

# Sri Lanka Advocacy Network

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## NGO Submission

Universal Periodic Review Second Cycle on Sri Lanka (1 November 2012)

April 23, 2012

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1. The Sri Lanka Advocacy Network (SLA) – network in Germany of human rights defenders and non-governmental organisations – submits this report to the Office of the High Commissioner for Human Rights (OHCHR) on the situation of human rights in Sri Lanka for being considered in the second cycle of UPR on Sri Lanka to be reviewed at 1 November 2012. According to the framework for the second UPR cycle, emphasis should be given to the recommendations accepted by the country under review. Therefore, a main source of reference are the documents A/HRC/8/46 together with the responses of the Government of Sri Lanka to the recommendations contained in document A/HRC/8/46/Add.1.

2. With this stakeholder report, SLA emphasises the human rights situation in particular in relation to obligations of the government of Sri Lanka arising from international cooperation contained in a number of human rights treaties to which Sri Lanka is party (see A/HRC/WG.6/2/LKA/2, page 2, Scope of international obligations).

## **I. BACKGROUND AND FRAMEWORK**

### **A. Scope of international obligations**

3. Sri Lanka is not a party to the Optional Protocol of the Convention Against Torture, either to the Convention for the Protection of All Persons from Enforced Disappearance. Sri Lanka also did not access to the Rome Statute of the International Criminal Court.

4. According to document A/HRC/8/46, para. 82, A.4, Sri Lanka accepted the recommendation by Ukraine to “*Cooperate actively with international mechanisms (...) as well as special procedures of the Human Rights Council*”. Until now, Sri Lanka denied the invitation to a number of mandate holders of the UN Special Procedures despite several and continuous requests: Special Rapporteur on Independence of Judges and Lawyers, Independent Expert on Minority Issues, Working Group on Enforced or Involuntary Disappearances, Special Rapporteur Human Rights Defenders, Special Rapporteur on Freedom of Expression, Special Rapporteur on extrajudicial, summary or arbitrary executions.

5. Sri Lanka was member of the UN Human Rights Council in the years 2006-2008, and thus, is subject to the highest human rights standards. But as already noted in 2008 in the

Compilation prepared by the OHCHR (A/HRC/WG.6/2/LKA/2, para. 2), the application of treaties in domestic law still remains in question by the Supreme Court, and the Government did not address the issue by an appropriate legislation at all.

6. Although Sri Lanka is a party to a number of pertinent treaties, the Government has not been active accordingly and did not undertake effective investigations and other accountability processes either; i.e. towards its obligations to the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the 1949 Geneva Conventions, Common Article 3 of which applies to non-international armed conflicts, as well as relevant customary international law obligations, which in the area of international humanitarian law include the principles of distinction and proportionality to protect innocent civilians from harm. Even in relation to the Lessons Learnt and Reconciliation Commission (LLRC; see also below), the Government failed with international standards in terms of independence, competence, adequate mandate and authority, witness protection, public report in all recognised languages, and government response in a timely and transparent fashion and taking appropriate accountability measures.

7. Cooperation with HR mechanisms goes beyond the submission of reports and information. Meaningful cooperation with the OHCHR requires the government of Sri Lanka to reveal the implementation of the treaties, the recommendations of treaty bodies, of special procedures, and UPR recommendations at national level.

## **B. Constitutional and legislative framework**

8. According to document A/HRC/8/46, para. 82 / A.15, A.21 and A.39, Sri Lanka accepted recommendations saying “*Ensure the adequate completion of investigations into the killings of aid workers*” (USA)<sup>1</sup>, “*Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes*” (Sweden), and “*Effectively investigate allegations of attacks on journalists, media personnel and human rights defenders and prosecute those responsible*” (Ireland). The report of a commission of inquiry appointed in 2007 to inquire into this and other serious human rights violations, is yet to be published. In general, there has been little progress on many of those recommendations made in UPR 2008. Compared to the first UPR in 2008, the human rights situation in Sri Lanka remains dismal i.e. in terms of impunity, inaction on implementing accountability, lack of independent investigations. Abductions and disappearances of persons continue with no serious attempt being made either to put an end to such incidents or to deal with those alleged to be responsible. Related to allegations on killings during the final stage of the war against LTTE, the government continues to deny the scale and gravity of human rights abuses. Even the LLRC recommends that independent investigations be conducted into those allegations.

