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**UNIVERSAL PERIODIC REVIEW – 28<sup>TH</sup> SESSION**  
**CANADIAN TAMIL CONGRESS – STAKEHOLDER SUBMISSION**  
**DEMOCRATIC SOCIALIST REPUBLIC OF**  
**SRI LANKA**

The Canadian Tamil Congress is a not-for-profit organization that was established in 2001 to serve as an advocate for the concerns of Tamil Canadians. Headquartered in Toronto, with members across Canada, CTC strives to represent the Tamil Canadian community's concerns at the municipal, provincial, federal and international levels. One of CTC's objectives is to cooperate with national and international organizations to alleviate the suffering of and provide humanitarian assistance to Tamils worldwide, and to advocate for the needs and concerns of Tamils Canadians in their status as Tamil diaspora. As a non-partisan organization CTC strongly believes in the Canadian values of equality, respect for human rights and multiculturalism.

Submitted on March 30, 2017

**Universal Periodic Review – 28<sup>th</sup> Session**  
**Canadian Tamil Congress – Stakeholder Submission**  
**Sri Lanka**

**Introduction**

1. The Canadian Tamil Congress (“**CTC**”) remains concerned with Sri Lanka’s domestic human rights situation, specifically the treatment of Tamils in the North-East of Sri Lanka.
2. Sri Lanka’s human rights record has been of grave concern to the international community for the last eight years. The United Nations Human Rights Council (“**UNHRC**”) embodied this concern in its last five resolutions on Sri Lanka, A/HRC/RES/19/2, A/HRC/RES/22/1, A/HRC/RES/25/1, A/HRC/RES/30/1, and most recently in March 2017 in resolution A/HRC/RES/34/1.
3. Despite some positive reforms and minimal progress made on the contents of resolution 30/1 and in other areas requiring human rights redress, significant problems remain. Ongoing militarization in the North-East of the country, a lack of accountability for abuses committed by the military and political officials, and specific worries that plague women and children in the North-East should take prominence during country submissions at Sri Lanka’s third Universal Periodic Review (“**UPR**”).

**Brief overview of methodology**

4. This submission was drafted by a team of lawyers and human rights advocates that have been working in Toronto, Montreal, Geneva and Sri Lanka over the past ten years on the human rights situation in Sri Lanka. The information and recommendations outlined come from a multitude of sources, including visits to Sri Lanka, information gathering and fact-finding missions from partners and civil societies collaborating in the North-East of Sri Lanka, as well as research and review of external reports.

**Demilitarization of the North-East**

5. While the armed conflict ended in May 2009, almost eight years later, the North-East of the country remains heavily militarized.
6. While the military has reduced its visible presence in the towns of the North-East, they remain heavily concentrated in camps and base sites in the region. Although major human rights violations by the military have subsided under the new government, it continues to conduct widespread surveillance of the North-East Tamil population. This tactic of intimidation has left the population feeling vulnerable, especially given the fact that a similar situation occurred during the 2005 ceasefire. At that time, the military was also present in the North-East and keeping track of civilian activities; after the armed conflict recommenced, the military used the lists they had kept during the ceasefire period to kill over 600 people within a matter of months. Fears from the memory of this

time, and of the abuses by the military during the final stages of the armed conflict, linger in the population.

7. Contrary to the Sri Lankan government's commitments in Operative Paragraph 10 of resolution 30/1, the military continues to be heavily involved in civilian life in the North-East. <sup>i</sup> The military administers upwards of 300 schools in the Vanni region, including paying teachers' salaries, and runs farmland retaining the local Tamil population. The military also controls local businesses, including restaurants and food stores.<sup>ii</sup>
8. The military is also in charge of all land releases back to rightful landowners in the North-East. While some progress has been made on returning lands, deep concerns remain in two areas: first, the condition in which lands are returned, and second, the ongoing militarization surrounding the returned lands.
9. First, lands are often returned in a condition unsuitable for their use. For example, in the Valikamam North region, there is a longstanding and ongoing program of massive soil excavation by the military which has left the villages at a lower sea level than the roads.<sup>iii</sup> Such a program has left displaced peoples returning to their lands feeling extremely worried about the flooding that will occur during the rainy season. Additionally, there appears to be a pattern of the military destroying lands right prior to their release. In the town of Sampur, the military cut down all of the trees and filled in all the wells prior to return, and in the village of Keppapilavu, where there is currently a protest by the villagers for the return of their lands, there were reports of the Sri Lankan Air Force burning coconut trees on the lands.<sup>iv</sup> Second, the released lands remain surrounded by military camps and base sites. Land has been released partially, such that even in areas where the landowners' residential plots of land are released, the military continues to occupy the land on which they would make their livelihoods. In one village in Sampur, further expanded upon in the next section, a primary school is located right next to an army base camp.

