettlement/return; and carrying out a comprehensive enumeration in the Northern Province.

27. The Cabinet of Ministers in May 2012 decided that a Task Force headed by the Secretary to the President would monitor the implementation of the LLRC recommendations.

28. In July, a matrix containing the National Plan of Action to implement LLRC recommendations was developed by the Task Force, presented to Cabinet and approved. The main focus areas for implementation are International Humanitarian Law Issues, Human Rights, Land Return and Resettlement, Restitution/Compensatory Relief and Reconciliation. The Task Force has indentified a corresponding activity, an implementing agency, a key performance indicator and a time frame in respect of each recommendation.

29. Special emphasis has been given to regulating the activities regarding the management of land in the Northern and Eastern Provinces. The Ministry of Land and Land Development has decided to resolve the

land disputes in these areas by implementing a special programme of work. Specific Cabinet approval has been received for policy proposals relating to the matter. Directions have been given to temporarily suspend the distribution of land. Priority is to be given to those persons who have been displaced or fled from their natural locales or lost their land.

30. An amendment to the Prescription Ordinance is being considered whereby displaced or disadvantaged owners of land will be exempted from the rules of prescription during a period of 30 years to enable them to defeat any adverse claims based on the running of time.

31. With regard to matters of accountability, *inter alia*, the cases relating to 17 aid workers and the 5 students who met with their deaths in Trincomalee were referred to the Attorney-General to ascertain whether a *prima facie* case exists to launch prosecutions. The Attorney-General has advised the Inspector-General of Police to conduct further investigations.

32. Additionally, the Sri Lanka Army has commenced investigations, firstly, by appointing a Board of Inquiry to study the LLRC recommendations and formulate a viable action plan to implement the recommendations that are relevant to the Army and, secondly, a Court of Inquiry has been appointed to investigate allegations of civilian casualties and the Channel 4 story, irrespective of whether the video footage was genuine or not. The Sri Lanka Navy has also initiated similar measures. These boards have commenced work and several witnesses have testified.

4. Restoration of Civil administration, Infrastructure and Economic Development

33. The civil administration system in the North and East is fully functional with Government officials at the District, Divisional and grassroots levels being appointed and discharging their functions.

34. With the dawn of peace, flows of funding for development activity which the conflict affected areas were previously deprived of, increased substantially. The “Uthuru Wasanthaya” (Northern Spring) and “Neganahira Navodaya” (Eastern Reawakening) programmes designed to facilitate development work in the North and East, being implemented by the GoSL, were further accelerated to provide, *inter alia*, livelihoods for persons in the conflict affected areas.

35. With the termination of military operations and the gradual restoration of normality, the strength of the military in the North has been reduced considerably. The present strength in the Jaffna Peninsula is approximately 15,000. Further rationalization of this presence would be considered in line with national security interests. It must be noted that the role of the military in the North today is confined solely to security related matters. The former High Security Zones (HSZs) have ceased to exist. The Palaly Cantonment is now the only area in which some security restrictions remain, but even within the Cantonment, civilians have unrestricted access to the airport and the Kankesanthurai harbour. While it is true that there are still some civilian properties included in the Cantonment, it must be stressed that civilians have not occupied these properties for the last 20 to 25 years. The Government has taken

measures to pay compensation to the owners of these properties and to provide alternate land to them. It should also be noted that lands that had been forcefully taken from the people and occupied by the LTTE for many years have also been released to their legal owners. The former HSZ in the Eastern Province located in the Sampur area from 2007 has been reduced in extent by 65% and declared a Development Zone under the Board of Investment. The IDPs from this area who are to be resettled will be granted alternative land or compensation.

36. The military is no longer involved in civil administration in the North and East and the Police Department now continues its responsibility of maintaining law and order. In this context, 11 new Police Stations have been established in the North since 2009. 1,216 Tamil officers have been recruited: 789 (2005 to 2011) and 427 (Jan 2012 to date). Tamil language training is also being provided to police personnel. This is in line with the GoSL's overall policy of promoting trilingual competency among public officers.

37. These measures are indicative of GoSL's commitment to assuring the safety and wellbeing of people in the conflict-affected area.

38. Due to GoSL efforts aimed at the revival of the provincial economy, a 22% growth has been recorded in the Northern Province, while Sri Lanka's overall GDP recorded around 8% growth in 2011. In terms of investment promotion, the Atchchuveli Industrial Zone in the Northern Province, which is being developed in a 25 acre area is expected to attract approximately 40 local and foreign investors and to generate employment to over 6,000 persons. A further 67 acres is scheduled to be added in the second stage. The Zone will enable small and medium enterprises to better tap into the post-conflict opportunities in the country. The reconstruction of the Northern railway line which was totally destroyed by the LTTE, is currently under way. It will provide connectivity and linkage to markets to the Northern province. A Vocational Training Institute on par with international standards and certification is being set up in Kilinochchi to enhance the skill levels and the employment opportunities of the youth in the North. Bilateral and other assistance has been received from several countries in support of these initiatives.

5. Constitutional and Legislative Reform

39. Another critical aspect to the restoration of normalcy was the holding of elections in the North and East soon after the areas were brought under Government control. Provincial Council elections were held in the Eastern Province even before the Humanitarian Operation ended, and Local Authority elections were held for the Jaffna Municipal Council and Vavuniya Urban Council as early as August 2009. Presidential and General Elections were held islandwide in 2010. Local authority elections, held last year, saw elections held throughout the country including in the North and East. In the areas formerly occupied by the LTTE, people exercised their franchise without fear for the first time in three decades. The fact that political plurality has returned to these areas is clear from the results of these elections. The swift restoration of democracy to those parts of Sri Lanka is a significant achievement. Elections for the Northern Provincial Council are envisaged to be held in 2013.

40. Provincial-wide governance for the Northern Province poses its own unique challenges as the people in the Province have not experienced elected democratic provincial representation for several years. In the interim, the present administrative arrangement under the Governor has been restored and governance structures that transcend purely local government are being gradually strengthened.

41. The Working Group placed emphasis on the implementation of the 13th and 17th Amendments to the Constitution during the initial UPR of Sri Lanka in 2008. GoSL made it clear that it would take steps to address and remedy the practical impasse (relating to appointments, etc., to certain public bodies) created as a result of the 17th Amendment and stated that steps would be taken to address outstanding issues arising out of the 13th Amendment which deals with devolution of power to Provinces as well as its implementation. The changes wrought by the 17th Amendment in 2001 were further amended by the 18th Amendment to the Constitution which was enacted and certified as law by the Speaker of the Sri Lankan Parliament on 09 September 2010.

42. Prior to being debated in Parliament the Supreme Court was, by presidential reference, requested to determine upon its constitutionality. A modified consultative process between the national executive and national legislature prior to making appointments to such public bodies and offices is emplaced by the said 18th Amendment to the Constitution. Most of the bodies are reconstituted and the key personnel holding office are largely free from allegations of partisan or other bias. What is important is that these bodies and officials are enabled to function smoothly as the public expect and deserve the independent, effective and efficient exercise of their various functions under the law.

43. A central feature of the Government's approach to evolving a consensus formula to ensure preservation of identity, human dignity, security, unity, empowerment to promote development is a Parliamentary Select Committee (PSC). The objective is to achieve multi-party consensus in respect of constitutional changes, to fulfil the legitimate aspirations of the Sri Lankan people enabling them to work in unison and with a sense of national identity for a better tomorrow. Parallel to this multi-party mechanism, the Government is engaged in bilateral discussions with Tamil political parties as well as Muslim representation. Mindful of the fact that all previous attempts at evolving a constitutional formula failed due to lack of consensus, the GoSL remains optimistic that the PSC would help achieve such a consensus, given its inclusivity and transparency, and commitment to democratic ideals.

44. Another significant development is the lapsing of the Emergency Regulations promulgated under the Public Security Ordinance in 2005. As early as May 2010, the GoSL reduced the scope of the Emergency Regulations in keeping with the improving ground situation.

45. By August 2011, the situation had improved to an extent that permitted the lifting of Emergency altogether. This was not done in a vacuum but with careful consideration of the needs of the country. Certain legal and regulatory arrangements were made to cater to any exigencies that could arise and these instruments are now in place with the framework of the Prevention of Terrorism Act, such as the

proscription of the LTTE and the TRO, a framework for the continued holding of detainees and remandees and the rehabilitation of surrendees.