9. Together with the 18<sup>th</sup> amendment to the Constitution and the Presidential Commission of Inquiry Act of 1948, both seriously question the independence of any commission of inquiry as the President is authorised to set the Terms of Reference for Commissions, appoint and remove members, give directions to the Commission’s secretary and decide whether or not the report or its recommendations are made public. In the same line, the President established the

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<sup>1</sup> Related to the case of 17 staff members working for the aid group Action against Hunger (Action Contre la Faim; ACF) killed in August 2006. In response to the failure of Sri Lanka’s government to account for these crimes, ACF appealed to the European Union, to constitute an international inquiry into the massacre.

LLRC in 2010. The LLRC was denied the mandate to carry out any investigations into human rights abuses or to make any recommendations for bringing perpetrators to justice.

10. The UN Panel of Experts set up by UN General-Secretary Ban Ki Moon stated in 2011, that the LLRC *'fails to satisfy key international standards of independence and impartiality, as it is compromised by its composition and deep-seated conflict of interests of some of its members.'* The commission *'does not meet international standards for an effective accountability mechanism'*. Despite all evidence of failed investigations and accountability, the government of Sri Lanka continues to reject calls for an international assistance and independent investigation, including the rejection of UN Human Rights Council's resolution 19/2 of March 2012. Whereas the UN Panel of Experts produced a report in April 2011 containing a large number of violations committed by both sides during the armed conflict.

## **II. Promotion and Protection of Human Rights on the ground**

11. Since there will be presented details of the following aspects by others, SLA would like to draw special attention to some outcomes of UN Committees in recent time focussing on the lack of accountability. The Committee against Torture stated in 2011 (CAT.C.LKA.CO.3-4)<sup>2</sup> having received extensive allegations of torture and ill-treatment, including disappeared persons, acts of cruelty and ill treatment by the police, harassment of humanitarian workers, human rights lawyers, journalists and ordinary persons; among others. The Sri Lankan delegation responded that some of the issues will be pursued within military law, while until now, none of the findings, if there is any, were made public. In addition, the delegation refused to answer questions on accountability related to attacks on journalists and human rights defenders. The Committee further questioned the willingness of the government to ratify the Optional Protocol to the Convention against Torture, the Convention against Enforced or Involuntary Disappearances and the Rome Statute of the International Criminal Court. A study in 2009 by Rehabilitation and Research Centre for Torture Victims in Copenhagen stated also a clear lack of accountability.<sup>3</sup>

12. According to document A/HRC/8/46, para. 82 / A.27, Sri Lanka accepted the recommendation by Sweden saying *"Adopt measures to investigate, prosecute and punish those responsible for serious human rights crimes such as enforced disappearances"*. Whereas the report of the UN Panel of Experts concludes (page 116) saying that Sri Lanka has a poor record in relation to enforced disappearances for decades and up to the present time which requires international, immediate and serious attention. The UN Working Group on Enforced or Involuntary Disappearances has identified Sri Lanka as having the second largest number of disappearance cases in the world. In January 2011, the WGEID<sup>4</sup> reported that 5,636 cases remain unanswered by the government; among them the case of Prageeth Ekmaligoda, cartoonist and journalist who is missing since 26 January 2009. Approximately 100 others have disappeared since then.

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<sup>2</sup> Committee against Torture, Forty-seventh session, 31 October–25 November 2011, Consideration of reports submitted by States parties under article 19 of the Convention, advance unedited version, Concluding observations of the Committee against Torture, Sri Lanka.

<sup>3</sup> See *"Study on Prevalence, Determinants and Causes of Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka"* via <http://rct.org/resources/partner-publications/alarming-new-study-on-torture-in-sri-lanka.aspx>.

<sup>4</sup> UN Working Group on Enforced and Involuntary Disappearance.

## **II.1. Administration of justice and the rule of law**

13. Emergency Regulations lapsed at the end of August 2011, but the Prevention of Terrorism Act remains in place and further legislation has been introduced that allows the government to continue alike under formal emergency regulation.

14. Sri Lanka accepted Austria's recommendation saying "*Adopt measures to ensure the effective implementation of legislative guarantees and programmes for the protection of witnesses and victims*" (A/HRC/8/46, para. 82 / A.28). Nevertheless, up to the date, nothing has happened with regard to legislation. Witnesses are highly vulnerable to be killed, as the case of Chandrasiri Dasanayaka reveals, who was killed on 15<sup>th</sup> April 2012 in custody of Wadduwa Police Station.

