

## **Human Rights Situation in North East Sri Lanka**

Third Cycle, 2017

Submission by North East Coordinating Committee (NECC)<sup>i</sup>

In the period under review Sri Lanka moved from a post war suppressive political period to a new political transit period under a new government which came to power on 9<sup>th</sup> January 2015. The change has opened a space for the communities and civil societies in North and East areas to come out and openly express their grievances and to demand for their rights. Even though the situation may look positive still the fundamental rights are challenged by the continuing militarized and ethno-political institutions that continue to be exist in these areas. Besides, within the two years period the National Unity government has failed to prove its strong and genuine commitments on resolving the national question of minorities.

## **1. Challenges in the Transitional Justice mechanisms:**

The State of Sri Lanka established the Secretariat for Coordinating Reconciliation Mechanisms (SCRM) with Cabinet approval on 18 December 2015 as per its assurances to the international community that it would implement the recommendations of Resolution 30/1.<sup>ii</sup> The Secretariat comes under the direct purview of the Prime Minister's Office. However, the Secretariat functions under the guidance of the Ministry of Foreign Affairs. Therefore, it is not clear as to which parliamentary body is responsible for the SCRM.

The Coordinating Secretariat was not formed under any law that was passed by the parliament and gazetted. Therefore, this structure has no authority to function on a long term basis as it does not have any legal entity and without this, it will be difficult to coordinate the proposed mechanisms —Office of the Missing Persons, Truth Seeking Commission and Office of Reparations and Special Courts – in an effective manner. A major reason for stagnation in the progress of the transitional justice process is the absence of a structure that is legal and independent with the authority to carry out the proposed work free of any political interferences. We would like to point out that appropriate measures were not taken to implement the recommendations of the OISL (*OHCHR Investigation on Sri Lanka*) report which we believed was the basis for Resolution 30/1.

It was said separate acts will be introduced for the above four mechanisms of transitional justice and if these four Mechanisms are to be handed over to four different Ministries, it wouldn't help to promote a comprehensive transitional justice process. It will become an ad-hoc activity. For an example the OMP Act has not been operationalized after more than seven months after it had been passed in the parliament as still the government has not identified a Ministry to hand over the implementation of the OMP. This type of approach will not help to achieve the objectives of the transitional justice. Sri-Lanka so far not considered to

introduce a “Transitional Justice Law”. Also there is no a “Ministry of Human Rights and Transitional Justice” in Sri-Lanka to promote the comprehensive transitional justice approach and the human rights policies.

## **2. Consultation Task Force and National Consultation was not officially recognized by the State**

Despite the various challenges, the Consultation Task Force for Reconciliation Mechanisms was able to carry out its consultations with the cooperation of the civil society and affected communities. However, neither the President nor the Prime Minister was present to accept the report when it was finally released after many delays. The Consultation Task Force was compelled to hand over the report to the former President Chandrika Bandaranaike Kumaratunga who has no decision making authority in terms of policy reform.<sup>iii</sup> Therefore, we consider that all doors to officially implement the recommendations of the Task Force are strictly closed.

Following the tabling of the final report by the Consultation Task Force, the Minister of Justice Wijedasa Rajapakse claimed that he did not have any faith in the Task Force. He further added that the need to follow the recommendations of the consultation report does not exist.<sup>iv</sup> Even after more than two months after the publication of the report, neither the President nor the Prime Minister has made public their official position and that of the government. This goes on to prove that the State parties have failed to extend their support to the transitional justice process and continue to ignore accountability.

Many thousands in the North and East who have been affected directly by violence and various other forms of violations lack awareness of the activities of the Consultation Task Force. The final report of the Task Force has recommended the National Consultation must be continued.<sup>v</sup> But the government does not show any positive signs on continuing the consultation. Overall, the voices of the victims appear to be ignored in the transitional justice process.

