

**Universal Periodic Review (UPR)
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Human Rights Situation in Sri Lanka

A joint submission of :

Sri Lanka Ecumenical Coalition for UPR 2017¹

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¹ **Religious and Priests for Human Rights, Alliance for Justice, Human Right Office Kandy, National Christian Evangelical Alliance of Sri Lanka, Franciscans International (FI), Dominicans for Justice and Peace, Congregation of Lady of Charity of the Good Shepherd, the World Evangelical Alliance (WEA) and Marist International Solidarity Foundation (FMSI).**

A. INTRODUCTION

1. Sri Lanka Ecumenical Coalition for UPR 2017 is a collective of Christian faith based groups in Sri Lanka and their international partners, which came together to engage with the review of Sri Lanka through the UPR in 2017, based on their experiences of monitoring and reporting on the human rights situation in Sri Lanka, advocacy and other initiatives to assist survivors and victims' families.
2. Due to limits in capacity and expertise, the human rights issues addressed in this submission are limited to the rights of the child, language rights, freedom of religion, prison conditions, transitional justice and enforced disappearances.

B. RIGHT OF THE CHILD

Second-Cycle UPR Recommendations

3. During the UPR session in 2012 the Government of Sri Lanka (GoSL) committed to strengthen the protection of the rights of the child in areas such as child labour, domestic violence, trafficking and sexual exploitation.²

Legal and Institutional Framework

4. In 2015, the GoSL ratified the Palermo Protocol on trafficking in person. Since 2012, the National Child Protection Authority (NCPA), which is under the Ministry of Women and Child Affairs, took several initiatives such as establishing 24-hour hotline to receive complaints on child abuse and child rights violations; educational initiatives to empower children to protect themselves; and the establishment of child protection committees. The Government has not yet approved the draft National Child Protection Policy, intended to ensure effective coordination among all organizations and individuals working for the protection and development of children in Sri Lanka.

Promotion and Protection of Human Rights on the Ground

5. According to the Chairperson of the NCPA, the hotline service is dedicated to receive complaints on child abuse and child right violations. In 2015 and 2014 there were 10732 and 10375 child abuse cases reported. Of the complaints reported in 2015, the highest number of complaints at 2,317 was related to cruelty to children. While 1,463 cases were on not receiving compulsory education, 885 cases of neglecting of children, 735 cases on sexual harassment and 433 cases of rape, and 365 cases on grave sexual abuse.³ From January to July 2016 NCPA received 6,548 child abuse related complaints.⁴ The figures show an increase of crimes against children in Sri Lanka. In recent years, high statistics of sexual abuse of children has risen. According to the figures tabled in Parliament in 2013, there were 1750 cases of child rape, 5,475 cases of child molestation and 1,194 cases of child abuse in 2012⁵ while in 2014, in the District of Puttalam alone, the hospital reported 108 child sexual abuse cases.
6. The Penal Code Amendment in 1995 has made incest a grave crime. The amendment was a response to the evidence of high incidents of incest in the country. In spite of the

² See the UPR WG Report on Sri Lanka, paras 127.70-73

³ http://www.colombopage.com/archive_16A/Jan26_1453794816CH.php

⁴ <https://roar.lk/reports/child-sexual-abuse-sri-lanka-may-bigger-problem-imagined/>

⁵ See [https://www.unicef.org/srilanka/VAC\(3\).pdf](https://www.unicef.org/srilanka/VAC(3).pdf)

amendment high number of cases of incest continue to increase. The tolerance of incest in some communities and the reluctance to react against it by reporting it as a form of abuse seems to indicate a permissive attitude to incest that has its roots in an earlier local tradition. It also seems to connect with customary norms of male dominance. Male dominance, i.e. the control of female sexuality, and perceptions of women as man's property are reflected not only in domestic violence and other forms of gender-based violence, such as rape and sexual harassment but also incest. Though the incest does not have social legitimacy, it is a hidden phenomenon which remains within the family setting because of the shame could bring attached to the family relationship. The incidences of incest are occasionally brought to the court thus lead to think the nonexistence of the incest in the country.

7. Social protection for children who need care and protection has been much neglected in the country. The state protection remains focused on the institutionalization of children and continue to be reliant upon voluntary homes. The lack of a coherent national policy on the deinstitutionalization of children means children victims of abuse and neglect, children with disabilities and children living in poverty continue to be institutionalized. A recent study found that of the 14,179 children in institutional care, 50% of the children had a single parent while 32% have both parents.⁶ Many of these children could be reunited with their families, but Sri Lanka currently lacks programs to help reunite children with their families.