C. Adoption and Implementation of the National Action Plan for the Promotion and Protection of Human Rights

46. Specific measures have been adopted by the Government to safeguard and foster the promotion and protection of human rights. At the 2008 UPR, Sri Lanka pledged to devise a five-year National Action Plan for the Promotion and Protection of Human Rights. Since 2008, with the assistance of UNDP, Sri Lanka has worked on delivering on that pledge through a participatory process involving Government and civil society. The NHRAP was endorsed for implementation by the Cabinet of Ministers in December 2011. The implementation stage of the Action Plan, including monitoring and evaluation, is currently underway with the initial evaluation scheduled for December 2012/January 2013. Progress is being made in implementation.

IV. Promotion and Protection of Human Rights on the Ground: Implementation of International Human Rights Obligations

47. Sri Lanka is party to sixteen core human rights and labour rights, United Nations and ILO Conventions. Pursuant to the ratification of the salient human rights treaties, Sri Lanka has given internal effect to the international treaties via enabling domestic legislation, to ensure the protection of sacrosanct human rights within its jurisdiction through effective implementation of the conventions.

48. The principal aim of Goal 1 of the Civil and Political Rights Chapter of the NHRAP, i.e. 'Measures to give effect to international human rights obligations' is a common thread that runs through the NHRAP. Some specific initiatives that have recently been taken with regard to the implementation of human rights obligations are:

(a) As no comprehensive census has been carried out in the Northern Province since 1981, the Department of Census and Statistics was charged with the task of making an enumeration of persons in the Northern Province and this task was completed in 2011. While critical for socio-economic and development planning, the enumeration, followed by an islandwide census in 2012, would provide an accurate picture of patterns of deaths, outward migration within and outside the country, caused by the conflict and other reasons. A comparison of the population data from the enumeration and from the islandwide census will enable the GoSL to gain an understanding of the causes of deaths as a result of the conflict. Causes could include LTTE cadres killed in action, LTTE cadres and civilians who escaped the conflict and migrated to other parts of Sri Lanka/overseas, civilians likely to have been killed in the crossfire, civilians killed by the LTTE whilst escaping from LTTE control, false reporting and deaths reported but not occurring during the period of the humanitarian operation. It is expected that by the resulting statistics the unfounded allegations of 'tens of thousands' of civilian deaths having occurred in the first 5 months of 2009 will be conclusively refuted.

(b) The Government has made a substantial investment in development of the North and East. The *Neganahira Navodaya* programme for the East has resulted in expenditure totaling Rs. 142 billion up to 2011 with a further Rs.25 billion estimated for 2012. The *Uthuru Wasanthaya* programme for the North has seen a commitment of Rs. 117 billion up to 2011 with a further Rs 64 billion committed for 2012. In all, investment in the Northern Province under the 4-year investment plan will total nearly Rs. 300 billion. This is in line with national policy on social protection that views welfare expenditure as a means to draw vulnerable segments into the national development process. Recognising the need for social protection support for most vulnerable segments of the society, the government continues its social welfare programmes including *Samurdhi*, fertilizer subsidy, electricity and fuel subsidy programme. By providing a large amount of government welfare support to vulnerable groups, it is expected to build up the assets base of receiving families. In the long term, the government expects to change the dependency attitude of vulnerable groups from passive recipients of social support to active contributors to the economy. Therefore, it is expected that a significant portion of welfare support funds will be used for asset creation. Empowering women, creating opportunities for children, sharing the experience of elders and mainstreaming the differently-abled people are priority areas for government intervention made in social protection programmes. In 2011, the Government has spent Rs.98 billion towards upgrading the living standards of people.

(c) A new National Project has been launched by the Ministry of Justice and the Attorney General's Department in partnership with the Police Department to enhance the efficacy of the criminal justice response to child abuse. The resources for the project are provided by the GoSL and UNICEF. The primary objectives of this project are to expedite the processing and the passage of cases of child abuse through the several phases of the criminal justice system and to prevent secondary victimisation of child victims of abuse in consequence of their involvement in the criminal justice system. A secondary objective of the project is to enhance the professionalism in the conduct of criminal and forensic investigations, and the conduct of prosecutions.

(d) The Inspector-General of Police, in December 2011, issued strict instructions to all officers regarding the treatment of detainees arrested. Safeguards include measures for ensuring the physical safety and dignity of the arrested individual as well as reiterating internal controls with regard to handling of persons in custody. Directions have also been given enabling Attorneys-at-Law to visit their clients in custody as of right as opposed to with the leave and license of the Police. Criminal prosecutions have been streamlined by the establishment of Divisional Prosecution Units at the Provincial level which expedites the prosecution of terrorism offences.

(e) With regard to access to persons detained on suspicion of involvement in terrorist activity, a database containing details of all detainees/arrested suspects has been established in order to facilitate their Next of Kin (NoK) to obtain details. Wide publicity has been given in all three languages regarding access to the database by the NoK and several persons have utilized the service.

(f) The GoSL is committed to taking necessary steps to ensuring safety of media personnel and institutions. In order to ensure media freedom, the Government is seeking to strengthen grievance

mechanisms which include complaints to Police, processing FR applications filed in the Supreme Court, and complaints to Press Council. The Government is also pursuing investigation into the current cases on alleged attacks on media personnel and institutions.

(g) Sri Lanka has a vibrant civil society and our Constitution guarantees the protection of every citizen's fundamental rights, including rights of members of civil society. Although no special laws have been formulated with regard to "Human Rights Defenders", any person who seeks to facilitate or vindicate human rights has the option of filing a Fundamental Rights application in the Supreme Court, or a Writ Application in the Court of Appeal, or making a complaint before the National Human Rights Commission, on their own behalf or in the public interest. The full gamut of constitutional guarantees, including effective remedies, is available to individuals or groups who wish to espouse social causes and advocacy, also encompassing the area of human rights.

(h) Sri Lanka is party to the seven core Human Rights Treaties and four Optional Protocols: The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), Convention on the Rights of the Child (CRC), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, Optional Protocol to the ICCPR and the Optional Protocol to CEDAW. Sri Lanka is also signatory to the Convention on the Rights of Persons with Disabilities (CRPD). The GoSL has progressed in fulfilling its reporting obligations including submitting its periodic reports to the Committee on the Elimination of All Forms of Discrimination Against Women (2009), Committee Against Torture (2011), responses to the List of Issues to the Committee on Economic, Social and Cultural Rights (2010). Sri Lanka has also responded to the confidential communications from the UN Commission on the Status of Women (CSW) and to UN Special Procedure Mechanisms.

(i) Sri Lanka closely works with the UN Special Procedures on Human Rights. An inter-ministerial working group to verify cases of alleged disappearances has been established. In this context, the GoSL submitted its response on 59 cases of disappearances brought to its attention by the Working Group on Enforced or Involuntary Disappearances (WGEID). Further investigations are being conducted on remaining allegations communicated by the WGEID. Arrangements have also been made for the maintenance of a database of allegedly disappeared persons. As Sri Lanka has stated on previous occasions, including to the WGEID, information sharing on the presence of some of these persons in countries which have given them asylum, is critical to making an accurate assessment of the number of supposedly disappeared. The Police report a relatively good rate of success in tracing missing persons.

Joint Civil Society Submission – Universal Periodic Review of the United Nations*

*Second Cycle, 14th Session 2012 - Officially Submitted to the UN in April 2012***

In the period under review Sri Lanka moved from full scale war to a post-war context. Even while the country is presented with a historic opportunity to address the underlying ethno-political grievances and there have been significant developments during this period, there are serious concerns that fundamental problems remain unaddressed. With regard to a political solution, the Government has failed to fully implement the 13th Amendment and to provide a more far-reaching solution. On key human rights issues, even while in terms of volume of incidents the situation may look positive, there has been little change in addressing the fundamental structures and process that facilitate violations of human rights and the culture of impunity, essentially demonstrating the Government's poor record in fulfilling and implementing its existing UPR (Universal Periodic Review) commitments.

1. General Overview of Rule Of Law

1. The period witnessed a further deterioration in the rule of law in Sri Lanka, with challenges ranging from the increased centralisation of power by the Executive and politicisation of independent institutions to the lack of investigation and prosecution into serious human rights abuses and the introduction of draconian security laws, which all contributed to the consolidation of the culture of impunity. The three decade old civil war has served as a justification for the steady erosion of the rule of law. Nationalist sentiments and popular militarism, which intensified during the last stages of the war, continue to disproportionately influence the public discourse and governance. Attempts to raise human rights concerns, at national or international levels, continue to be cast as undermining national sovereignty, the defeat of terrorism and the architects of the military victory. This context has facilitated the enactment of Constitutional amendments and legislation providing wide powers to the executive and defence establishment in the post war period.

