

SRI LANKA

TAMIL CENTRE FOR HUMAN RIGHTS – TCHR

UN UNIVERSAL PERIODIC REVIEW 2ND CYCLE
14TH SESSION OF THE UPR WORKING GROUP, 22 Oct – 5 Nov 2012

This submission is presented by the Tamil Centre for Human Rights – TCHR under the UN Human Rights Council resolution 5/1, in accordance with General Assembly resolution 60/251 of 15 March 2006 and Economic and Social Council resolution 1996/31 of 25 July 1996.

SUMMARY

Universal Periodic Review - Summary of views - A/HRC/8/L.10/Add.1 - 26 June 2008

According to the Working Group on the Universal Periodic Review (A/HRC/8/46 -13 June 2008), the views of Sri Lanka, concerning the recommendations and conclusions, as well as voluntary commitments presented before the adoption of the outcome by the plenary, did not sufficiently address several important issues *during the interactive dialogue in the Working Group* (A/HRC/8/LKA/Add.1 and Add.2).

SESSION OF THE UPR IN JUNE 2008

In the last follow-up to the UPR process on Sri Lanka, many states reminded Sri Lanka about several important matters, including the need to: involve civil society organizations, including those from multi-ethnic communities and conflict affected areas in Sri Lanka's north and east; investigate and prosecute all allegations of extrajudicial, summary or arbitrary killings and bring the perpetrators to justice in accordance with international standards; ensure the adequate completion of investigations into the killings of aid workers, including by encouraging the Presidential Commission of Inquiry; prosecute and punish those responsible for serious human rights crimes such as enforced disappearances; adopt measures to ensure the effective implementation of legislative guarantees and programmes for the protection of witnesses and victims; take measures to protect the rights of IDPs, including long-term housing and property restitution policies that meet international standards, and so on.

In Sri Lanka, abductions, torture, and assassinations of civilians, media personnel, social workers and human rights activists continue to date. The government has not arrested, investigated and punished anyone involved in those crimes.

The security forces and intelligence services continue to be a threat to the public.

SRI LANKA'S VOLUNTARY PLEDGES IN THE 1ST CYCLE OF UPR

These consisted of: National Plan of Action; dialogue and cooperation with the Office of the High Commissioner for Human Rights to strengthen national mechanisms; Witness and Victim Protection Bill was to be introduced in Parliament and measures taken to implement legislation including establishment of the necessary institutions; The Ministry of Disaster Management and Human Rights was to launch a national human rights awareness campaign; The Ministry of Disaster Management and Human Rights was to organize a regional seminar for parliamentarians on a human rights related theme in 2008; Sri Lanka was to take measures for effective implementation of the 13th Amendment to the Constitution and to improve and upgrade detention facilities.

- ➔ It is to be noted that presently there is no longer a Ministry of Disaster Management and Human Rights in Sri Lanka.
- ➔ Even though Sri Lanka speaks about a National action plan, this has not been submitted to Parliament for action. Therefore this is just eyewash for the UPR.

Witness and victim protection

Sri Lanka voluntarily made a pledge in June 2008 to introduce a Witness and Victim Protection Bill in the parliament.

The Sri Lankan Parliament had first considered legislation to protect victims and witnesses, the aptly titled “*Draft Bill for the Protection of Victims of Crime and Witnesses*”, in 2007, and this same legislation was reintroduced in June 2008. Yet over the past three years, little has been done to promote its passage.

Many people who participated in the LLRC and spoken openly about the disappearances, then became targets of the security forces and the intelligence service.

On 20 September 2008, the complainant Mr. S. K. A. S. Nishanta Fernando in a torture case before the Supreme Court was shot and killed by unidentified gunmen.

In November 2010, in Hatton, Devarathnam Yogendra cooperated with the Bribery Commission to catch a police officer who had been accepting bribes. A representative from the Bribery Commission watched as the police officer accepted a bribe, and arrested him on charges of bribery. Later Yogendra was harassed, accused of fabricated offenses, assaulted, and threatened with death as a result of his involvement -- by the Sri Lankan police. Police repeatedly abused the judicial system, filing false charges against Yogendra.

13th Amendment to the Constitution

As per the 13th Amendment, a product of the Indo-Sri Lanka accord of 1987, Colombo agreed to devolve some powers to the provinces. One of the key provisions of the 13th Amendment is that the north and east is merged into one province, subject to a referendum.

Implementation of the 13th Amendment to the Constitution is the trump card that Sri Lanka plays everywhere when national political issues are raised in international forums including the Human Rights Council and the treaty bodies. President Mahinda Rajapaksa who promised to go beyond the 13th Amendment said a few months back, that the *Parliamentary Select Committee (PSC)* would now have to suggest a solution. This is like earlier governments not finding any solution to the island’s long bloody conflict. The present government, with over a two-thirds majority and a President with executive powers is failing to implement the 13th Amendment to the Constitution.