Redress and Impunity

8. The culture of impunity that has been aggravated by deficient investigation by the police, long delay of the processing of the child abuse cases in the justice system and the weak sentence of the perpetrators remain one of the biggest challenges in tackling child sexual abuse and exploitation. Delays in the judicial process of child abuse take as long as eight years or more to prosecute criminals who abuse children, the delay traumatized thousands of children whose cases are struck in the courts. Many of these children are forced to reside in safe houses away from their families. Many times to appear in the court room is a traumatizing experience for the children. The education of judges, lawyers and prosecutors in regard to the appropriate handling of sexual violence cases remain a priority.
9. Furthermore there has been a trend of releasing perpetrators of sexual violence with suspended sentences which goes against the Penal Code Amendment of 1995 which made provision for heavy jail sentences. This makes the public lose trust in the judicial system and fuels a culture of impunity.
10. Many of these cases fall through the cracks due to the victimization of the complainants. There are dangers for the victims as well as witnesses. They are subjected to extreme intimidation. It is hard to believe that Sri Lanka's Protection of Victims of Crime and Witnesses Act will remedy this in any significant aspect unless the Authority established under this law is led by independent and competent individuals.

Recommendation to the GoSL

- 1. Agree to a specific time frame within which investigation, hearing and judgment of all cases of child abuse, sexual and gender based violence should be completed.**
- 2. Take measures to raise awareness to prevent sex with an underage children and incest and incestuous child abuse which is a serious crime.**

Trafficking of children

⁶ https://www.unicef.org/srilanka/Current_Childcare_Analysis_book_Final.pdf

11. Within the country, women and children are subjected to sex trafficking in brothels. Boys are more likely than girls to be forced into prostitution in coastal areas for child sex tourism. Some child domestic workers in Colombo, generally from the Tamil tea estate sector are subjected to physical, sexual and mental abuse, nonpayment of wages and restrictions of movement indicators of labour trafficking.⁷ Though the government ratify the Palermo Protocol on trafficking in person in 2015, its effects is very insignificant.
12. The government demonstrated limited progress in law enforcement efforts to address human trafficking. Though the government has Standard Operating Procedures (SOPs) for the identification of victims, officials' ability to implement these procedures and ensure victims were not jailed or penalized for crimes committed as a direct result of being subjected to human trafficking remained impaired. The ignorance of the government officials about the issue of human trafficking resulted in a failure to charge the perpetrators under the trafficking statute leading the issue of human trafficking being unnoticed or denied within the country.
13. Provisions for victim protection is inadequate, provided no specialized services to the victims and mix child victims with criminal in state institutions.

Recommendation to the GoSL

- 1. Provide capacity building for law enforcement officials on early identification, referral, rehabilitation and social integration of trafficking victims including by providing them with access to shelters, legal, medical and psychosocial assistance.**
- 2. Take concrete measures to prevent trafficking in person; protect the victims and bring those involved to justice.**
- 3. Address the legal gaps that impede the prosecution of traffickers under the article 360(c) of the Penal Code.**

Child labour

14. We received information on children in Sri Lanka who are engaged in child labour, including in agriculture and in domestic work. There are no laws regulating employment in third party household which leaves children ages 14-18 employed as domestic workers, vulnerable to exploitation.⁸ Though the minimum age for compulsory education is 14 years, children from Malayaha Tamilar community (often living in estates), and in the rural areas are not able to complete their 10th standard of education due to poverty, lack of teachers, transportation to schools, sanitation and the mind set of people which limit specially the Malayaha Tamilar community children to study only up to primary education. In many estates, there are schools only up to 8th standard. The newspaper "Sunday Times" on 18th September 2016 reported that the many children of school going age of the village in Naula Divisional Secretary area in Matale, in Central Province, were unable to attend school due to poverty and were forced to work in the tea estates, paddy fields and in other menial jobs to support their families.⁹ The situation is same in the Northern province especially in war affected area.
15. We have received reports of children being employed as domestic workers due to debt bondage and of children from tea plantation sector being trafficked internally to perform domestic work in Colombo. Some child domestic workers are subjected to physical sexual

⁷ <https://www.state.gov/documents/organization/258876.pdf>

⁸ <https://www.dol.gov/sites/default/files/images/ilab/child-labor/Sri%20Lanka.pdf>

⁹ <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20160918/284717681222778>

and emotional abuse. Children predominantly boys are trafficked internally for commercial sexual exploitation in coastal areas as part of the sex tourism industry

Recommendation to the GoSL

- 1. Ensure that the legal framework includes protections for children engaged in domestic work.**
- 2. Eliminate barriers to education including difficulties with transportation to schools, lack of sanitation and clean water and food, and an inadequate supply of teachers.**

C. LANGUAGE RIGHTS

Second-Cycle UPR Recommendations

16. The GoSL accepted the recommendation to strengthen the capacity of public institutions to enable the effective implementation of the trilingual policy.¹⁰