* The organizations comprise Center for Human Rights & Development, Centre for Policy Alternatives, Center for Promotion & Protection of Human Rights, Centre for Women and Development (Jaffna), Dabindhu Collective, Equal Ground, Families of the Disappeared, Home for Human Rights, Human Rights Organization(Kandy), INFORM Human Rights Documentation Center, International Movement Against Discrimination and Racism (Asia Group), Janaawaboda Kendrya, Janatha Sanwada Kendraya, Law and Society Trust, Lawyers for Democracy, Mothers and Daughters of Lanka, Movement for Defense of Democratic Rights, National Fisheries Solidarity Movement, National Peace Council, Raja Abhilasha Network, Puravasi Kamituwa, Red Flag Women's Movement, Right to Life Human Rights Centre, Rights Now Collective for Democracy, Savisthri Women's Movement, South Asia Network for Refugees, IDPs and Migrants Sri Lanka (SANRIM Sri Lanka), Stand-Up Movement (SUM), Women's Action Network (WAN), Women and Media Collective, Women's Support Group and Women's Centre.

The individuals comprise D.T.W.G Dissanayaka, Daya Ariyawathi, Dimuthu Lanka Wijesooriya, HMP Sanjeevanic, J.A. Somaweera, J.K. H.L.Perera, K.M Nimal, Keerthi Wijesinghe, M. N. Fernando, M.Rahman, Malini Kulathunga, P. Weerasinghe, Puravasi Kamituwa, Father Praveen OMI, R.M. Karunathna, Rohan Salgadue, Ruki Fernando, S.N.W.M. Wanninayake, S.P.S.P. Kumara, Sarath Dias, Selvy Tiruchandran, Sendil Sivanagam, Sugath Rajapaksha, Sunil Kahagalla, V. Paramanadan, W.M. Wijekoon.

** Ed. Note- due to lack of space, the *LST Review* is unable to carry the footnotes to this Submission.

2. The 18th Amendment to the Constitution has undermined independent institutions and human rights protection in post-war Sri Lanka. Following the introduction of the 18th Amendment, the Executive wields greater control over actors relevant to the legal system as unilateral appointments are now made to the Supreme Court, the Court of Appeal and the Attorney General's department. The Executive also continues to have considerable influence over lower courts through the Judicial Service Commission. This has left the Judiciary more vulnerable to Executive control, undermining judicial independence. Although the Judiciary has, in a handful of cases asserted itself and challenged the acts of the Executive there is a general unwillingness to challenge executive fiat. This has also led to the courts dismissing some cases without giving (adequate) reasons for its decision and long delays in proceeding with certain case. There are also concerns that processes which do not have the same safeguards as a judicial process are now recognized as a 'competent court'. Further, there are serious concerns for the lack of implementation and disregard for judicial orders. In addition, the lack of independence of the Attorney General's department coupled with threats to judicial officers, lawyers and even litigants has cast serious doubt on the ability of Sri Lankan courts to administer and deliver justice in a fair manner.

3. The lack of independence and effectiveness of the National Human Rights Commission (NHRC) stems from multiple reasons including the unilateral appointment of commissioners to the NHRC by the Executive which was followed by the failure to appoint new commissioners for almost two years and more recently the resignation of one commissioner from the NHRC. There continue to be concerns relating to institutional issues including the financial independence and the legal capacity of the NHRC as well as the lack of timely action with complaints made to the NHRC. Regardless of its weaknesses, the NHRC has in some instances taken measures to protect the rights of individuals. Similar concerns are raised with other institutions.

4. In addition to existing institutions, a long list of commissions of inquiry and committees were appointed to examine human rights issues. The lack of meaningful follow-up action on reports of commissions of inquiry demonstrates a lack of genuine will to address human rights violations.

5. The legislative process continues to lack transparency and involves little participation or public scrutiny in a process that results in far-reaching constitutional amendments and broad sweeping legislation. A disturbing tactic used by the GOSL is to classify prospective legislation as an 'Urgent Bill'.

6. With the end of the war, there were expectations that the state of emergency would be withdrawn and the resulting restrictions on fundamental rights would be restored, instead of the introduction of draconian security laws. While the Emergency Regulations (ERs) promulgated under the Public Security Ordinance (PSO) are no longer in force, the Government has introduced similar measures under the Prevention of Terrorism Act (PTA). The PTA regulations contain even less safeguards than the ERs and is a violation of Sri Lanka's international obligations.

7. In addition to the judicial and legal challenges, the process for obtaining justice for victims of human rights abuses and their families is fraught with significant challenges, including security threats. A key

impediment in successful and independent investigations and prosecutions is the lack of witness and victim protection safeguards, which has resulted in many witnesses and victims being reluctant to testify for fear of reprisals, thereby weakening or halting cases against alleged perpetrators.

8. The period in focus also witnessed developments related to Government plans and policies such as the National Human Rights Action Plan (NHRAP). While the NHRAP contains some important recommendations and timelines for implementation, there are serious questions of process including the formulation and consultation relating to the policy, omissions and feasibility of implementation. There are also concerns as to the suitability of some of the lead agencies in implementing the recommendations.

9. There is no public information available whether any serious human rights violations have been prosecuted in any court of law in the period in question although numerous commissions, committees and others have been initiated. In other instances, there has been interference in the criminal justice system including recent incidents of withdrawal of charges by the AG in cases perceived to be political. A disturbing trend is that perpetrators who enjoy political patronage and who have committed grave crimes continue to flout the law. The lack of credible independent investigations into human rights violations which would lead to indictments and prosecutions of perpetrators of human rights, has resulted in a serious lack of public confidence and trust in the justice system.

2. Detention

1. Despite the end of the war, the basic issues relating to detention remain including the failure to provide a list of detainees and detention centres and the lack of basic legal safeguards governing detention. Apart from the Criminal Procedure Code, detentions were governed by the Emergency Regulations (ER) till September 2011 and the Prevention of Terrorism Act (PTA). ERs were extensively used to detain political opponents and others engaged in dissent. However, although ERs became inoperative as a consequence of the Government allowing the state of emergency to lapse, the PTA continues to undermine fundamental rights. There a number of problems with the PTA including that it facilitates arbitrary arrests and detention; suspects held in custody have no statutory right either to inform a family member or to promptly access a lawyer; and the non binding Presidential Directives requiring that arrestees are informed of the reasons for arrest are rarely respected. Detaining suspects under the PTA beyond the maximum period prescribed by law and not producing them before a magistrate within the required period is a common practice. In addition, any challenge to the legality of the arrest and detention before a court is precluded under the PTA thereby also denying a right to a remedy and compensation.

2. The Code of Criminal Procedure continues to lack provisions for the right to a lawyer during interrogation, to confidential communication with the lawyer and to an interpreter. The NHRAP recognizes the right to a lawyer but recommends that the right be available only after the recording of a statement of the suspect. The Government has admitted that detention facilities are inadequate and overcrowded. In spite of the commitment to address these issues by the end of 2012, no steps have been taken to date and there is information that secret or unofficial detention centers continue to be used.

3. Surrendeeds

1. 'Surrendeeds' is a term used by the state to refer to persons who were sent to government-run rehabilitation centres for alleged involvement with the LTTE. The approximately 12,000 Surrendeeds include individuals who were forcibly recruited and others who served the LTTE in administrative positions, hence there are issues as to the identification of these persons as ex-combatants. Key problems include the lack of legal safeguards and the security of the Surrendeeds. While held at Protective Accommodation and Rehabilitation Centres (PARCs) Surrendeeds are denied a right to legal representation and due process rights. Although rehabilitation is meant to be for a maximum of 2 years, there are multiple cases where Surrendeeds have been held for much longer and/or where Surrendeeds have been transferred to detention centres or detainees sent for rehabilitation. Hence, by transferring an individual from a detention centre to a PARC or vice versa, a person can be detained without judicial oversight for a period of 3 ½ years.

2. Since July 2009, no independent protection agency has had access to Surrendeeds. Hence, it is very difficult to ascertain whether Surrendeeds have been held for more than the maximum period or under what conditions. As of February 2012, PARCs remained operational with a reported total of around 1,000 persons, both men and women. Following their release Surrendeeds face intimidation, harassment and increased levels of surveillance by security officials from a number of state agencies, in addition to problems relating to social and economic reintegration.

4. Torture

1. The practice of torture is widespread and commonly resorted to by police and army personnel. The methods of torture commonly used include severe levels of violence and sometimes includes sexual abuse. The practice of extracting confessions under torture continues and there is a heavy evidential burden to challenge such confessions.