### **Recommendations**

- 10. Order all security forces to end surveillance, harassment and reprisals against the Tamil community and human rights defenders.**
- 11. Give highest priority to the release and return of all lands that are occupied by the military to the rightful landowners, including lands which are required for the population's livelihoods. Establish and publish guidelines directed at military personnel for conditions in which lands must be returned to landowners, within three months of the UPR. Formulate and publicly circulate a comprehensive timetable for when lands will be released, within three months of the UPR.**
- 12. Give highest priority to the removal of the military from civilian life, schools and other commercial activities, as per Operative Paragraph 10 of UNHRC resolution 30/1. Formulate and publicly circulate a comprehensive timetable for ending military involvement in schools, civilian life and commercial activities, within six months of the UPR.**

### Women in the North-East

13. Many of the reforms called for above impact women more than other groups. Female headed households, single women, internally displaced women, war widows and female former combatants continue to suffer discrimination, sexual and gender-based violence, harassment and abuse from the authorities, including at the hands of the military. Women and children are particularly vulnerable to the effects of discrimination, and their situation merits particular, focused attention.
14. Given the post-war context, large numbers of female-headed households exist in the North-East. There are grave concerns surrounding women in these homes, as well as female former combatants and internally displaced women, and the ongoing militarization. In Sampur, a section of plots of land containing a large number of female-headed households and a grade school is located not even 500 meters from the military base camp.<sup>v</sup> Given the historic abuses by the Sri Lankan, and indeed almost every military, towards women and children, this is especially disconcerting.
15. Additionally, there are disturbing reports of women subjected to sexual violence, as referred to by the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment in his Preliminary observations and recommendations made on his recent visit to Sri Lanka.<sup>vi</sup> In a situation where the military is in close quarters in many regards, this is concerning. In some situations of military run farmland, there are reports of women being called by their military employers to come in to work in the middle of the night “to sign forms”,<sup>vii</sup> who are then sexually assaulted.

### Recommendations

16. **Publicly issue unequivocal instructions to the military, intelligence, police and security forces that torture, sexual violence and other human rights violations against Tamils and Tamil women in particular are prohibited and perpetrators will be punished.**
17. **Targeted psychosocial and livelihood assistance for women in the war-affected areas, particularly the female heads of household and former combatants, needs to be strengthened. Women’s voices must be systematically heard and reflected in all processes, including releases of land, the building of political institutions, and the transitional justice process.**

### Accountability

18. Historically, crimes against Tamils in Sri Lanka when the perpetrators are Sinhalese have been met with impunity.<sup>viii</sup>
19. Unfortunately, such impunity continues under the present government. The need for accountability does not depend on the present state of human rights; accountability is crucial in order to hold perpetrators to account for the mass atrocities committed in Sri Lanka, and to adopt systemic reforms to prevent further recurrence. Unfortunately, the Sri Lankan government appears reticent

to accept accountability as the *sine qua non* for the development of trust in the government and institutions by the Tamil people. It does not appear to understand that accountability is not an afterthought to, but rather coterminous with, a sustainable peace. Until such accountability is implemented, security forces will continue to operate with impunity in the North-East and sustainable peace will remain elusive.