Legal and Institutional Framework

17. The Constitution of Sri Lanka guarantees the equal rights for all citizens, as stipulated in Article 12,¹¹ while Article 15 (7) provides for restrictions on Articles 12, 13(1), 13(2) and 14 in the interest of “national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.”¹² Article 18 of the Constitution declares Sinhala and Tamil as being the Official Languages of the State, with English as the link language. Article 19 recognizes Sinhala and Tamil as National Languages of Sri Lanka.¹³

Promotion and Protection of Human Rights on the Ground

18. The Tamil language gained recognition as an official language through the 13th Amendment to the constitution.¹⁴ While this was a welcome move by the then administration, the official language policy as enshrined in the constitution is yet to be fully realized. It is only in the Northern and Eastern provinces of Sri Lanka that some government officials perform their administrative duties in the Tamil language. While there has been some recruitment of Tamil-speaking police officers, and some training of police officers in Tamil, the need is far greater than the current provision. Even in the majority Tamil-speaking North and East, many police stations are unable to receive complaints in Tamil as the personnel are entirely Sinhala-speakers. This has resulted in a breach of the linguistic rights of the ethnic Tamil minority.¹⁵

¹⁰ See A/HCR/22/16 para 127.55

¹¹ Article 12 of Constitution stipulates equality before the law and stipulates that no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds

¹² It is important to note, however, that such restrictions need to be prescribed by law, i.e. legislation.

¹³ See also Article 14(1)(f) of the Constitution provides the freedom for each citizen by himself or in association with others to enjoy and promote his own culture and to use his own language. According to Article 27(2), concerning Directive Principles of State Policy, the State is pledged to establish in Sri Lanka a Democratic Socialist society, the objectives of which include [mentioned in Article 27 (c) and (g)]; Article 27 (c): the obligation to provide for all citizens an adequate standard of living for themselves and their families, including the full enjoyment of social and cultural opportunities; and Article 27 (g): to raise the moral and cultural standards of the people, and to ensure the full development of human personality.

¹⁴ 13th Amendment to the Constitution, 14th November 1987, s. 2.

¹⁵ It is important to note that the various language policy changes made by successive administrations historically, have contributed to current ethnic challenges. The introduction of the Sinhala Only Act in 1956, which declared Sinhala as the official language of the State, was the most devastating of these policies; resulting in the exacerbation of existing grievances and deepening the ethnic and linguistic divide. This was also a contributing factor towards the country's civil war.

19. Ethnic Tamil minorities who reside outside the parameters of the North and East provinces, are unable to transact official business with State authorities in the Tamil language, either through correspondence or in person. Further, information material offered by public institutions is scarce in the Tamil-language.¹⁶
20. While the Public Administration Circular No. 3 and 7 of 2007 promote the bilingual services of the public sector, it is of concern that no positive action is envisaged for the recruitment of Tamil language speakers to provincial governments outside the North and East, to redress their under-representation in the public sector and to include minority communities to public administration.¹⁷
21. The Official Languages Commission is under-resourced, unable to inspect and monitor implementation of the official languages law and unwilling to take legal action against uncooperative public institutions. Presently, there is a National Co-Existence and Official Language Ministry, however language issues have been dealt with a lackluster approach. Furthermore, it has not been decentralized with offices outside of Colombo.
22. The lack of Tamil-language translators in the public service violates the right of Tamil-speakers to engage with the administrative service in Tamil. Tamil-speaking government officers in the North and East have made complaints that circulars issued by the central government appear in Sinhala only.
23. Ethnic Tamil estate workers find it difficult to apply for social security benefits (Employees Provident Fund and Employees Trust Fund) due to the lack of adequate Tamil-speaking officers in the Labour Department. In addition, Tamils outside the North and East are unable to have births, deaths or marriages registered in the Tamil-language as government officers are predominantly Sinhala-speakers or lack the technical resources.
24. The Special Rapporteur on Minority Issues, following her mission to Sri Lanka commented on the difficulty for Tamil-speaking people in the North and East to engage with State officials and State institutions in the language they prefer.¹⁸ For instance, when women from minority communities approach local Children and Women's Bureau Desks to report cases of domestic abuse, they face difficulties owing to language barriers. This results in unwillingness on the part of victims to report incidents of violence.¹⁹

Recommendation to the GoSL

- 1. Ensure effective implementation of the Official Languages Policy through the recruitment of bilingual public officials for every government institution.²⁰**
- 2. Ensure effective functioning of the Official Languages Commission, with staff that is willing to record and address issues and complaints of language discrimination.**
- 3. Implement without delay of the recommendations by the Lessons Learnt and Reconciliation Commission (LLRC) with regards to the trilingual policy.**
- 4. Fully commit to the protection of language rights as set forth in the National Action Plan for the Protection and Promotion of Human Rights.**

¹⁶ The Centre for Policy Alternatives filed a complaint against the Colombo Municipality Council in 2012, to the Human Rights Commission regarding building permits not being issued in Tamil: <https://www.cpalanka.org/wp-content/uploads/2014/11/3rd-Edition-Vibhasha-English.pdf>

¹⁷ Annual Report of the National Language Commission 2006. More than 50% of the officers represented matters at the Language Audits were not aware of the Constitutional Provisions with regard to the Official Languages Policy or the directives issued by the government on the subject. Due to this reason name boards, sign boards, direction boards etc. appeared only in one language in most of the Divisional Secretariats audited.