## **3. Prevention of Terrorism Act**

Prevention of Terrorism Act (PTA) has facilitated arbitrary and illegal arrest and detention, lengthy detention without trial, and torture. Basically it violates the International Convention on Civil and Political Rights (ICCPR). To this day there have been arrests, detention and inquiry under the PTA. Under the new National Unity government, 11 Tamil speaking government officers (Grama Niladaries) were detained under the name of rehabilitation for one month in the Poonthoddam camp. Seven of them are women including a woman with a baby. Especially people in North East are targeted by this draconian law to be punished for general

crimes and sexual crimes too. 13 men who have been arrested under the suspicion of their connections with the gangster team “Awa group” were arrested under the PTA. Similarly the teenager Vithya’s collective rape and murder suspects are interrogated under PTA.<sup>vi</sup>

Human rights activists and affected communities in the North and East have been calling for the repeal of the Act.<sup>vii</sup> Sri Lanka Human Rights Commission too has laid down general directives in this regard.<sup>viii</sup> However, the new Government has not repealed the PTA after more than 2 years. Instead, it appears to be focusing on replace it with the Counter Terrorism Act (CTA) being drafted secretly without consultations with Sri Lankan public. A leaked draft<sup>ix</sup> indicated that it contains several draconian provisions that may restrict civil liberties and due process.<sup>x</sup> During the side event organized by the Sri-Lanka Mission for UN in Geneva in March 2017, while answering for a question of a participant the Foreign Minister also accepted that the CTA bill has exceeded the objectives of the government.

#### **4. Political prisoners**

Although many assurances were given to release political prisoners who have been languishing in prisons for a lengthy period of time, the government had showed very little concern regarding their release and wellbeing. Presently, there 191 political detainees detained under the PTA; they include 121 (02 women) political prisoners in detention and nearly 70 detainees released on strict bail conditions (their trials are continuing).<sup>xi</sup> Sri-Lanka Human Rights Commission released Press Communique highlighting to the Attorney General of the ill effects of long term detention and the human rights violations as well.<sup>xii</sup>

#### **5. Enforced Disappearances**

The current National Unity government extended the duties of the Pranagama Commission which was formed by the then President Rajapakse.<sup>xiii</sup> People who observed the commission sittings said, intelligence officers were sitting in-front of the room where the commission hearings took place and they photographed and monitored the people who gone to give testimonies and in one incident the intelligence personals took the name list of the people who had gone to give the testimonies from the government officers who entered their names.<sup>xiv</sup> Some people who gave testimonies in front of the Paranagama Commission said, their stories were not heard appropriately and they were mainly diverted to consider on getting compensation and certificate of death instead of seeking truth and justice. Some of the divisional secretary officers compelled the people to get death certificates with compensation for their involuntarily disappeared family members. There were several complaints of threats and intimidations by the intelligence against the family members of disappeared persons who visited the commission.<sup>xv</sup>

The WGIED visited Sri-Lanka in November 2015 by the request of the government. People who met the Working Group were monitored by the intelligence and some of them received threat calls. This was mentioned in the Working Group's country visit report. Family members of enforced disappeared persons, who met the High Commissioner Al Zeid during his country visit in February 2016, also faced threats. High Commissioner has mentioned this in his Oral Statement on Sri-Lanka at the 31<sup>st</sup> session of the Human Rights Council which was held in June 2016.<sup>xvi</sup>

On 14<sup>th</sup> January 2016, on the Thai Pongal day, the Prime Minister who participated in the National Thai Pongal Day which was held in Jaffna made a statement to the public that the people who were considered as disappeared would had been dead.<sup>xvii</sup> The statement was repeated by the Prime Minister in an interview with Channel 4.<sup>xviii</sup> Many family members, especially women, who are seeking for their beloved ones were psychologically disturbed by this statement. A woman stated that she got chest pain and fallen ill for weeks.<sup>xix</sup> Trauma counselling was not systematically provided to the affected people to manage the situations. The government had several meetings with the families of disappeared but so far it has not officially declared the status of the disappeared persons and not created justice mechanisms to find the truth and to punish the perpetrators of these violations.

The OMP does not consist of a judicial mechanism, It has no authority to prosecute and is not bound to share their findings with prosecuting authorities. It appears that the reason for the formation of such a weak office is to ensure protection of the security forces. This has been clearly stated in the FAQs on OMP of the SCRM official website.<sup>xx</sup> The civil society and the affected communities are left in the dark not knowing what action the government would take, since the government had failed to take any action even after establishing OMP.