15. In relation to human rights defenders, Sri Lanka accepted the following recommendations: "*Ensure a safe environment for human rights defenders' activities and that perpetrators of the murders, attacks, threats and harassment of human rights defenders be brought to justice*" (A/HRC/8/46, para. 82 / A.17 by Poland) and "*Take measures to ensure access to humanitarian assistance for vulnerable populations and take further measures to protect civilians, including human rights defenders and humanitarian workers*" ((A/HRC/8/46, para. 82 / A.14 by Canada and Ireland). Up to date, any healing therapy of traumata is denied to be implemented by any non-governmental organisation. Based on the recent experience with harassment of human rights defenders even in the buildings of the Palais des Nations on occasion of the 19<sup>th</sup> session of the Human Rights Council, the government has revealed itself as perpetrator.

## **2. Right to life, liberty and security of the person**

16. According to document A/HRC/8/46, para. 82 / A.38, Sri Lanka accepted Mexico's recommendation saying "*Continue to strengthen its activities to ensure there is no discrimination against ethnic minorities in the enjoyment of the full range of human rights, in line with the comments of (...) CEDAW*". Also accepted was Algeria's recommendation saying "*Give special attention to the rights of women and further promote education and development and their representation in politics and public life*", while CEDAW stated in 2011 (CEDAW/C/LKA/CO/7) that levels of participation were 'extremely low'. This is even true for the LLRC with one female and seven male staff members.

17. In the North of Sri Lanka, the high militarisation is a cause of fear in particular among female-headed households. They fear that the military presence and proximity could lead to problems. Allegations are saying that particularly former female LTTE combatants are in a situation of 'comfort women'. Widows and single women fear staying alone in their homes especially at nights. There are numerous reports of cases of gender based violence in the areas of return while victims are too scared to speak in public. The Channel 4 documentary 'Sri Lanka's Killing Fields' showed scenes of sexual violence, abuse and killings of female Tamil fighters and civilians during the final phases of the war. The government of Sri Lanka refused up to the date to start proper investigations in those matters.

## **3. Freedom of expression, association and peaceful assembly, and right to participate in public and political life**

18. Sri Lanka accepted the recommendations by Denmark saying “*Take measures to improve safeguards for freedom of the press*” and by Poland saying “*Adopt effective measures to ensure the full realization of the right to freedom of expression for all persons*” (A/HRC/8/46, para. 82 / A.40 and A.41). Since 2008, the media and other critics are intimidated and harassed by the government up to the rank of ministers. A number of media workers have been killed in Sri Lanka without any outcome in terms of criminal investigation; among them the case of Lasantha Wickramatunga, editor of the *Sunday Leader* newspaper, shot in January 2009 by unidentified gunmen. Others have been arbitrarily detained, tortured and allegedly disappeared while in the custody of security forces. Many journalists have left the country in response to death threats.<sup>5</sup>

### **III. Conclusion**

19. This brief overview allows the conclusion that the culture of impunity in Sri Lanka is linked with the inadequacy of legal and institutional provisions as well as with a biased approach by the government and several administration levels to deal with severe human rights violations and violations against humanitarian law. There is a true need of an international human rights monitoring and with assistance mechanisms in order to neutrally investigate and report human rights violations and promote remedial measures, including criminal investigation, prosecution and capacity-building of domestic human rights mechanisms.

### **IV. Recommendations**

20. Accept HRC Resolution 19/2 and allow the entry of international human rights monitors.
21. Agree with OHCHR a timeframe for implementing the recommendations of the LLRC.
22. Regularly report on implementing the LLRC’s recommendations to the HRC.
23. Immediately launch credible investigations into the disappearances reported to the LLRC, bring those proven responsible to justice, pass an effective witness protection legislation to enable witnesses to give evidence fearlessly before such investigation mechanisms.
24. Launch an effective domestic accountability mechanism that meets international standards, to investigate the allegations of violations committed by both sides during the armed conflict, which were found credible by the UN Panel of Experts, and cooperate with international accountability mechanisms.
25. Extend a standing invitation to all Special Procedures, in particular to the Working Group on Enforced and Involuntary Disappearances.
26. Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance and accept the competence of the Committee under articles 31 and 32.
27. Sign and ratify the Optional Protocol to CAT.
28. Cease the harassment, threats, attacks and murders of and ensure a safe environment for human rights defenders, including media workers and journalists.
29. Cooperate with the Special Rapporteur on the situation of human rights defenders.
30. Ratify the Rome Statute on the International Criminal Court.
31. Adopt measures to strengthen the rule of law; prevent human rights violations, including enforced disappearances, extrajudicial executions and torture, gender based violence; ensure punishment of those responsible.

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<sup>5</sup> See also Sri Lanka Briefing Notes, issues nos. 02 and 03, March 2012.