¹⁸ Report of the Special Rapporteur on minority issues on her mission to Sri Lanka, 31st January 2017, pp. 7

¹⁹ *ibid*

²⁰ The Special Rapporteur on minority issues made a similar recommendation in the concluding observations of her recent report on Sri Lanka: "Report of the Special Rapporteur on minority issues on her mission to Sri Lanka", 31 January 2017, pp. 18.

D. FREEDOM OF RELIGION AND BELIEFS

Second-Cycle UPR Recommendations

25. The GoSL accepted several recommendations promoting freedom of religion and belief.²¹

Legal and Institutional Framework

26. Article 9 of the Sri Lankan Constitution accords Buddhism “the foremost place” and makes it “the duty of State to protect and foster the *Buddha Sasana*, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)”, granting Buddhism which is the majority religion special protected status and state patronage. However, in Supreme Court Determination No. 2/2001, it was stated that this “does not guarantee a fundamental right to ‘propagate’ religion as in Article 25(1) of the Indian Constitution.”²²

27. Article 12 of the Constitution guarantees equality before the law and stipulates that no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds. Article 15 (7) of the Constitution provides for restrictions on Articles 12, 13(1), 13(2) and 14 in the interest of “national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society.” It is important to note, however, that such restrictions need to be prescribed by *law*, i.e. legislation.

28. In October 2015, the GoSL co-sponsored HRC Resolution 30/1 to effectively investigate attacks on members of minority religious groups and places of worship, and to hold perpetrators of such attacks accountable.²³ In its preamble, the GoSL also affirmed to ensure that all Sri Lankans are entitled to the full enjoyment of their rights, regardless of religion, belief or ethnicity.²⁴

Promotion and Protection of Human Rights on the Ground

29. The National Christian Evangelical Alliance of Sri Lanka (NCEASL) has recorded an over 450 incidents of intolerance faced by Protestant Christian Evangelical communities from 2012—2017.²⁵ Similarly, within the same period, the Secretariat for Muslims (SFM) recorded over 470 incidents perpetrated against Muslims; incidents including threats, attacks, attempts to attack, harassment, incitement, intimidation and violence.

Involvement of Local Government Officials

30. Following the election of the new government, the NCEASL recorded a total of 184 incidents, with the SFM recording over 141 incidents against the Muslim community. Though 2015 saw a decline in violent attacks perpetrated by Buddhist extremist groups such as the *Bodu Bala Sena* (BBS—Buddhist Power Force) and *Sinhala Ravaya*; incidents instigated or supported by local government officials continued.

²¹ See A/HRC/22/16 paras 127.56-57 and para 91

²² S.C. Special Determination No. 19/2003, via <http://www.refworld.org/pdfid/4be3e7042.pdf>

²³ Resolution adopted by the Human Rights Council, October 2015, A/HRC/RES/30/1

²⁴ *Ibid*

²⁵ NCEASL Incident Reports 2013—2016, via <https://slchurchattacks.crowdmap.com>

31. Additionally, over 50 reported incidents against Christians have involved State officials, in either an implicit or active capacity. Notably, high-level law enforcement and government officials such as the Senior Superintendent of Police (SSP), the Assistant Superintendent of Police (ASP) and Divisional Secretaries have been directly involved in a number of incidents.^{26,27,28} Other incidents recorded against Christians include; arson, demolition of churches, damage to property, physical assault of clergy and church members causing serious injury, death threats, intimidation, discrimination, forced displacement and forced closure of churches.