Witness Victim Protection Act has been passed and a national authority has been established in this regard.<sup>xxi</sup> Nevertheless, surveillance, inquiry and intimidation directed at the families of the disappeared is continuing to this day. As women of these families are the main persons who are tirelessly struggling to find their beloved ones they are the people often become primary victims of these state sponsored intimidation.

## **6. Ex Combatants**

Ex combatants who have been undergone a detention process were not given rehabilitation per the international standards. Brutal torture (both physical and psychological) was perpetrated against most of these detainees. Female combatants faced gender based sexual torture and intimidation.<sup>xxii</sup> Both male and female ex combatants are still facing threats and intimidation by the state intelligence. They receive telephone calls from the intelligence any time of the day and visited by them any time.<sup>xxiii</sup>

## **7. Rule of law**

Sexual crimes, murders, violent gang activities, sand and timber smuggling and trafficking and distributing narcotics have been increased in North and East areas. Especially in Northern Kilinochchi sand mining has become a major natural resources rights violation.<sup>xxiv</sup> In Jaffna violent activities of gangster teams in public places has intensified. This has again created a self-curfew among general public in Jaffna due to fear and to protect themselves from such gangsters.<sup>xxv</sup> Not only gangsters but in one incident police officers at a check point breached their duty to protect the law and order and shoot at a motor cycle rider and killed him and this caused the death of the person who was sitting behind him too (both the young men are university students).<sup>xxvi</sup> In an incident police persons at the check point used their gun and threatened a civilian who traveled in the particular way.<sup>xxvii</sup>

## **8. Gender based violence and sexual crimes**

There has been a significant increase in violence against women and children in war affected areas in the North and East. School children, especially female children are unable to return home safely without facing various forms of sexual harassments. According to the Police Report released in 2015, a total of 135 female children under the age of 16 were sexually abused in the North and East.<sup>xxviii</sup> Incidents of women being attacked and murdered are increasing. A pregnant young mother of seven months was raped and murdered in the Jaffna district at beginning of this year.<sup>xxix</sup> Reasons for such increase in sexual crimes is the absence of law and order, failure by the police to take action to produce the perpetrator before the court and lack of protection for victims and witnesses. In addition, unavailability of State sponsored safe houses for women in the in the North and East and lack of documentation and data on incidents of gender based violence and sexual crimes in order to raise wider awareness are also contributing factors for such increase.

Heavy militarization and the function of state intelligence is another reason for the gender based violence. Men attached to state intelligence section make telephone calls to female headed house holds at late nights and verbally abuse them. A woman attached to the zonal task force of the Consultation Task Force has received several SMSs with abusive messages during her time period in the task force.

Although Sri Lanka has ratified CEDAW, no action has been taken to propose a draft legislation in line with its international obligations. A legislation that comprising CEDAW General Recommendation 19 and Resolution 1325 in order to eliminate violence against women is not in place.

## **9. Development bill to reduce powers of the provincial councils**

The development bill which has been gazetted by the Sri Lankan government to ensure rapid economic development will limit the economic and development activities of the provincial council.<sup>xxx</sup> Section 12 of the Bill states that the relevant Minister holds the authority to obtain a preferred land through the Chief Minister of the Provincial Council for the purpose of tourism, high-tech agricultural activities and fisheries. Accordingly development activities of the province which is under the control of the provincial council will be transferred to development agencies and thus come into the power of the central government. Therefore, this Bill is a stumbling block to devolution of power in terms of politics and development to the provinces. Basically this Bill is disadvantageous in terms of the aspirations of the minorities in the North and East who have been calling for political, economic and administrative independence since inception.

## **10. Resettlement is not carried out fully in the North and East and Continuation of Military occupation**

### **Northern province:**

Resettlement has not taken place fully in military occupied areas. Areas such as Keppapilavu, Mullikulam is fully occupied by the military and the people of the said areas have been resettled in so called development villages in forest areas.

Movements of security forces and intelligence have increased in the said areas. Similarly, the people who were resettled in areas like Valalai and Mavittapuram of the Vallikamam North are living amidst military camps.