20. There has been minimal progress on accountability for crimes committed during the armed conflict, as well as for ongoing violations. In fact, the government has been consistently backtracking on its promises in this regard.<sup>ix</sup> Despite the government's commitment in Operative Paragraph 6 of UNHRC resolution 30/1 to put in place an accountability mechanism with the involvement of international and foreign lawyers, judges and investigators,<sup>x</sup> many high ranking officials have remarked in recent statements that no accountability mechanism is needed,<sup>xi</sup> or that accountability is not a priority.
21. The Consultation Task Force on Reconciliation Mechanisms ("**CTF**") and its recent report are a prime example of the Sri Lankan government backpedalling on this topic. The CTF was created by the present government. It delivered a report recommending, among other things, international involvement in a credible accountability and transitional justice mechanism. However, the government completely rejected the findings in the report.<sup>xii</sup> As both Human Rights Watch and Amnesty International note,<sup>xiii</sup> the government's rejection of the recommendations in the report is deeply disconcerting, especially given the fact the CTF represents the lowest baseline of what the Sri Lankan government committed to in resolution 30/1, and of what the High Commissioner for Human Rights Zeid Ra'ad Al Hussein, recommended in his recent report on Sri Lanka.<sup>xiv</sup>
22. The Office of Missing Persons Act ("**OMP**") as currently drafted is not a justice mechanism— it contains no clear links to accountability, but rather appears to serve merely as a truth mechanism. There is a discretionary provision within the OMP permitting for referrals to the "authorities" in certain cases, but only in instances where it is in the "society's interest",<sup>xv</sup> which in Sri Lanka has most often been interpreted against Tamils. As it currently stands therefore, unless amendments are made in this regard, the OMP cannot be viewed as an accountability mechanism.

### **Recommendations**

23. **Present a comprehensive strategy on transitional justice, with a timetable to implement the commitments welcomed by the UNHRC in resolution 30/1 and the recommendations contained in the present and previous reports of the High Commissioner, within six months of the UPR.**
24. **Formulate and promptly launch a communications campaign to inform the public about the objectives, timeframe and rationale of the reconciliation agenda, identifying ownership of and commitment to the process of transitional justice and accountability, within six months of UPR.**
25. **Make minor amendments to the OMP such that it is allowed to operate as an accountability mechanism. For example, make the link with justice clear by way of minor linguistic amendments**

to the Act, and appoint commissioners who are capable of and willing to work on the topic of accountability.

26. Fully implement the recommendations of the High Commissioner in his February 2017 report to the UNHRC, including the call for international participation in an accountability mechanism. Adopt legislation establishing a credible accountability mechanism, which must include international judges, defence lawyers, prosecutors and investigators, to investigate allegations of violations and abuses of international human rights law and violations of international humanitarian law, and provide it with the resources necessary to enable it to prosecute those responsible promptly and effectively. This should be achieved with reference to international standards that require society involvement in national reconciliation by conducting truth-seeking and disclosure, justice through criminal prosecutions of perpetrators of serious crimes, reparation to victims and meaningful reform of institutions. Conduct extensive consultations with all stakeholders, including the diaspora, in a transparent and broadly participatory exercise that is equitable and earns the trust of all Tamils.
27. Fully implement the recommendations of the Consultation Task Force on Reconciliation Mechanisms.

### **Constitutional and Legislative Framework & Court and Legal System**

28. The current constitutional and legislative framework in place sets the foundation for structural discrimination against Tamils. The *Prevention of Terrorism Act* (the “PTA” or “Act”) has been used to specifically target and terrorise Tamils since its inception. Constitutional negotiations begun, but have stalled. Any constitutional amendments made must be acceptable to Tamils in the North-East.
29. Great abuses are played out through the court system. Crimes committed against Tamils often take decades to come to trial. In the instance of the Kumarapuram massacres, where 24 Tamil civilians including 13 women and 9 children below the age of 12 and several others were critically wounded by military personnel in Trincomalee in 1996, 101 indictments were filed against each ex-officer charged. Last year, 20 years later, every single officer was acquitted. Additionally, the court process is rife with procedural inequality and abuse. Often, court proceedings take place only in one language, Sinhala. In one instance observed just last year, a court case had been ongoing for 14 years. The accused was Tamil, as was his defense counsel. Everyone else in the courtroom was Sinhalese. Since no interpreter was present, the proceedings took place in Sinhalese.<sup>xvi</sup>

### **Recommendations**

30. With respect to its recent oral commitments, immediately repeal the PTA, release all political prisoners detained currently under the Act, and establish a moratorium for the use of the Act for new arrests until replacement legislation is enacted. Replacement legislation must contain safeguards against arbitrary arrest and torture or cruel, inhuman or degrading treatment, as well as provisions for access to legal counsel in the language spoken by the accused from the moment

of deprivation of liberty. Consultation should be undertaken on the new legislation in a timely, robust and transparent national fashion in a manner that is inclusive of Tamil civil society from the North-East of the country. Legislation must also contain strong, independent judicial overview of law enforcement and security agencies.