Weak law enforcement response to FoRB violations

32. Law enforcement officials are often reluctant to take effective action against persons who infringe on the liberties of minority religious groups, as a result of undue influence and pressure exerted by local Buddhist monks, government officials and politicians. Protestant Christians have also been victims of false allegations and police officers have been known to compel Protestant Christian pastors to discontinue religious worship activities. Furthermore, on one occasion an Officer-in Charge of the local police station coerced a pastor into signing a letter stating that no Christians would be buried in the local public cemetery.²⁹
33. As at February 2017, no persons have been prosecuted in relation to the attacks instigated by the extremist group BBS on the Muslim community in Aluthgama in June 2014. Four people were killed in this attack and 80 injured.³⁰

Registration of Religious Places of Worship and the Official Recognition of Protestant Evangelical communities

34. Sri Lankan legislation does not require the registration of religious places of worship for any religious body. However, a Circular dated October 2008 was issued by the *Ministry of Buddha Sasana and Religious Affairs* demanding that all “new constructions” of places of worship should obtain approval from the said Ministry.
35. Following the issuance of Circular 2008, Protestant Christian Evangelical churches have faced routine harassment, including forced closures by local government authorities who claim such places of worship as not ‘recognized’ or ‘registered’ with the government. Refusal of ‘recognition’ by the state has deprived thousands of Christian citizens of their fundamental rights, including the freedom of thought, conscience and religion. Since the inception of the new government, 52 incidents involving local government and law enforcement officials also involved the use of the Circular 2008 to infringe on the rights of Protestant Christians.³¹ Notably, however, churches belonging to larger, mainstream denominations do not face this issue of non-recognition.³²
36. Moreover, in 2015, a Ministry of Christian Religious Affairs was established as a representative body of the Protestant Christian minority in Sri Lanka. This was followed by a political appointment of a Coordinator to specifically address the grievances of the Evangelical Christian community. While this is a welcome step, the Protestant Christian

²⁶Annexure 1, NCEASL Incident Report 2016, 29th February

²⁷Annexure 2, NCEASL Incident Report 2015, 14th October

²⁸Annexure 3, NCEASL Incident Report 2016, 10th January

²⁹Annexure 4, NCEASL Incident Report 2016, 6th January

³⁰ UN General Assembly, A/HRC/30/61, 28th September 2015, pg. 6

³¹ NCEASL Incident Report 2015 and 2016, via <https://slchurchattacks.crowdmap.com>

³² The Christian community comprises of three main bodies: the Roman Catholic Church, the National Christian Council (NCC) and the National Christian Evangelical Alliance of Sri Lanka (NCEASL). The Catholic Church and the more traditional protestant Christian denominations represented by the NCC are ‘recognised’ *de facto* by the government as ‘legitimate’ Christian churches. Christian denominations which are outside these two groups are not. Several churches which are members of the NCEASL and which are legal bodies incorporated by acts of parliament are not recognized in practice.

community in Sri Lanka is yet to witness the effective functionality of these appointments. Moreover, local government officials have been known to disregard letters dispatched by the Minister of Christian Affairs, effectively refusing to recognize its authority.

Recommendations to the GoSL

1. **Withdraw the Circular issued in 2008 and inform the relevant religious affairs ministries in writing that registration is not a requirement and apprise the local government officers accordingly.**
2. **Ensure the mandate of the Coordinator for Charismatic, Evangelical and Pentecostal Churches to effectively address the grievances of the Protestant Christian community.**
3. **End the discrimination against all religious minorities and guarantee the exercise of religious freedom.**
4. **Take swift action to the full extent of the law, including sections 290-292 of the Penal Code against religiously motivated acts of violence or attempts to incite hatred towards any particular minority community, including disciplinary action against state officials and public servants who commit acts of discrimination or fail to perform their duty in a fair and impartial manner.**

E. PRISON CONDITIONS AND DELAYS IN JUDICIAL PROCESSES

Second-Cycle UPR Recommendations

37. The GoSL accepted a recommendation to incorporate the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders.³³ However, GoSL rejected several recommendations regarding prison and detention.

Promotion and Protection of Human Rights on the Ground

38. In Sri Lanka there is a very serious issue of over crowdedness in main prisons due to the denial of bail, inability to pay and meet conditions and bail, inability to pay fines for small crimes, delay of trials and of appeal cases as death sentence is no longer implemented. There are only 03 prisons that hold more than 700 prisoners who are given death sentence. Usually only 02-03 prisoners are supposed to be detained in one prison cell, however due to the lack of space each small cell is packed with 60-75 prisoners both prisoners with life imprisonment and death sentence.
39. During a visit to the Kandy Bogambara-Dumbara prison ward - D in December 2016, where prisoners serve the death sentence, we found 74 prisoners detained in one cell and as many as 55-60 prisoners detained in one single cell and they were mixed, both prisoners with life imprisonment and death sentence in same prison cell due to the issue of space.
40. Discussing with the prisoners, we found the major reasons for the over crowdedness were the lack of space and facility for the prisoners who are sentenced death as death sentence is not implemented in Sri Lanka; the appeal cases of both prisoners serving death sentence & life imprisonment are unduly delayed and remand prisoners are languishing in prisons for years without trial. The size of prison cell is around 2 m x 0.7 m.
41. The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka reported that the government did not provide him

³³ See A/HRC/22/16 paras 127.74

with the actual capacity of detention capacities, despite his request.³⁴ However, the statistics from 2013 showed that prisons capacity was to hold 11,762 inmates.³⁵ In 2016 they had a daily average of 16,000 to 19,000 with a daily average population of 8,406 remand prisoners. For every convicted prisoner there are three remand prisoners in jail. The annual admission for the year 2015 is 113,734 of which 89,586 were remand prisoners. Only 24,148 were convicted by a court.³⁶ Some prisoners are awaiting decisions from appeals, others are awaiting trials/ cases postponed and have been granted bail but are still locked in due to rigid bail conditions that they have no capacity to fulfill.