2. The detection of torture is rendered difficult as medical examinations remain at the sole discretion of the police. Malpractices by Judicial Medical Officers (JMOs) due to a lack of competence and fear of police and army personnel are frequent. Magistrates too fail to act diligently to detect torture and protect victims from further abuse. The Attorney General's Department has not demonstrated a zero tolerance policy on torture, has not since 2009 referred complaints of torture to the Special Investigation Unit of the Criminal Investigation Department, and does not inform victims of steps taken to investigate complaints of torture or prosecute alleged offenders. The NHRC too has no duty to provide victims with written reports of follow-up action taken. Victims of torture often do not initiate or pursue fundamental rights cases before the Supreme Court due to threat and intimidation. Even lawyers of victims have been threatened. Emphasis on professional sanctions for alleged perpetrators rather than criminal prosecutions is insufficient. In addition, compensation awarded to victims, is insufficient.

5. Human Rights Defenders

1. During this period, human rights defenders (HRDs) have been threatened, physically attacked, arrested disappeared and killed. In addition, HRDs have been systematically denigrated and their work disrupted, which has made the climate for engaging in human rights work both challenging and dangerous. Threats aimed at HRDs were published in the media including the state-owned media, which in some cases amounted to the incitement of violence by Government politicians. The vulnerability of HRDs has increased as a result of accusations of being traitors and having links to the LTTE or pro-LTTE groups, both by the media and Government actors. HRDs have also been subjected to interrogation, surveillance and harassment by the State. The disruption of work has also included attacking human rights meetings and training programmes. The situation for groups based in the North is particularly acute as they find it increasingly difficult to secure permission from the Presidential Task Force (PTF) to engage in specific activities relating to protection or empowerment, or to work in particular areas such as in Killinochchi and Mullaitivu. There was no effective investigation of complaints of threats, intimidation and attacks against HRDs, and no alleged perpetrators connected to such incidents have been prosecuted.

6. Freedom of Association and Assembly

1. Peaceful protests perceived to be anti-government and meetings, particularly those organised by human rights activists and opposition political parties, have been consistently disrupted or prevented through a variety of methods including judicial action, use of the police and security forces and attacks by armed gangs, which has also created a context of fear constraining the space for dissent. Public and even some private events in the North are supervised and controlled by the military and official circulars have been issued by the Government insisting that military officials and government politicians be given notice of events and participate at such events. Conspicuously, there have been no such restrictions or difficulties in relation to protests organised by the government or pro-government groups. As in the case of HRDs, there has been a concerted effort by specific media organisations to portray protests against undemocratic actions by the Government as 'unpatriotic' and 'attempts to destabilize the country'. Violence against political activists continues to be a key problem for political opponents and university student groups. In addition, religious and cultural events organised by Tamil communities in memory of those killed during the war were cancelled by the military and organisers of the events were threatened. Families of disappeared persons and religious leaders in the North who meet visiting foreign representatives have also been questioned and intimidated by the military.

2. The clamp down on civil society and human rights activists has been enforced by the introduction of a variety of legal measures, policies and practices, and a visible increase in control by the defence establishment. Non-Governmental Organisations (NGOs) have come under increased scrutiny by entities such as the Parliamentary Select Committee, to investigate NGOs working on peace and human rights. Legislative developments include the issuing of PTA regulations and the proposed amendments to the NGO Act, which were mooted after allegations were made -following the 2010 Presidential election - about 'foreign interference' to bring international and local NGOs under greater control and supervision

of the State. A number of new laws and regulations to further control NGOs are being contemplated by the State. Additionally, the mandate of the defence establishment has been expanded to supervise and monitor NGOs, with the NGO Secretariat falling under the purview of the Ministry of Defence, which has also resulted in increased scrutiny of NGO activity by intelligence agencies, security forces and police.

7. Freedom of Expression

1. Media freedom in Sri Lanka continues to be restricted. Reporting of events was restricted during the war with the GOSL imposing a blackout on media coverage of the war effort and restricting access to conflict zones to independent and foreign news agencies during its military offensive against the LTTE. Any attempt to provide reportage on human rights issues, particularly pertaining to the military offensive, national security policy and any critique of the government risked severe reprisals resulting in violent attacks, intimidation, abduction and killing of journalists, as well as outright violence against media institutions.

2. Hate speech and threats of violence, including death threats, against journalists and HRDs have been publicised by state media institutions, which are indirectly owned or managed by the state. There is one instance of a government minister publicly admitting responsibility for the death of and attacks on journalists. The failure of the government to intervene has given rise to concerns about a clamp down on dissent and creating a fear psychosis amongst media actors, despite the government's pronouncements and commitments with respect to media freedom and democracy. In most cases, the alleged perpetrators have not been investigated and even in the few cases in which arrests were made there have been attempts to manipulate/subvert the judicial process. This intimidation forced some media workers into exile and resulted in Sri Lanka being listed as one of the most dangerous places in the world for media workers.

3. In the post-war context, while some exiled journalists have returned to the country, threats to media freedom persist with several cases of journalists being assaulted and one disappearance. A sense of insecurity continues largely due to government inaction even after complaints of threats to and intimidation of media actors have been made. This has exacerbated the degree of self-censorship within mainstream media, and has, as a result, led to the preclusion of critical reportage on post-war cases of human rights violations, corruption and governance issues. The government has encouraged the exercise of self-censorship within media institutions and continues to stall on enacting right to information legislation.

4. The reintroduction and enforcement of draconian legislation in 2009 included the reactivation of the Press Council Act, which allows journalists to be convicted and imprisoned for a maximum period of two years without any judicial process. In September 2009, the Prevention of Terrorism Act (PTA) was used to sentence a journalist to 20 years of hard labour. Over the course of 2010 and 2011, the restrictions on freedom of expression have extended to web-based media including the arbitrary and extra-legal blocking of online news websites, the request for registration of news websites, arson attacks and arrests of online

journalists. Even SMS news alerts related to the security establishment now require prior approval by the Media Centre for National Security (MCNS).

8. Humanitarian Issues

1. The intensification of the war in the North resulted in a further deterioration of the humanitarian crisis in the country with the displacement of over 300,000 persons -almost all Tamil - in the Vanni. This was in addition to the 200,000 Internally Displaced Persons (IDPs) from previous years. The Government and the LTTE were accused of carrying out a series of violations including forced movement and restrictions on movement for IDPs, shortages of food, medicine and other essential goods to displaced populations, and other human rights violations against IDPs including forcible recruitment and the abduction of individuals. Following the end of the war there has been significant progress, at least in terms of the number of 'resettled' IDPs. Although there is progress in some areas, there are continuing problems including the issue of who is classified as an IDP and the lack of durable solutions for those officially resettled.

2. While the Government claims that only 6,567 persons remain to be resettled, the actual number of displaced persons is much higher with 34,671 'new IDPs' living with host families and a further 1,114 living in 'transit situations' and at least 141,074 officially registered refugees. The Government does not refer to statistics of 'old IDPs', hence it is not clear if all members of this population roughly numbering 180,000 at the end of the war, had returned, opted for local integration, relocated elsewhere or continue to live as displaced persons without officially being identified as such, especially given that some areas have not been opened up for resettlement. The currently proposed solution of relocation to another area raises questions about its voluntary nature and access to livelihoods in that area.

3. As a result of limited assistance and multiple challenges on the ground, those returning to their areas of origin face a fundamental problem in rebuilding their lives, which in turn raises the question as to whether these persons have found durable solutions. The Government's own policies such as those regarding land have resulted in uncertainty whether those who have returned to their land or continue to live in displacement will be able to fully own, access and control their land.

4. Despite the Government's commitments there is no new legislation dealing specifically with displacement. In addition to the absence of a policy framework related to displacement, Humanitarian actors also face a number of restrictions. The military's interference in humanitarian activities was continued by placing the NGO Secretariat under the aegis of the Ministry of Defence, the presence of military officials in the Presidential Task Force and the control it has over areas humanitarian actors can access and the implementation of work in areas. There are also concerns regarding the safety of humanitarian workers. These measures directly contradict the commitment made by the GOSL.

9. Northern Muslims and other 'old IDPs'

1. The Northern Muslim community that was expelled by the LTTE from the northern province in 1990, like other old IDP populations were not a priority for post war resettlement in 2009. Each set of old IDPs have their specific set of problems Like other protracted IDP populations, many Northern Muslims have established strong ties in their places of displacement and some may wish to become residents of those areas. The state needs to recognize and support local integration as a durable solution.