Secret detention and detainees

According to statistics collected by TCHR, more than 60,000 persons were imprisoned for political reasons. There is no central registry in Sri Lanka and many arrested persons have been reported missing.

Tamil women prisoners undergo physical and mental torture by the guards and some are victims of sexual violence perpetrated on them by the male guards. Since May 2009 the surrendered women combatants and civilians have been facing sexual violence.

Sri Lanka refuses to inform family members about the whereabouts of the hundreds of detainees who surrendered to military personnel at the end of the war. According to many reliable sources, thousands of civilians and combatants who surrendered to the Sri Lanka security forces are believed to have been killed and others are in secret and incommunicado detention centres in thick forest areas.

The ICRC is not permitted to visit any of these detention camps which have been under full surveillance of the Sri Lankan security forces and affiliated paramilitary groups since May 2009.

TCHR meetings with a few released detainees from Sri Lankan detention centres have established that there are secret detention centres managed by the Sri Lankan intelligence service, paramilitary group Tamil Eelam Makkal Viduthalai Pullikal known as Karuna group and EPDP Douglas Devananda.

Karuna and Douglas Devananda are cabinet ministers in the Sri Lanka government.

TORTURE

The Government does not condone torture or extra-judicial executions under any circumstances and refutes any implicit suggestion that it has been complicit in torture or extra-judicial executions. (A/HRC/8/46 /Add.1 25 August 2008)

All the reports of the Special rapporteur on Torture detail the fact that torture has been systematically carried out in Sri Lanka for many years.

There is ample evidence of widespread, persistent and serious torture using iron bars, wooden batons and various torture tools. These cruel and inhumane acts are violations of CAT, ICCPR and UDHR.

Sri Lanka has not signed the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

Enforced disappearances

Enforced disappearances is a campaign by the security forces and paramilitaries against anyone opposing the politics of the government. Sri Lanka has the highest number of disappearances and is the world's worst perpetrator of enforced disappearances. This constitutes a crime against humanity. Those who are causing most of the disappearances come in unmarked vehicles (often the notorious "white vans") and act with total impunity. Sometimes, victims have been arrested for questioning and subsequently disappeared.

Many reports of Presidential Commissions that have inquired into the evidence of disappearances have not been published. Furthermore no action has been taken on their recommendations.

Enforced disappearances in Sri Lanka: Out of the total number of disappeared; approximately 15% to 20% of victims were children below the age of 18.

Sri Lanka has not signed the *International Convention for the Protection of All Persons from Enforced Disappearance*.

Unaccounted

Before the bloody war came to an end in May 2009, the Government banned all independent and international media from entering the war zone, and forced the UN and other international humanitarian organizations to leave the conflict areas. Then they began systematically killing civilians, journalists, human rights activists and humanitarian workers. This was done to prevent the truth coming out of the war torn areas.

The Bishop of the Mannar Catholic Diocese, Rt. Rev. Dr. Rayappu Joseph, said in his submission to the Lessons Learnt and Reconciliation Commission that, according to the Government Secretariats, the population in the Vanni region (Northern part of Sri Lanka) in early October 2008 was 429,059. The total number of people, however, who emerged from the Vanni into government-controlled areas since then, according to UN OCHA 2009 statistics, is estimated to be 282,380; this means that over 146,679 people in the Vanni are not accounted for post-war.

In the North-East there are over 90,000 war widows and more than 50,000 of them are below the age of 35. They receive no help from the Government.

Sri Lanka has not signed the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.*

Freedom of opinion and expression

On 8 January 2009, Mr. Lasantha Wickrematunga, chief editor of the Sunday Leader was assassinated by unknown gunmen.

On 6 November 2009, the Special Rapporteur, together with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Special Rapporteur on the situation of Human rights defenders sent an urgent appeal to the Government regarding the situation of Ms. Frederica Jansz and staff members of the Sunday Leader which often reports on cases of alleged corruption and abuse of authority in Sri Lanka. Ms. Jansz is the Editor-in-chief of the Sunday Leader.

On the morning of 6 January 2009, several unidentified individuals raided the Sirasa TV in Pannipitiya in Colombo, armed with metal bars, rifles and pistols. The attackers destroyed the room with explosives, causing damage to broadcasting equipment.

On 8 March 2010, the Government of Sri Lanka was planning to arrest Mr. Weliamuna, the head of Transparency International's Sri Lanka office, in connection with the alleged misuse of funds. It was a State media campaign against the organisation.

Threats, harassment, intimidation, vilification and incitement against human rights defenders who are engaged with the UN Human Rights Council sessions have been systematic. Especially **Dr. Pakiasothy Saravanamuttu, Ms. Nimalka Fernando, Ms. Sunila Abeysekera and Mr. Sunanda Deshapriya**, who were particularly targeted for their support of the US resolution against Sri Lanka in the 19th session of the Human Rights Council.