42. There are several reasons for the court delay. There are increase numbers of crimes take place nowadays than few decades ago. Yet, the justice ministry has failed to increase number of court houses to hear these trials. In criminal high courts, everyday over 10 cases are listed for trials. In some instances, over 20 trial cases listed for a day. These are in addition to other bail, revision and appeal matters of that court and hence only one case is taken for trial and other cases are postponed for another 03-06 months. Due to the delays that are imbedded in the system of adjudication have come to a point where suspects are held indefinitely in prisons and families of suspects have to pay the lawyers for many years selling out all what they have without any recourse. Prolonged litigation creates a culture that encourages many forms of manipulation, which in turn favor the wealthy and the powerful. Another issue is that when the same case is heard by several judges, the judgment is written by the last judge, who, on some occasions, has not heard any of the evidence and the final judge, who writes the judgment, is unable to appreciate vital aspects of the trial or can even be misled by some unscrupulous lawyers who, in their submissions, give a version of events which are not at all supported by the actual evidence led in court.
43. The most serious issue that spurs out of prolonged trials is that they fail to realize the very purpose of litigation. In fact, by creating a situation of chaos the whole exercise reduces itself to an absurdity. When most serious crimes, such as murder, rape and many other forms of violations of life and liberty, are reduced to this absurd situation, it reveals the very tragic plight of human beings living in such a society.
44. As minimum mandatory sentence is no longer in force, certain courts force the accused to plead guilty for the charges while a non-custodial sentence is pre-bargained by lawyers and this has very negative effects to the suspect who plead guilty to a charge that he or she has never committed.

Recommendation to the GoSL

- 1. Amend the Judicial Act to allow the establishment of more criminal appeal court in the country.**
- 2. Allocate more resources to the High Courts and increase the number of High Court Judges.**

F. TRANSITIONAL JUSTICE

Second-Cycle UPR Recommendations

³⁴ See the report A/HRC/34/54/Add.2, para 52

³⁵ The statistics from 2013 as shown in <http://www.prisonstudies.org/country/sri-lanka>

³⁶ For more information on Prison Statistics of Sri Lanka 2016, see <http://www.prisons.gov.lk/Statistics/Statistics-2016.pdf>

45. The GoSL did not accept the recommendations related to implementation of recommendations in the Lesson Learn and Reconciliation Commission (LLRC) in which the transitional justice was addressed.

Legal and Institutional Framework

46. The GoSL co-sponsored the HRC Resolution 30/1 on Promoting reconciliation, accountability and human rights in Sri Lanka. Through this, the government made a series of commitments, including “to establish a judicial mechanism with a special counsel to investigate allegations of violations and abuses of human rights and violations of international humanitarian law, as applicable; affirms that a credible justice process should include independent judicial and prosecutorial institutions led by individuals known for their integrity and impartiality; and also affirms in this regard the importance of participation in a Sri Lankan judicial mechanism, including the special counsel’s office, of Commonwealth and other foreign judges, defence lawyers and authorized prosecutors and investigators.”³⁷
47. Following the HRC Resolution 30/1, in January 2016, the GoSL established a Consultation Task Force (CTF) with the mandate to seek the views and comments of the public on the proposed mechanism for transitional justice and reconciliation.³⁸ The CTF records the concerns and expectations of over 7,300 Sri Lankans from all communities, on the gamut of issues of transitional justice and its pivotal importance. In January 2017, the CTF presented its final report.
48. The UN High Commissioner on Human Rights presented his report on the implementation of Resolution 30/1 in which he noted that, “The fulfilment of transitional justice commitments has, however, been worryingly slow, and the structures set up and measures taken during the period under review were inadequate to ensure real progress”.³⁹ In March 2017, the HRC adopted Resolution on Promoting reconciliation, accountability and human rights in Sri Lanka which provided the GoSL with two additional years to implement the Resolution 30/1 in full.⁴⁰

Promotion and Protection of Human Rights on the Ground

49. The coming together of the two major political parties and cooperation of two major parties representing Tamils and Muslims, has brought about a unique opportunity to push towards significant reforms, but this appears to have been squandered. The President and the Prime Minister has failed to reach out to all Sri Lankans, especially to the Sinhalese majority, about its reform agenda. Neither have they taken a principled action to win the confidence of numerical minorities such as Tamils and Muslims. They have been backtracking on government's official commitments, instead of championing them.⁴¹
50. A consultation process towards a new constitution drew a large number of public representations, dealing with many issues.⁴² But the next steps are not clear, particularly in finding political solutions to the grievances of the country’s ethnic minorities and dealing