10. Accountability

1. Accountability has been a fundamental problem in Sri Lanka over the last three decades with specific relevance in post war Sri Lanka due to allegations of serious violations of human rights and international humanitarian law during the last stage of the war. Although several initiatives have been introduced by successive Governments to address violations, the inability and unwillingness to hold to account perpetrators has impacted day-to-day dispensation of justice and enforcement of law and order and exacerbated the culture of impunity.

2. Since the end of the war, there have been few domestic initiatives to address accountability. In May 2009, the Government assured the visiting United Nations Secretary-General that questions of accountability will be addressed but there has been no independent initiative, indictment or prosecution of alleged perpetrators nearly three years after the end of the war. The LLRC failed to adequately address issues regarding violations of human rights and IHL with criticism leveled against the process and methodology used in their findings. In contrast, international initiatives, which have been vehemently opposed by the Government, have indicated the occurrence of violations by both parties during war.

3. It is uncertain whether information on exact casualty numbers during the war will ever be publicly available due to lack of independent monitoring, destruction of documentation and flaws within existing mechanisms. The triumphalism since the military victory and the growing nationalist sentiments have all contributed to polarizing the discourse of accountability, with limited space to discuss anything related to the last stage of the war and accountability. While there are significant differences in opinion as to whether accountability is required and what it involves, a significant population, mainly from but not restricted to the North and East are determined to identify the whereabouts or the fate of those missing and to secure some form of acknowledgement, making clear the importance of this issue for achieving sustainable peace and reconciliation.

11. Disappearances And Abductions

1. There are no accurate figures of how many civilians were killed or disappeared during the war, including during the final stages of the war. The civilian deaths were estimated to be around 40,000 whereas some other sources estimates the missing persons between October 2008 and July 2009 were around 146,000.

2. The phenomenon of abductions and disappearances, including the 'white van abductions' was a dominant feature of the war but continues in the post-war context. The LLRC, pointed to the alarming number of 'abductions, enforced or involuntary disappearances, and arbitrary detentions.' In addition to the suffering caused to families, the phenomenon intensified the culture of fear and impunity. While in some cases the person who was abducted was released through paying of ransom, or the use of persuasion and influence, the fate of many of those who were abducted is still unknown.

3. During the war, this problem was particularly concentrated in the North and East, with Tamil civilians in particular being targeted by armed actors. Abductions, however also took place in other parts of the country, including in the capital Colombo. Various armed State actors, including the military have been accused of carrying out abductions, as have the largely Tamil paramilitary groups who are allied to the State.

3. The LTTE is also accused of carrying out abductions, including the forcible recruitment of civilians. In addition, both the LTTE and the TMVP were involved in the abduction and recruitment of children as combatants. While the Government initiated programs to assist the rehabilitation of child combatants from both groups, it has failed to prosecute individuals, including some who hold prominent positions in the current administration, accused of being involved in child recruitment.

4. Significant numbers of abductions continued in the post-war context despite the interim recommendations made by the LLRC in September 2010 to strengthen law and order to stop these abductions. Areas such as Jaffna and Vavuniya have witnessed sharp spikes in incidents during specific time periods. Individuals targeted in abductions include those seen to be critical of the Government such as activists and journalists.

5. The absence of effective institutional and legal mechanisms to deal with cases of disappearances and a highly militarized context in which these incidents take place has strengthened suspicions of the Government's complicity, if not involvement in these violations. The LLRC has recommended Government direct law enforcement authorities to investigate disappearances properly and to hold perpetrators accountable for their actions, and that domestic legislation be passed specifically to criminalize enforced or involuntary disappearances. In addition, a mechanism to help family members

and others to register details of the missing and for the State to help them trace the fate of these individuals is urgently required.

12. Extra Judicial Killings

1. Extra Judicial Killings (EJK) continued unabated during the war and post-war periods. Apart from the killings in the battlefields, there was a high incidence of EJKs reported from the conflict affected areas during the period of the war, but also a number of incidents reported from other parts of the country. There is no comprehensive data available on exact numbers. Armed actors including the State forces, the LTTE and paramilitary groups have been accused of carrying out EJKs.

2. Direct military hostilities can be attributed to a significant number of the killings reported during the period but there were also multiple cases of EJKs including civilians being executed by armed actors and allegations of persons who surrendered to the military during the last stage of the war and soon thereafter being shot dead. Similarly, testimony by survivors who left the war zone reported of alleged EJKs by the LTTE including killing civilians who were suspected of attempting to flee the war zone and protested the recruitment of family members especially during the last stage of the war, in addition to using civilians as human shields.

3. Even after the conclusion of the war, extrajudicial killings have continued with numbers demonstrating a significant problem. In the post-war context, there have been several cases of extra judicial killings and other deaths of criminals and detainees in suspicious circumstances and 49 reports of death in custody between 2009 and 2011. There have also been incidents of political violence resulting in killings, where there are significant concerns relating to the breakdown of the rule of law. Other trends related to EJK during this period include the discovery of bodies in abandoned wells and killing of protestors and critics of the Government and their allies.

4. Several reasons can be cited for the high incidence of EJK including high levels of militarization, impunity with which security forces operate, the active role of armed groups and lack of an effective process to control arms and hold persons to account. There is an almost systematic lack of adequate investigations in reported killings during the period under review.

13. Rights of Lesbians, Gays, Bisexual and Transgender (LGBT) Persons

1. The Government has not made significant progress in promoting and protecting the LGBT community. Consensual same-sex sexual activity between adults is criminalized, even in private spaces, by Section 365(a) of the Penal Code. Although there have been no convictions under this provision, police stations have received complaints on this ground. This criminalization opens the door for harassment and abuse by police and anti-gay groups. Homophobic and transphobic articles are common in the media, including in some State owned newspapers, and some newspapers have even 'outed' individuals as homosexuals.

2. Persons of diverse sexual orientation and gender identities are not explicitly protected from discrimination by the provisions of the Constitution regarding non-discrimination, thereby contributing to their vulnerability. The inclusion of sexual orientation and identity within the scope of Article 12 of the Constitution is not part of the NHRAP, although this recommendation was made in initial drafts. Nor have any recommendations been made by the NHRC to bring national law in accordance with international standards on this issue.

14. Women's Human Rights

1. Despite the advances made in women's rights, there remain a number of concerns including an increasing regressive socio-political environment where it is difficult to advance women's issues. This is in the context of limited movement on the policy front. Despite very low representation of women in all levels of government, which adversely impacts the design and implementation of policy, no affirmative action measures have been initiated.

2. There is also a high incidence of crimes against women. The Police Bureau for the Protection of Women and Children received 714 complaints of grave and violent crimes and 2,391 minor crimes against women in 2009. Yet, there is very limited use of the Prevention of Domestic Violence Act. The intransigence of the police to file complaints under the Act and initiate effective follow-up may also be traced to opinions at the highest levels of government that domestic violence is a 'family matter' to be resolved in private. Women also often face arbitrary penalization under the Vagrancy Ordinance and sex-workers face harassment under the Brothels Ordinance. There are also several problems regarding sexual violence against women and abortion. Furthermore Muslim women have unequal rights in marriage and divorce under Muslim personal law.

3. The increased military presence in the North and the East has been accompanied by a large number of women, particularly from women-headed households, reporting violations of their physical security. There is an apprehension among women in the region that approaching law-enforcement agencies with complaints of rape, murder, trafficking or disappearance will only invite further abuse. Three years after the war, women in the region lack livelihood options, educational opportunities and psychosocial healing spaces, increasing their vulnerability—particularly of female ex-combatants and the wives of men in detention or under-going rehabilitation—to abuse.

15. Cultural Rights

1. Tamil is an official language in law but the relevant provisions of the 13th and 16th Amendments to Constitution have not been fully implemented, in particular within the public service, police and security forces. There is a significant shortage of Tamil-speakers in state institutions, with only 6% of central government able to communicate in Tamil.

2. The shortage of Tamil-medium teachers, especially in the hill country and in some Muslim schools has reduced access and availability of education in the Tamil-language within those communities. This in turn impacts the socio-economic opportunities available to these communities and their cultural identity.

3. In the Tamil-majority North and East, there is apprehension that State actors are attempting to dilute the cultural identity of the region through various means. While there is significant space for religious freedom in Sri Lanka, recently there have been a number of attacks on places of worship.

16. Socio-Economic Rights

1. Even while official statistics suggest clear progress towards achieving the Millennium Development Goals, the data is incomplete as it excludes the North and East where the war made data collection impossible and there are gaps in the analysis.