**31. Urgently ratify and implement the Optional Protocol to the Convention against Torture, as well as enable the Subcommittee on Prevention of Torture and other international and national monitoring mechanisms to conduct regular unannounced inspections of all places of detention.**

**32. Accede to the Rome Statute of the International Criminal Court.**

**33. Abolish the death penalty.**

**34. Fully implement the recommendations contained within UNHRC resolution 30/1, and 34/1.**

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<sup>i</sup> Resolution 30/1, A/HRC/RES/30/1 at Operative Paragraph 10.

<sup>ii</sup> New India Express, “Wigneswaran complaints to EU about Sri Lanka Army running schools in Northern Province”, November 2, 2016, at <http://www.newindianexpress.com/world/2016/nov/02/wigneswaran-complains-to-eu-about-sri-lankan-army-running-schools-in-northern-province-1534275.html>.

<sup>iii</sup> As with many of the abuses against Tamils in this report and ongoing in Sri Lanka, there is little documentation on this topic. See also [http://www.tchr.net/reports\\_commission\\_2002.ht](http://www.tchr.net/reports_commission_2002.ht)

<sup>iv</sup> Reports from villagers, observed

<sup>v</sup> Observed during a visit to Sampur in September 2016. Partial photograph found here:

<https://goo.gl/photos/7K4AanhCndhdtd7v7>

<sup>vi</sup> (29 April to 7 May 2016) [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/54/Add.2](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2)

<sup>vii</sup> See for example the International Truth and Justice Project’s Submission to CEDAW on Torture and Sexual Violence against women, at <http://www.itjpsl.com/reports/submission-to-cedaw>

<sup>viii</sup> Amnesty International, “Twenty Years of Make-Believe: Sri Lanka’s Commissions of Inquiry”, June 11, 2009, at <https://www.amnesty.org/en/documents/ASA37/005/2009/en/>

<sup>ix</sup> The Island, “War Crimes Probe : UN did not insist on foreign judges – Govt.” March 16, 2017, at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=162043](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=162043). See also The Diplomat, “A Former President Dismisses Accountability in Sri Lanka” February 9, 2017, at <http://thediplomat.com/2017/02/a-former-president-shares-a-fairy-tale-on-accountability-in-sri-lanka/>.

<sup>x</sup> *Supra*, note I, at Operative Paragraph 6.

<sup>xi</sup> *Supra*, note ix.

<sup>xii</sup> Ceylon News, “Sri Lanka rejects call for foreign judges in domestic war crime probe” January 4, 2017, at <http://www.ceylonnews.com/2017/01/sri-lanka-rejects-call-for-foreign-judges-in-domestic-war-crime-probe-video/>.

<sup>xiii</sup> Human Rights Watch, “Sri Lanka: Adopt Task Force’s Justice Proposals” January 12, 2017, at <https://www.hrw.org/news/2017/01/12/sri-lanka-adopt-task-forces-justice-proposals> and Amnesty International, “Sri Lanka: Consultation Task Force report must lead to justice” January 11, 2017, at <https://www.amnesty.org/en/latest/news/2017/01/sri-lanka-consultation-task-force-report-must-lead-to-justice/>.

<sup>xiv</sup> [www.ohchr.org/EN/HRBodies/HRC/RegularSessions/.../A\\_HRC\\_34\\_20\\_EN.docx](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/.../A_HRC_34_20_EN.docx)

<sup>xv</sup> <https://www.cpalanka.org/wp-content/uploads/2016/07/office-on-missing-persons-establishment-administration-and-discharge-of-functions-a-bill-1.pdf>

<sup>xvi</sup> Observed during a visit in June 2016.