³⁷ See A/HRC/Res/30/1

³⁸ For more complete information of the Consultation Task Force, see the official sites at <http://www.scrm.gov.lk/documents-reports>

³⁹ See A/HRC/34/20, para 59

⁴⁰ See A/HRC/34/L.1

⁴¹ For example, neither turned up at the launch of the report of the Consultation Task Force on Reconciliation Mechanisms, despite months of waiting. There has been conflicting messages from within the government about commitments made, with the President and Prime Minister backtracking on a key commitment to have foreign judges in the judicial mechanism.

⁴² The report of the Public Representation Committee (PRC) has been published as well as reports of six sub-committees. Available at http://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf, http://english.constitutionalassembly.lk/images/pdf/PRC_2.pdf and <http://english.constitutionalassembly.lk/interim-report/126-interim-report>

with concerns of oppressed communities.⁴³

51. There is still no official transitional justice policy, with a UN Human Rights Council resolution the Sri Lankan government co-sponsored⁴⁴ being the only official reference point. The commitments made therein includes setting up 4 major institutions,⁴⁵ legal reforms and some practical measures on the ground⁴⁶ to address long standing grievances of war affected communities, but many such grievances remain.⁴⁷ 17 months after the commitments, the enabling legislation for only one institution has been passed,⁴⁸ but the only progress for six months has been amendments to reduce the powers.
52. Transitional justice appears to be largely aimed at pacifying international concerns and to lesser degree some domestic pressures.⁴⁹ Many human rights challenges do not fall into the framework of transitional justice and there is a danger that they may worsen social inequalities, poverty and lead to more protests and government repression.⁵⁰

Recommendation to the GoSL

- 1. Implement without delay the UN HRC Resolutions 30/1 and 34/1 on Promoting reconciliation, accountability and human rights in Sri Lanka.**
- 2. Implement the recommendations of the Consultation Task Force (CTF) on Reconciliation Mechanisms.**

G. ENFORCED DISAPPEARANCE

Second-Cycle UPR Recommendations

53. The GoSL accepted one recommendation to continue and provide greater cooperation to the Working Group on Enforced or Involuntary Disappearances to accomplish its work.⁵¹

Legal and Institutional Framework

⁴³ Such as women discriminated by personal laws, those with different sexual orientation and gender identities, religious minorities etc.

⁴⁴ Human Rights Council Resolution, Promoting reconciliation, accountability, and human rights in Sri Lanka, 14 October 2015, UN Doc. A/HRC/RES/30/1 (adopted 1 October 2015)

⁴⁵ An Office of Missing Persons (OMP), a Commission for Truth, Justice, and Guarantees of Non-reoccurrence, a Judicial mechanism with Special Counsel, which will have the participation of foreign judges, prosecutors, investigators and defence lawyers, and an Office for Reparations.

⁴⁶ Such as to reduce the military's role in civilian affairs, facilitate livelihoods, repeal and reform the Prevention of Terrorism Act (PTA), criminalise disappearances and review the victim and witness protection law. None of these have been fulfilled. One of the commitments, the ratification of the International Convention for the Protection of All Persons from Enforced Disappearance (adopted 20 December 2006, UN Doc. A/61/488 and entered into force 23 December 2010) was done in May 2016.

⁴⁷ Monuments erected to honour the Sinhalese dominated military during the Rajapakse time continue to dominate the Tamil majority Northern landscape. Army camps that were built over some of the cemeteries of former LTTE cadres that were bulldozed by the Army after the war are still there. The loved ones of those whose remains were in these cemeteries have no place to grieve, lay flowers, light a candle, or say a prayer. While the numbers have reduced from those under the Rajapakse regime, intimidation and reprisals on families, attacks, and threats and intimidation of activists and journalists continue to occur. Limited progress on issues, such as the release of political prisoners, land occupied by military, continuing military involvement in civilian affairs in the North and East, reports of continuing abductions, and arrests under the PTA have raised doubts about the Government's commitments. Although a few military personnel have been convicted and some others arrested on allegations of human rights abuses, the lack of progress in thousands of other cases only reinforces calls for international involvement for justice.

⁴⁸ http://media.wix.com/ugd/bd81c0_156157c2484244cba2fb9b2c1c0612df.pdf

⁴⁹ The Government's commitments have only been officially articulated in Geneva by the Foreign Minister and not in Sri Lanka. The Foreign Minister has been the regular advocate and defender of these commitments. Most meetings with local activists have been convened by him or held at the Foreign Ministry, where the Secretariat for Co-ordinating Reconciliation Mechanisms (SCRM) is housed. All these contribute to the process being seen as emanating and driven by foreign pressure.