2. Food Security is a problem in most parts of Sri Lanka but is acute in areas directly affected by the war. There also remain concerns regarding budgetary allocations with specific sectors getting priority over others which are critical to human development. Other concerns include labour issues including problems with wages and meeting certain labour standards and issues related to development programmes. Further rights of those forcibly evicted and displaced are poorly protected in law and in practice.

17. Up-Country Tamils

1. Despite the formal end of statelessness, Up-Country Tamils in general and estate workers and residents in particular continue to experience political, economic, social and cultural discrimination. State authorities adopt a *laissez-faire* attitude to estate sector residents and neglect the provision of essential services. The community also faces sporadic violence.

18. Rights of Migrant Workers

1. The revenue earned by migrant workers provides up to one third of Sri Lanka's foreign exchange. But many gaps remain on the policy front. Even though Sri Lanka has signed up to the Convention on the Protection of the Rights of All Migrant Workers no enabling legislation has been enacted. The National Migration Policy has yet to be effectively implemented and monitored. Sri Lankan embassies, in countries with a high percentage of Sri Lankan workers, lack capacity to deal with the needs of migrant workers. Steps have yet to be taken to ensure that migrant workers can exercise their right to vote in Sri Lankan elections while residing in other countries.

Joint Submission by the Women's Action Network and Centre for Human Rights and Development 2nd Universal Periodic Review of Sri Lanka (November 2012)

The Situation of Internally Displaced, Resettled and Relocated Women in the North and East of Sri Lanka*

1. Introduction

Since the last Universal Periodic Review of Sri Lanka in May 2008 the status of women in the North and East has seen significant deterioration. While it is acknowledged that the end of the armed war has brought about significant changes such as lack of large scale fighting and bombardment and increased freedom of movement, in the last three years women's security has significantly reduced and the benefits of peace are yet to be enjoyed by these women. In this context the WAN wishes to submit before the committee various aspects and issues that displaced women have faced in the last four years. The report wishes to highlight issues faced by women who are either 1) still displaced, 2) returned home or 3) settled in new locations. The issues covered are right to return, relocation, land rights, access to services, safety and security, and cultural rights.

2. General Statement

The Sri Lankan government has failed to protect and enhance women's rights and adopt necessary measures to safeguard the rights of Internally Displaced Persons (IDPs) as it agreed it would during the last Universal Periodic Review. There has been heightening of militarization in the North and the East since the end of the armed war in May 2009. There is a lack of holistic resettlement measures and a continued culture of impunity which has placed IDPs, especially women IDPs, in vulnerable positions. Militarization of civil administration is at its peak especially in the north and the east.

In the North and the East women make up the majority who survived the brutal war. Their numbers include almost 90,000 war widows and many single young women. These IDP women have to care for

* The North East Women's Action Network (WAN) is a network of 11 women's organizations based in the Northern and Eastern provinces of Sri Lanka. The network was started in 2002 as the lobby wing of three women's organisations that have been operating in the North for many decades and spread to cover 08 districts where the country's ethnic minority communities form a majority of the population in the two provinces and which has been the most affected areas by the war. The WAN has been working in building the capacity of women's rights activists and addressing issues that women face at the ground level through local mechanisms and activism in the north and the east. A few of the WAN members were part of the preparation of the 2008 UPR civil society collective report.

The Centre for Human Rights and Development (CHRD) is a non-profit organization initiated in 1997 by a group of human rights lawyers and activists for the protection and promotion of human rights in Sri Lanka. The objective of CHRD primarily is to ensure protection of human rights of ethnic minorities mostly indigenous Tamils, Indian origin Tamils and Muslims. CHRD's main two work areas are providing legal aid and building civil society coalitions at the district level.

their families not only socially but also economically. IDP women in the North however continue to find themselves excluded from decision making positions and livelihood options.

While the Sri Lankan state is a signatory to the CEDAW and submitted its report in 2011 there have been no significant measures taken to reduce violence against women in the domestic or public realm. The significant rise of violence against women and girl children in the North and the East and the Sri Lankan judiciaries' inaction in these cases mirror the States disregard for the rights of women and girls in Sri Lanka and especially of women in the North and the East.

3. Categorising of Issues Faced by Women IDPs

Right of Return

Many IDPs have been denied the right of return in the North and the East. A large number of locations have been deemed High Security Zones (HSZ), Special Economic Zones (SEZ) or military bases and their former residents denied access to their lands. The Sri Lankan state has in numerous cases (like Sampoor, Mullikulam, Silavathurai, Iranamadu etc.) informed those displaced that they have no right of return and have to accept the relocation sites offered by the Sri Lankan government. These relocation sites are often isolated and lack access to areas – such as the sea and cultivable land – where people can pursue their traditional livelihood methods, and are lacking in basic infrastructure and devoid of any resources. In part because women are continuously excluded from the decision-making process, they have often found themselves in relocation sites that are unsafe. In many cases women have no livelihood opportunities in these areas. The relocation land is much smaller in size (some time 10 perches for family for their original 2 acre land) and uncultivable. In several areas the government has yet to 'clear' the land and has informed people that they should relocate rather than return to their original land.

Even though the government had proudly announced its success at resettling hundreds of thousands of people in less than three years, the manner and the speed in which it has been done has harmed many women. For instance, Muslim women returning from Puttalam district makeshift to Jaffna (their original homes) after a prolonged displacement face a long and complicated process; they are forced to spend about Rs.1500 (more than half a months salary for many) to register themselves at the Jaffna district secretariat due to local travel and obtaining various documents. They also need to cover their travel and food costs between Jaffna, often having to forgo the cost of food rations, as they are forced to shuttle between Puttalam and Jaffna. Most have no shelter or intermediate arrangement in Jaffna when they first return after over 20 years of being forcibly evicted by the LTTE from their homes.

IDPs displaced by a government special economic zone in Sampoor have been demanding the right to return to their land for the last 06 years. Rations have been stopped since December 2011 in an effort to force them to relocate to government allotted land that is barren and much smaller in size compared with the fertile ancestral plots of land taken away from them. The relocation sites are removed from traditional livelihood methods. In most cases the Sri Lankan government has been in negotiation and consultation

only with the men in Sampoor who are seen as the 'head of household'. In the case of the Oluvil harbor construction – due to which several families were displaced yet again the displaced were resettled in areas that did not allow them to continue their fishing. Women from Oluvil who used to work cleaning nets and drying fish now find themselves unemployed and unable to support their family financially.

Land

Access to land and women's ownership of land continues to be an area in which the Sri Lankan State has not taken any proactive steps. This poses particular problems in the current context of frequent and ongoing government appropriation of land for various developmental projects, HSZs, SEZs and for alleged environmental protection.

Due to the prolonged and multiple displacements of the Tamils and Muslims in the North and East thousands of IDPs have lost their title deeds and other land documents. The Sri Lankan government, however, has been slow in providing the IDPs their relevant documents or in providing mechanisms for those whose records cannot be found. Instead the Sri Lankan State has proposed measures like the recent government circular requiring people in the north to register their land within a stipulated period. This circular may intensify land problems as it does not recognize the land distributed by the LTTE and open up space for the military to directly get involved in land disputes in the north. This would be particularly unjust in the aftermath of 30 years of war, where many people in the north do not have the documents to prove their ownership and much of the land in these areas have become jungle. Luckily a court injunction has temporarily prevented the government from imposing this rule in the north.

During the 30 year war, land that was under the LTTE control was divided as per the LTTE's decision to various people. While these decisions are legally null and void the State has not looked into the complexities of the situation and has in some areas started returning the land to the original owners.¹ The current users are left with no recourse, no alternate land, which makes the poor people pay the price of the war between the state and the LTTE.²

In most cases women are the ones who are left behind to negotiate with the State to reclaim their land. Women in the North and East have complained about government officers treating them badly. In many cases, the fact that government officers speak only Sinhala, not the Tamil of local residents, makes it difficult to negotiate.

Developmental agencies and the government continue to register new land and houses under the name of the 'head of household' and even though in many cases the head has been a woman the government officers and developmental agencies have specifically asked for the name of a male member of the house and registered land under their names. In the culture of the east, and due to the dowry system in the Tamil

¹ Those who owned the land in the 1980's

² In Velloor for example people have been evicted from the land in which they lived for the last 20 years.

and Muslim communities, houses and land have traditionally been in women's names. The above practice of recognizing only men as the head of the house hold by the government and aid agencies and the government's inability to recognize women having co-ownership of the state land allocated for resettlement have been badly harming women's right to property and other post-war assistance.

