



## **PEOPLE FOR EQUALITY AND RELIEF IN LANKA**

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### **PEARL SUBMISSION TO THE THIRD UPR OF SRI LANKA**

## **PEACE POSTPONED: ONGOING IMPUNITY AND MILITARIZATION IN SRI LANKA**

### **HUMAN RIGHTS DEVELOPMENTS SINCE THE SECOND UPR IN 2012**

1. Militarization in the North-East has continued, although the government claims that military presence in Tamil areas has been significantly reduced. The military occupation of Tamil lands is a source of ongoing trauma to the Tamil population, who are forced to live among the same soldiers who attacked their families and communities through alleged war crimes and crimes against humanity.
2. Government land grabs in the North-East have continued, while the rightful Tamil owners continue to live in internally displaced person (IDP) camps.
3. The establishment and execution of the Office of Missing Persons (OMP) occurred hurriedly and lacked meaningful consultations with victims, their families, and civil society. In addition, the OMP lacks accountability and transparency.
4. The constitutional reform process has lacked transparency and meaningful participation from civil society.
5. Impunity has continued to reign for alleged atrocity crimes committed during the 1983–2009 ethnic armed conflict.
6. Although the government regime changed in 2015, the new government has not adequately addressed allegations of atrocity crimes or ongoing human rights violations in the North-East. In fact, the current government has reneged on certain international commitments, including its commitment to establish an accountability mechanism that involves significant participation of international judges, investigators, and prosecutors to investigate the deaths of and redress the tens of thousands of Tamil victims.
7. Positively, the Sirisena government has made commitments to the international community, including in UN Human Rights Council Resolution A/HRC/RES/30/1 (2015), that are stronger than those made by the previous Rajapaksa government. Unfortunately, most of these commitments remain on paper and not in practice.

**RECOMMENDATIONS TO THE GOVERNMENT OF SRI LANKA**

8. Sri Lanka should demilitarize the North-East in accordance with its commitments to Tamil civilians. The Ministry of Defence should reassign and relocate soldiers throughout the entire country according to population sizes instead of maintaining the overwhelming majority of troops and bases in the North-East.
9. The military should immediately disengage from civilian activities, including its involvement in schools, Tamil cultural activities, and agricultural and other economic activities.
10. Sri Lanka should return land taken from civilians in the North-East to its rightful owners in a satisfactory condition for cultivation and Tamil livelihood.
11. Sri Lanka should release political prisoners who were detained in relation to the conflict.
12. Sri Lanka should reform the security sector, particularly the police and military, and adopt lustration policies to remove members of the security forces implicated in ongoing torture and sexual violence as well as in pre-2009 alleged war crimes and crimes against humanity.
13. Parliament should repeal the Prevention of Terrorism Act (PTA), which sweepingly violates due process rights.
14. Sri Lanka should allow international actors to provide justice for international crimes, as the government is both unwilling and unable to undertake investigations and prosecutions of alleged perpetrators in accordance with its international commitments.
15. All branches of the government of Sri Lanka should implement awareness-raising campaigns to educate the Sinhala South about the atrocity crimes and ongoing human rights violations committed against the Tamil population, in accordance with second-cycle UPR recommendation (A/HRC/22/16) 127.35 (by Myanmar), which was supported by Sri Lanka.
16. The Constitutional Steering Committee should actively solicit and include input from Tamil victims, their families, and civil society throughout the constitutional reform process.
17. Sri Lanka should ratify the Rome Statute, with retroactive effect, in accordance with the second-cycle UPR recommendations (A/HRC/22/16) 128.3 (by Costa Rica and Estonia) and 128.4 (by Latvia). While Sri Lanka did not support those recommendations, their implementation would demonstrate President Sirisena's commitment to achieving accountability for Tamil victims and their families.

## METHODOLOGY

18. The information here is based on reports by PEARL and its contacts in Sri Lanka but also draws on information from international civil society groups and news media sources.
19. Because many of the relevant second-cycle UPR recommendations were not supported by the previous Rajapaksa regime, which governed during the end of the war, this submission looks at the implementation of: (1) the second-cycle UPR recommendations supported by the Rajapaksa government of 2012; and (2) the international commitments made by the current Sirisena government since it came to power in 2015.

## FOLLOW UP ON RECOMMENDATIONS FROM THE 2012 UPR

### Militarization Continues to Pervade Tamil Civilian Life

20. The military remains heavily involved in civilian life in the North-East, primarily in schools, military-run health clinics, grocery stores, and agricultural farms.<sup>1</sup> This level of penetration not only precludes the healing of the Tamil population but also highlights Sri Lanka's disregard for its commitment in A/HRC/RES/30/1, ¶ 10 on "ending of military involvement in civilian activities." The current government should express its commitment to human rights standards by supporting and following through on recommendations on demilitarization during its third-cycle UPR.
21. As of 2014, at least 160,000 primarily Sinhalese soldiers were stationed in the North-East.<sup>2</sup> Eight years after the end of the armed conflict, the nearly one-to-six military-to-civilian ratio<sup>3</sup> is unreasonable and does not achieve the Sirisena government's stated goal of creating and maintaining "public order."<sup>4</sup> The continued renewal of the military's mandate in the North-East demonstrates Sri Lanka's disregard for restoring normalcy and the rule of law to the war-ravaged and predominantly Tamil areas. It also highlights the government's disinterest in achieving sustainable peace and reconciliation.