Myliddy harbour and the surrounding 12 km long coastal land spreading across areas such as Palaly, Oorani, and Kankesanthurai have not been released for public use<sup>xxxii</sup>

Nearly 100 families who were living in temporary shelters in Jaffna were resettled in a different area called Nallinakkapuram (Reconciliation Village) created by the military. There's heavy military presence in the area.<sup>xxxiii</sup>

A total of 4835 persons of 1224 families are living in temporary camps in the Jaffna district. A further total of 28, 492 persons of 7123 families are living with friends and relatives.

The Navy refused permission for 184 families of Iranatheevu Island in Kilinochchi to resettle in their land.

The military has taken over 39 acres of private land belonging to 23 persons in Neduntheevu (Delft). Further, in the same area they have taken over 05 acres of land belonging to government departments and public and also occupied 20 building belonging to government organizations and public.

There are 12 fresh water wells in the Sarapiddy area of Neduntheevu and the Navy alone is utilizing these wells. 72,000 liters of water is being used for their consumption as they draw water 6 times per day in a bowser that holds 12,000 liters.

Similarly 12,000 liters of drinking water is daily taken by the Sri-Lankan Navy in Karainagar Naval base from a well in Ponnalai village (GN division J/170) of Chankanai area.

Besides, the wells in private lands belonging to the people is also controlled by the military and thousands of liters of water is drawn on a daily basis for the surrounding camps. As a result, people are facing water shortages. The water crisis exists in resettled areas, islands and in various parts of the Jaffna peninsula.

### **Eastern Province:**

People of Sampur fully abandoned their lands when hostilities broke out in 2006. At that point when people were displaced, the government ignoring the legal provisions in the law, went ahead and illegally acquired 818 acres of land owned by the people and later gave the land on long term lease to a private company. When the present National Unity government came into power in 2015, the long term lease agreement with the private company was cancelled. Without providing any basic facilities the displaced people were resettled in two phases in their own lands on 19.08.2015 and 25.03.2015. However, the ownership of the land have not been transferred to the resettled people and continues to be a property of the government. Also, facilities for resettlement were not provided. When the people of Sampur had been displaced in 2006, the navy had put up a training camp in 176 acres of the land belonging to the people. On 25.03.2016 this camp was removed. It was decided at the Trincomalee Development Committee meeting that 40 acres of alternative land will be provided between Sampur Sea and Villukulam to put up the camp. But, in addition to the approved 40 acres, a further 245 acres of land from the Sampur coastal area and 32 acres of people's land including the Neelakerni Sri Murukan Temple land (totaling 277 acres of land) was taken over by the navy for the above purpose. As a result, coastal fishing in the Sakaravattavan area in Sampur and fresh water fishing in the Villukulam area in Sampur has been banned. The 505 acres of land allocated for construction of a coal power plant includes 110 acres of private land. Furthermore, the allocated land comprises 15 water tanks used by public and 395 acres of forest land used by tribal communities for their livelihood purposes.<sup>xxxiii</sup>

### **11. Issues face by Fishers:**

The traditional harbor of 300 fisher families of Metkuthurai costal village (GN division J/5) of Delft island in Jaffna district is being totally under the control of the Sri-Lankan Navy since 2004. The fishers of this village are unable to place their boats in this

location. Therefore, the fishers daily travel 7 Km from their village to Kilakuthurai for their fishing activities.

## **12. Militarization**

Military presence can be seen and felt in the people's daily lives in the North and East. The military interference in economic activities, educational activities, cultural events, family events has become a common occurrence.<sup>xxxiv</sup> The military runs a total of 22 business centres in the Mannar district.<sup>xxxv</sup> Such kind of military economic spots are functioning in all districts of North and East areas.<sup>xxxvi</sup> The State contracts for infrastructure work in the North and East are being taken by the forces and they involved such construction work. For an example, Navy renovated Navalady – Sampur road with the financial assistance of the Ministry of Resettlement.<sup>xxxvii</sup> As a result local construction workers, contractors and the local governments too are affected. A total of 588 preschool teachers are receiving their salaries from the Civil Security Department (CSD) under the Military. In Kilinochch and Mullaitivu districts military run farms (CSD farms) in various locations. More than 3000 civilians including women are working in those farms. Two batches of men who work in the farms were recently given training with armaments too.<sup>xxxviii</sup> A portion of UN Peace Building Fund has been granted to Sri-Lankan government for the resettlement of IDPs in lands released by the Government from former High Security Zones. The Ministry of Resettlement is responsible for this.<sup>xxxix</sup> But military is responsible to construct the houses for the IDPs of Valikamam North.<sup>xl</sup> Nallinakkapuram model village houses were constructed by the military and photographs of the military have been hung in all those houses. Military engage in government administrative activities covertly in North and East.