TCHR General Secretary and many other activists who attend the Human rights council became victims of the smear campaign by the government of Sri Lanka and their media.

Impunity

TCHR is gravely concerned about the prevailing climate of impunity in Sri Lanka, reported by human rights organisation, activists and other civil society actors, over many years. The Sri Lanka government has systematically failed to investigate the security personnel and the paramilitary groups, even though there is strong supporting evidence of torture and other violations.

The staff of the Attorney General's office have become the spokespersons of the Ministry of Defence and justify the violations carried out by the Security personnel. There is no independent monitoring mechanism available in Sri Lanka.

Violence against women, sexual harassment, rape, especially of Tamil women continues with impunity.

The Karuna group and EPDP members are responsible for many abductions in Amparai, Batticaloa Trincomalee, Vavuniya, Vanni, Mannar and Jaffna.

Independent Group of Eminent Persons (IIGEP)

The Independent Group of Eminent Persons – IIGEP was established by the Government of Sri Lanka in February 2007. The IIGEP was intended to oversee the Presidential Commission of Inquiry (CoI), appointed to inquire into 16 cases of gross human rights violations, and headed by India's former chief justice P. N. Bhagwathi. It issued three public statements raising serious concerns about the conduct of the premier prosecution body:

- ➔ Their suggestions had been ignored or rejected by the government, whose correspondence with them was "characterised by a lack of respect and civility".
- ➔ The government probe into abuses did not meet even basic minimum standards and the Presidential Commission's Public Inquiry Process fell short of International norms and standards.
- ➔ There was a "lack of political and institutional will to investigate and inquire into the cases before the (government) commission,"

On 6 March 2008, the IIGEP announced that they were quitting Sri Lanka, accusing the government of failing to tackle the issue - Sri Lankan authorities did not meet even the basic minimum standards in probing serious abuses.

Indian fishermen killed by Sri Lanka Navy

For a long time, Indian fishermen from nearby Tamil Nadu have been killed in the Palk Straits in a brutal manner by the Sri Lankan Navy. Many fishermen and their boats were taken into custody by Sri Lankan naval personnel whenever they fish near the International Maritime Boundary Line (IMBL). It has become a regular practice of the Sri Lankan navy to throw fishermen into the sea, if they refuse to part with their fish catch.

According to Civil Society sources in India, over 550 fishermen were killed in the last 30 years.

Brief summary of fishermen and boats apprehended by the Sri Lanka Navy.

2009 127 fishermen with 32 boats were apprehended;

2010 34 fishermen with 4 boats were apprehended

2011 164 Indian fishermen with 31 boats were apprehended.

2012 19 March (*upto*), 107 fishermen with 20 boats were apprehended.

Recommendations

Establish an independent and international body on: discrimination, arbitrary detentions, torture, freedom of expression and movement, enforced disappearances, and other fundamental human rights.

All political detainees to be released or brought to justice without any further delay. Also the list of names of those who surrendered to the military at various check points at the end of the conflict should be released to the public.

Sri Lanka should allow all UN Mandate holders to visit Sri Lanka without any further delay.

Threats, harassment, intimidation, vilification and incitement against human rights defenders especially those who lobbied in the 19th session of the HRC should be stopped.

Sri Lanka has not delivered on commitments it made during the 1st Periodic Review in June 2008, including promises to take all necessary measures to prosecute and punish perpetrators of human rights violations and violations of international humanitarian law. The government must be held accountable for its failure to deliver on these and other commitments pledged.

The South Indian fishermen, fishing in the International Maritime Boundary Line (IMBL), should not be harassed, arrested or killed by the Sri Lanka Navy.

Sri Lanka should be encouraged to ratify the Rome Statute of the International Criminal Court.

Tamil Centre for Human Rights - TCHR

The Tamil Centre for Human Rights has representatives in all parts of Sri Lanka, including in the North and East.

TCHR has been closely following the human rights situation in Sri Lanka for nearly twenty two years and has produced numerous situation and fact finding mission reports for the information of the participants, mandate holders and various sections in the OHCHR. TCHR representatives have been participating in all UN Human Rights Forums since 1990.

The Tamil Centre for Human Rights (TCHR) officially participated in the United Nations : **(1)** In 1993, held an information stall and a photo exhibition in the UN 2nd World Conference on Human Rights held in Vienna, Austria, from 14-25 June. **(2)** In 2001, officially participated in the NGO forum of the UN World Conference Against Racism - WCAR in Durban, South Africa **(3)** TCHR representatives also attended the main WCAR conference **(4)** In 2005, officially accredited by the UN to participate in the World Summit on the Information Society in Tunisia **(5)** In 2006, officially accredited to participate in the UN Conference on Anti-corruption Measures, Good Governance and Human Rights, in Warsaw, Poland **(6)** In 2007, officially participated in the 'UN 7th Global Forum, Re-instating good governance', in Vienna, Austria. TCHR also participates in meetings of Treaty bodies and submits reports to the same.

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