⁵⁰ Unemployment, debt, and sexual and gender-based violence is widespread in the former war ravaged areas as well as other parts of the country. The new Government's economic and development policies are focusing on trade, investment, and mega development projects, which privilege the rich and marginalise the poor. Pre-war rights issues, such as landlessness, sexual and gender-based violence and discrimination, caste, rights of workers, including those working on tea estates, still need to be addressed.

⁵¹ See A/HRC/22/16 para 127.60

54. Sri Lanka adopted Prevention of Terrorism Act (PTA) in 1978. This Act provides state security with the powers to search, arrest, or detain people who are suspected to be involved in the terrorism activities. The PTA gives the power for the government to detain suspects for extended periods of time without presenting charges or bringing them before a court. An activist who was detained by the PTA and still under investigation, has termed it and new draft aimed at its replacement, as a “license for enforced disappearances, arbitrary detention and torture”.⁵²
55. On 25 May 2016, the GoSL ratified the International Convention for the Protection of All persons from Enforced Disappearance. Although a draft bill giving effect to the convention was gazetted on 9 February 2017, it has still not been enacted.
56. In August 2016, the GoSL enacted a law to establish the Office of Missing Persons (OMP). It aims to find the truth about disappeared and missing persons and to bring closure to their relatives, to cease their suffering, to end their trek from government offices to army camps to police stations in search of their loved ones.⁵³

Promotion and Protection of Human Rights on the Ground

57. Enforced disappearances have been reported in Sri Lanka since the 1971 and late 1980s uprising by the Janatha Vimukthi Peramuna (JVP) and in the context of the three decades long armed conflict between the Government and the Liberation Tigers of Tamil Eelam (LTTE). Disappearances and abductions have been reported even after the end of the war in May 2009 and though reduced in number, even in 2015-2017.⁵⁴
58. According to the government, over 65,000 missing persons’ cases had been received since 1994.⁵⁵ According to testimonies provided to our partners, the Army had taken away many LTTE cadres, including senior leaders, as well as a Catholic Priest, after they had surrendered to the Army on the last day of the war. Despite numerous complaints to various domestic and international bodies, and habeas corpus cases pending in courts for several years, there is no information about any of them.
59. On 15 January 2016 during a visit to Jaffna, the Prime Minister of Sri Lanka Mr Ranil Wickremesinghe made a statement “I regret to inform you that the very large number of people in the lists of missing people are not among the living anymore. I don’t know what happened to them.”⁵⁶ This statement has upset many of the family members of the missing persons.
60. Since January 2017, several Tamil families of disappeared have started indefinite protests and fasts in the North and East, demanding truth and justice. A meeting with four Ministers in Colombo in February had not yielded results and the families who were at the meeting were accused of demanding priority for their own cases, though they insisted they were demanding truth and justice for all disappeared.
61. Many of the disappeared have been sole or primary income generators for their families and in the absence of comprehensive scheme for economic empowerment, most families of disappeared face extreme poverty, which worsens their trauma.

⁵² <https://rukiiii.wordpress.com/2017/02/07/draconian-law-cripples-sri-lankas-reconciliation-hopes/>

⁵³ http://media.wix.com/ugd/bd81c0_156157c2484244cba2fb9b2c1c0612df.pdf

⁵⁴ <http://groundviews.org/2016/06/28/continuing-abuse-under-pta-abductions-arbitrary-arrests-unlawful-detentions-and-torture/> and <http://www.ceylontoday.lk/print20170101CT20170331.php?id=14595>

⁵⁵ <http://www.mfa.gov.lk/index.php/en/media/media-releases/6502-cabinet-certificates-of-absence>

⁵⁶ See <http://www.ceylonews.com/2016/01/large-number-of-sri-lanka-missing-are-dead-ranil/>

Recommendation to the GoSL

- 1. Repeal the Prevention of Terrorism Act (PTA).**
- 2. Reform of the victim and witness protection legislation.**
- 3. Enact the law criminalizing disappearances.**
- 4. Immediately establish the Office of Missing Persons (OMP), desist from any amendments to the Act that will reduce its powers and instead, consider the inclusion of recommendations of families of disappeared and Consultation Task Force (CTF), provide the needed resources including the establishment of offices in the Northern and Eastern Provinces so as to effectively function and facilitate the interaction with the victims and their families.**
- 5. Design and implement immediate and comprehensive programs for economic empowerment and psychological support.**
- 6. Expedite ongoing investigations into cases which are pending before the police, judiciary and national human rights commission, using work done by successive Presidential Commissions of Inquiries and other bodies.**