## **13. Threats and intimidation to human rights defenders**

The military and State intelligence officers continue monitor and carry out inquiries of human rights activists and representatives of civil society organizations in the North and East to date.<sup>xli</sup> They force the communities to provide information regarding their activities. They have also formed informants amongst the public in order to obtain information on activities carried out by civil society activists. Women human rights defenders who are working at civil society organizations are visited by the intelligence and inquiries are taking place regarding their work. Journalists are threatened and forced to provide information about the programmes of civil society activities. Some human rights activists often receive telephone calls by the intelligence and their movements are closely followed by them.<sup>xlii, xliii</sup>

## **14. Discrimination in justice mechanisms**

Justice is imperative for reconciliation. However, the Sri Lanka judiciary acts in a biased manner. In the past, perpetrators went scot free and victims of war crimes and extra judicial killings were denied justice due to our justice system. Kumarapuram massacre<sup>xliv</sup> and the killing of parliamentary member Raviraj<sup>xlv</sup> went on to prove that although there were credible witnesses, the perpetrators went scot free due to jury trials.

## **15. Language policy and ethnic discrimination:**

Though the Constitution of Sri-Lanka guarantees the Tamil is the official language in North and East areas, until to date very often official letters are sent to individuals and institutions in North and East in Sinhala language by the government authorities. They receive letters in Sinhala language as a response for their appeals in Tamil. Some of the police stations in North and East take the complaints from Tamil only speakers in Sinhala and give the copy of the Sinhala statements to them. As Most of the time Sinhala speaking police officers and government officers are employed for the service of Tamil only speaking people in North and East so the civilians struggle to understand the language.<sup>xlvi</sup> In some areas the Tamil names of the villages are changed and Sinhala names are given instead to that ex. In Jaffna, Kantharodai a traditional Tamil village in Chunnakam area has been changed as Kadhurugoda during the period of past regime and still its being continuing with the same name. Similarly in Trincomalee, Ilangai Thurai Mugatthuvaram has been changed as Lanka Patuna.

Threats and hate speech against minorities have been increased in the recent past by the Sinhala Buddhist extremist forces. They do street protest, public meetings and also directly intimidated minority government officials as well.

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<sup>i i</sup> Alternative Generation for Social Justice and Rights, Jaffna , Ampara District Women's Network, Center for Human Rights and Development (CHRD), Centre for Humanitarian and Integrated Development (CHID-Mullai), Center for People's Dignity and Rights, Kilinochchi, Center for Promotion and Protection of Human Rights, Trincomalee (CPPHR), Trincomalee District Youth Development AHAM Trincomalee, Trincomalee District Women'S Network, Law and Human Rights Education Institute- Jaffna, Center for Peace and Justice (CPJ), Jaffna, Forum for War Affected People. Mannar, Mannar Social and Economic Development Organization (MSEDO), Mannar, Batticaloa District Women's Network

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- ii Promoting reconciliation, accountability and human rights in Sri Lanka, 29 September 2015, UN Human Rights Council, Geneva, A/HRC/30/L.29, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/220/93/PDF/G1522093.pdf?OpenElement>
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- iv I Have No Confidence in the CTF, 6 January 2017, Daily Mirror, <http://www.dailymirror.lk/article/I-have-no-confidence-in-the-CTF-Wijeyadasa-121817.html>
- v Final Report of the Consultation Task force on Reconciliation Mechanisms, Executive Summary and Recommendations, 17 November 2016, P-85 <http://www.scrm.gov.lk/documents-reports>
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- xi Center for Human Rights and Development, Colombo
- xii Press Communique, Human Rights Commission of Sri-Lanka, 27 November 2015, HRC Release of prisoners <http://hrcls.lk/english/wp-content/uploads/2015/11/HRCSL-Press-release-on-27-November-2015.pdf>
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- xiv Group discussions with families of disappeared persons in North and East districts, January – March 2017
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