Ad-hoc government policies imposed on communities without proper consultation have had serious impact on land usage and ownership. For example in Vedha-Theevu an elephant fence was put up in the last year to prevent elephants from attacking; however the fence was built in such a manner to prevent Tamil farmer's access to their agricultural land and ended up fencing off the Tamil villages from the Sinhala villages. The local government officials were not informed of this decision. The same pattern of constructing through cultivable and inhabited land instead of the borders of the jungles has been commonly practiced by the forest department in the Eastern province. Yet another recent such case is the Ashraf Nagar village in Ampara district where 69 families have been first fenced under the pretext of protection from elephant and later a military base was built within the newly fenced village. Out of the 69 families only 04 families now live in this village which has turned into a Sri Lankan army base. Both these instances women who have inherited land which was given by their forefathers through the dowry system not only lost their homes but also their livelihoods of home gardening and agricultural related jobs. Women's organizations in the east have been informed of several such elephant fencing incidents that have fenced villages in and deprived women of their land, houses, livelihood activities and access to other communities and villages. In a few such cases initially there have been some consultation with the community but subsequently the decision as to where the fence should be constructed was decided by the government hierarchy.

In Trincomalee there are several cases of people being forced to sell their land for developmental activities. In Velloor for example the police threatened owners and coerced them to sell their land for tourist hotels. The owners who were women complained that to date they have not been given alternate land and the compensation was meager.

In Kiran, Mullikulam, Silavathurai, Echchalampathu, Ashraf Nagar and in several other areas in the north and east, land has been taken over by the military for bases and headquarters in the post-war context when Sri Lanka is meant to be returning to a period of normalization and demilitarization.

Shelter

While several government projects and foreign housing schemes are in place, selection for housing has been ad hoc. The government's insistence that even those not affected by war be provided housing, so that the ethnic balance is maintained, harms Tamil and Muslim IDPs who have been displaced multiple times over the last 30 years. In many cases the criteria for selection is problematic and marred with political interference. For example IDPs returning from India have been excluded from Indian and other Government housing schemes. While it is understood that given the limited resources the State must prioritize those it provides housing for, there needs to be transparency and accountability in the process.

Under the current housing schemes, older people are not provided housing or any other form of shelter. In many cases there are single widowed women who have then been refused housing. There has also been no comprehensive method in building houses, and the housing programs are not made to suit the ground realities – most notably the vulnerability of women forced to search for resources in the context of heavily militarized and unsafe environment. Women headed house-holds have often been burdened with building the house with the material given with their labour contribution which makes them vulnerable to exploitation and even sexual abuse since they have to approach the men who have building and construction skill to give free labour. Aid agencies and the Sri Lankan government have failed to take into account women's issues such as having to go to work to provide for the family, the lack of family support in such instances, women having to spend more time to care for children and for the physically challenged in the aftermath of a brutal war.

Requirements for being awarded houses – such as owning at least 10 perches of land and possessing land documents – leave many without housing as they have lost their land titles and many even can't identify their land boundaries correctly after being in displacement over two decades. The government has also put a stop to providing legal documents or land allocation for landless in the north. People with only 5-7 perches of land get no housing and no measures have been taken to address the same.³

Right to Livelihood and Employment

Before displacement women in the North and the East were engaged in various livelihood activities such as livestock breeding, home gardening, fish drying and running small shops. However, many women who have returned have found that they are unable to engage in livelihood activities due to several reasons:

The military has opened several food and grocery shops, thus curtailing women's livelihood options in the north. Earlier several women used to earn their livelihood by running small shops. The military has also been engaging in the sale of vegetables. Women therefore are unable to sell vegetables from their home gardens due to their inability to compete with the military and their fear of doing so. In several places the military has taken over public land and private land alike to create military camps and training centers and they are even engaging in paddy cultivation using the land that has been forcibly taken from poor farmers.

Even though aid for livelihood activities have been provided the Sri Lankan government and humanitarian and development agencies alike have been only encouraging poultry breeding, animal husbandry and sewing. There has been a "one size fit all program" for women's livelihood opportunities and Rs. 35,000 has been given as loan. These livelihood activities consider women as secondary income earners and encourage them to take up livelihood activities that are home based and do not generate much profit. Since there is no skill improvement or advancement and everyone is engaged in more or less same activities there is also limited marketability. In several instances women have complained that aid

³ Athiyammankeni

agencies have not even given cages for the chickens even though funds have been allotted for the same and high yield cows demand more food so the beneficiaries have to sell them off since they are unable to meet the cost of feeding them.

The continued view of what livelihood activities women can engage in seems to reflect a conservative mindset. In the current context where women are the primary breadwinners it is imperative that a holistic and progressive understanding and implementation of livelihood activities is undertaken by the Sri Lankan state and Aid agencies.

Cultural Rights

Cultural rights of minority communities in Sri Lanka have come under severe threat through covert and overt measures of the Sri Lankan government in the last three years. As stated above language rights are yet to be given to minority communities. However in the last three years there has also been a capturing of public places and spaces and culturally colonizing the same, which has deprived minority communities of their right to preserve their culture. In scores of locations, Buddhist temples and statues have been built on roads in predominantly Hindu and Muslim areas. Families have been forced to leave their homes and cultivable lands due to newly announced Buddhist archeological sites belonging to majority community being established. Sinhala settlers have then been subsequently brought into maintain the newly discovered Sinhala heritage sites. In Illangai Muhathuwaram, in Trincomalee district, the Ganesh Temple which existed for many years was taken away and a Buddhist temple has been built in its place. The area has now been renamed Lanka Patuna. Women from this area do not have a temple to worship in and feel this destruction of their Hindu temple a violation. In several areas the Sri Lankan government is seen to actively build Buddhist temples and statues while Hindu temples, churches and mosques remain destroyed or inaccessible.

Public Services- Health Care, Education, Grama Seveka's (government officials in charge at the village level) and Police

Women in the North and East continue to suffer due to lack of access to basic amenities and services. Even though the Sri Lankan government has made commendable progress in terms of physical rebuilding, this has primarily been in regards to roads. Hospitals are far and few in between several areas in the North while in many of the few school buildings that are in place (especially in Vanni), there is no proper infrastructure or teachers to provide children basic education. In most cases teachers in Math, Science and English were never available. While Sri Lanka is proud to be a country with 97% literacy rate, this lack of facilities in schools will induce a drastic drop if changes are not made immediately. As schools with grades 10-12 are mostly built in towns, parents of girl children are reluctant to send their children to school, due to lack of proper transport facilities and concerns for their safety. As a result there is a high drop out of girl children in the North and the East.

Women in the North and East complain that while medical care was available, many of the doctors do not speak Tamil. In several cases in Killinochchi, Mannar and Mullaiteevu women had been given wrong medicine as the doctor and the patient were unable to communicate, which has led to misunderstanding and wrong diagnoses. The lack of proper and systematic counseling for the communities that have lived through the brutal war has also led to a rise in mental illness, and women have been finding it difficult to deal with the trauma they have faced. Women's groups and non-governmental organizations are not permitted to deal with this issue since the Presidential Tasks Force restricts their work to 'hardware' activities such as construction, as opposed to 'software' relating to protection and empowerment activities.

Police stations in the North and East are almost entirely manned by Sinhala-speaking men. Women are especially affected by this as they are unable to register complaints and have the same read back to them in a language they don't understand. In most cases even if there is a women's desk in charge of Violence Against women cases either there are no women present or the female police officer speaks only Sinhala.

Language continues to hinder women when accessing other government officers and services as well. In Trincomalee even though 80% of the residents are Tamil-speaking, majority of government officers and most police stations function in Sinhala.

With the rise of violence against women statistically in the north and the east there seems to be a general misunderstanding among authorities and administrative bodies that the violence is connected to the Tamil and Muslim cultural practice. However this is detrimental not only in peace and reconciliation but also harmful for women. The rise in violence can be attributed to three reasons: One- failure of strict law enforcement and collapse of law and order situation, Two- women's lack of access to police stations and lack of trust in law enforcement authorities, including the perception that the police is insensitive to the needs of civilians, particularly women and Three - the breakdown of social structures such as family and community. Most women are without male support or any family structure which is opening them to violence and abuse. The lack of economic support has also meant that women are forced to consent to abusive relationships and economic relationships such as prostitution so as to take care of the family. It is important that the police and other government officers understand these nuances rather than consider that the Tamil or Muslim society per se is violent and abusive.

Government Assistance

The power of decision making in the resettlement areas has remained in the hands of men, mostly politicians. Community women are not allowed to be part of a decision making body. Returning women do not have the power or authority to make decisions that concern their community. There is no adequate support structure for women and a sense of belonging to a community has been lost due to suspicion and operation of para-military groups as government spies. The already existing socially and culturally constructed power hierarchies further strengthened by the current context of no access to adequate

assistance and fulfilment of basic needs. Most men in returned areas, IDP camps and otherwise too become addicted to alcohol and drugs. Their excuse is their frustrated life without proper assistance and life being shattered from every aspect. This in return increases the vulnerability of women's lives.

There are several instances where aid that has been allotted to people has not been received by the beneficiaries. In Aalim Nagar for example beneficiaries were made to sign for goods worth one hundred thousand rupees for their houses but did not receive any of the material.

Beneficiaries of the NEHRP housing scheme in Trincomalee complained that they had to pay a bribe of 50 000 if they wanted their name on the beneficiaries list.

Many female rehabilitated cadres said they were asked to sign voucher indicating Rs. 75,000 for livelihood assistance but they did not received the inputs worth Rs. 75, 000 for their livelihood activities. It seems there is corruption and sexual abuse within the aid structures, mainly within the community and government level.

Safety and Security

Individual women's safety and security have deteriorated sharply in the last three years. Women returning to their original places have found their villages and areas highly militarized. Many women have also lost their relatives, which has an impact on their mobility and the sense of community given the protection and support that comes through such structures. There has been a high reportage of child sexual abuse, rape and murder or suicide and other grave violence against women - in the North in the last few months⁴. According to the Judicial Medical Officer of the Jaffna Hospital, within the months of February and March 2012 there have been 56 cases of rape and severe violence against women and girl children reported to his hospital. In 2010 the number of incidents of violence against women according to him was 102 and in 2011 it was 182⁵.

Reports of cases of domestic violence against women have seen a drastic rise. While it can be contended that women are now able to access the legal system and organisations, it is also to be noted that in many instances the inaction of the police has also led the sense of impunity within the community in regards to violence against women.

Another critical issue faced by a number of families in the north and the east, particularly women, is that of the missing – of husbands, sons, daughters and other family members. Over the last three decades the State and para-military actors have been involved in abductions. The number of those missing goes in to the thousands. In the last phases of the war disappearances⁶, detention and arrests of Tamil people were rampant. Those disappeared in Sri Lanka have primarily been male however the affect has been on those

⁴ <http://www.thesundayleader.lk/2012/04/01/rape-in-jaffna-women-want-justice/>

⁵ http://www.bbc.co.uk/sinhala/news/story/2012/03/120309_jaffna_child_abuse.shtml

⁶ <http://www.un.org/apps/news/story.asp?NewsID=26976>

who have been left behind- women. The Government has failed to provide these families any system of recourse to help them trace their family members. While currently much of the focus is about what happened in the last months of the war, the victims from the last two decades are waiting for some help to know what has happened to their loved ones.

August 2011 witnessed what is known as the “grease-yaka (devil)” attacks, where numerous women reported being physically assaulted by men who had concealed their identities⁷. These incidents were dismissed by the Government as a figment of people’s imaginations or the work of anti-government and terrorist agencies. Meanwhile, fear and suspicion grew within the communities where these attacks have occurred. These attacks highlighted the vulnerability of these communities and women especially in the North⁸. Sri Lanka Human Rights Commission issued a statement after much pressure asserted by the women’s groups⁹.

Women in Mullaiteevu and Killinochchi complained that even when harassed by the military they were unable to raise the issue because safety of the complainant is not assured. The Military and the Government continue various registration forms and methods and women have complained of being photographed by the military for registration. Even though initially it was a family photograph, recently there has been a trend of women being asked pose for pictures alone. Women also complained that they were not even allowed to change from their night dresses. Women in these areas also complained that visits by the military increased if the military was aware that the women were alone, single or widowed. This problem is also seen in the Eastern Province. In Sinna Muhathuvaram, in Trincomalee, the army camp is located right next to a girl’s school. Parents therefore are reluctant to send their children to school fearing the safety of their girl child.

Some women have faced severe violence in the hands of the military. Cases include: 1) the Mannar rape by police in March 2001, where two women were raped by the Counter Subversive Unit and the women were threaten when they took up a case against their violators and then made to leave the country; 2) the two women who were raped at the Rettaivaikkal detention in May 2009 and had to leave the country due to constant monitoring by their abuser in uniform; and 3) the Vishvamadhu rape case of June 2010 by the military and the judgment in this case has been dragged by the Attorney General’s Department. These are but a few examples of the violence women continue to face at the hands of men in uniform. The lack of protection to the victims and witnesses, delayed investigations, and granting early bail without considering the seriousness of offense committed by the accused in these cases and many other sexual abuse cases have led to a culture of impunity and created a trend of increasing sexual violence against women. Rural Women’s Development Societies have reported that there is an increase in forced prostitution in resettlement areas. Recently there have been several complaints in the North and East of Judicial Medical Officers (JMO’s) refusing to provide medical reports in cases of sexual violence, especially when perpetrated by the military.

⁷ <http://www.thesundayleader.lk/2011/09/18/grease-yakka-still-a-concern/>

⁸ <http://groundviews.org/2011/09/01/the-grease-devil-phenomena-in-sri-lanka-a-brief-collation-of-reports/>

⁹ <http://hrcls.lk/english/?p=1776>

Cases of detention and rape from the Tamil-speaking Northern province are often transferred to the Anuradhapura courts where the language of the court is Sinhala. This virtually ensures that the victim faces a more hostile court environment. It also places the victims and family members of those detained in a new environment where they are less secure. Victims are also forced to travel for hearings and women are frequently unable to bear the cost involved in traveling for the hearings. Thus most often they give up their struggle to get justice mid way.

There is a huge backlog in terms of the legal procedure files regarding rape, sexual abuse and child sexual abuse since these cases need to be sent to the Attorney General's department for direction. This has led to a delay in investigation and legal action. Rape, sexual abuse and child abuse are heinous crimes. The victims are vulnerable and face social stigma. It is important that when such cases are brought to the notice of the legal system, strict and immediate action is taken.

Female ex-combatants continue to face harassment by the military and the Criminal Investigation Division of the police, even though they have been released after rehabilitation. They are still required to report to the local military/ police station once a month and have been pressured into marrying or becoming informants if they want the harassment to be stopped. In one case an ex-combatant living in the eastern province was raped by a police officer when she went to register in his station.

In the aftermath of UN resolution against Sri Lanka some of the women's groups have had visits by intelligent officers asking for details about their work, donors, board and staff members' contact details. Often these intelligent officers have gone in civil cloths. In the north and the east currently it is the women's groups that deal with sensitive women's issues and provide safe custody for abused women since safe-houses are very rare and high in demand given the increase incidents of sexual abuse against women and girl children. In this backdrop these visits are going to force women group to stop much needed protection work they have been doing for abused women.

4. Recommendations

The government of Sri Lanka should

1. Ensure land and property is given either in the woman's name or under joint ownership.
2. Ensure the removal of military personal undertaking civil administration and stop the economic activities of the military which harm the women in the North and the East, reducing their chances of livelihood and employment and also curtails their access to public spaces.
3. Include women in all decision making bodies at all levels in regards to development, resettlement and relocation and ensure that 50% of the laborers employed in the development and resettlement work are local women.

4. Increase women's desks in the police station and ensure Tamil speaking women are available at the desks in all police stations in the north and east and other Tamil-speaking areas.
5. Issue a policy document regarding housing schemes ensuring that while participation by beneficiaries is encouraged that single women are provided with additional support and also in ensuring that those who are most affected are provided with houses without undergoing much hassle.
6. Ensure returning communities are able to practice their religion and enjoy their cultural rights by protecting their cultural identity and language.
7. Ensure that aid received is given to the beneficiaries as promised, that there is transparency with regards to choice of beneficiaries and reasons and that there is accountability of those in charge.
8. Streamline registration processes, ensure women officers are always present when women are being questioned, photographed or visits are made to the house by the police or military.
9. Ensure women's organizations that provide psychosocial counseling are granted PTF permission and ensure proper counseling and psychosocial help is provided through government hospitals.
10. Prosecute, charge and punish those who are credibly accused rape and sexual abuse, especially those in positions of power and end impunity in regards to violence against women.
11. Enact witness and victim protection act and right to information act. These two acts are much needed to overcome the culture of impunity and reestablish law and order.
12. Implement the recommendations made at the last Universal Periodic Review and by the CEDAW committee.
13. Release a complete list of all those detained in its various camps and prisons around Sri Lanka (not only the ones detained during the last bit of war) and immediately release political prisoners who have been languishing in prison (arrested under the Prevention of Terrorism Act) without any charges.
14. Invite the special rapporteurs on Violence Against Women and for IDPs to visit the North and East.

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