### The Military Continues to Take Lands, Perpetuating the Internal Displacement of Tamils

22. Sri Lanka supported the second-cycle UPR recommendations (A/HRC/22/16 (2012)) 127.93 (by Cuba), 127.94 (by Finland), and 127.95 (by the Holy See) on the right of return of IDPs. In recommendation 127.95, Sri Lanka agreed to "ensure legal ownership and return or restitution of houses and lands to internally displaced persons, according to international standards."

23. However, most of the land grabbed from Tamils by the military has not been returned and instead has been used to militarize civilian life in the ways enumerated in the previous section of this submission.<sup>5</sup>
24. As of May 2016, conservative estimates say almost 13,000 acres remain occupied in the Northern Province alone,<sup>6</sup> despite recurring promises by the Sirisena administration to return land in the Palaly High Security Zone, Kilinochchi, Mullaitivu, Thellippalai, and Kopay.<sup>7</sup>
25. To date, only a few thousand acres have been returned to their Tamil owners, largely in the shadow of military camps, with their homes, immovable structures, and indicators of land boundaries having been destroyed. For example, only about 1,300 out of 6,381 acres of the Valikamam North (former) High Security Zone in Jaffna District has been returned.<sup>8</sup>
26. As of 2015, there were over 73,000 IDPs in Sri Lanka, and a huge portion of them are awaiting land repatriation by the government. Thousands of families continue to languish in “temporary” camps, and many of them have been displaced for over 25 years.<sup>9</sup>
27. The government’s failure to fulfill its land restitution commitments violates the right of return of Tamil IDPs and refugees and also demonstrates the government’s agenda of forced displacement and desire to preserve the current levels of the military occupation.

### **The Office of Missing Persons (OMP) is Deeply Flawed**

28. Although Sri Lanka did not support the second-cycle UPR recommendations on disappearances, the Sirisena regime has taken measures, albeit flawed, to address this issue. In 2016, Parliament voted to create the OMP to investigate the disappearances of over 20,000 people during the armed conflict, recommend compensation to bereaved families, and empower families to take legal action against those responsible for the disappearances.<sup>10</sup>
29. While the creation of the OMP was a welcome step toward fulfilling Sri Lanka’s commitments in A/HRC/RES/30/1, ¶ 4, the establishment process has been deeply flawed. Namely, families of the disappeared were not consulted in the design of the OMP.<sup>11</sup>
30. The OMP has no civil or criminal prosecutorial powers.<sup>12</sup> To date, the OMP has not been established,<sup>13</sup> and the government is now recycling previous administrations’ claims that the missing persons in question left Sri Lanka illegally and therefore cannot be tracked down.<sup>14</sup>
31. The inadequate execution of the OMP contradicts Sri Lanka’s stated transitional justice and reconciliation commitments.

32. Furthermore, instead of supporting families of the disappeared who continue to peacefully demonstrate and demand answers from the government, security forces harass and intimidate them as a silencing tactic.<sup>15</sup>

### **Sri Lanka Continues to Detain Political Prisoners Under Harsh Conditions**

33. In A/HRC/RES/30/1, ¶ 12, Sri Lanka committed “to review and repeal the Prevention of Terrorism Act [PTA], and to replace it with anti-terrorism legislation in accordance with contemporary international best practices.” However, the PTA remains in force and is used to punish dissent, particularly by Tamils.
34. In October 2015, Tamils held major peaceful demonstrations to protest the continued detention, without trial, of Tamil political prisoners held under the PTA.<sup>16</sup>
35. Over twenty political prisoners (out of approximately 200 political prisoners, some of whom were detained after the end of the war in 2009) went on a hunger strike in August 2016 to protest their detention, which has lasted over seven years after the end of the armed conflict.<sup>17</sup>
36. PEARL has received reports of detainees being refused access to medical care. Family members of one individual who has been detained in relation to the conflict for 8 years reported that he was denied surgery to remove shrapnel from his jaw. The detainee is in constant agony and has repeatedly raised this with prison officials to no avail. This inhuman and inhumane treatment of an individual detained in relation to the conflict violates Sri Lanka’s obligations under both international human rights law and international humanitarian law.
37. While the Sirisena government has released some prisoners on a conditional basis,<sup>18</sup> the continuing lack of transparency and action by Sri Lanka violates the rights of individuals detained in relation to the conflict under international human rights law and the Geneva Conventions.
38. Tamils have consistently demanded the release of political prisoners as a crucial confidence-building measure, yet the government continues to ignore their needs and requests.

### **Sri Lanka is Not Effectively Investigating Allegations of Atrocity Crimes**

39. Sri Lanka supported the second-cycle UPR recommendations (A/HRC/22/16) 127.75 (by Ukraine), 127.76 (by the United Kingdom), 127.77 (by Argentina), 127.78 (by Chile), and 127.85 (by Switzerland) to investigate allegations of violations of international humanitarian law and international human rights law as well as to end impunity for wartime violations.

40. Although Sirisena developed a transitional justice agenda in his first year in office, none of his plans have been credibly fulfilled.<sup>19</sup>
41. In 2015, OHCHR recommended the establishment of a hybrid court with international participation to investigate and prosecute allegations of war crimes and crimes against humanity, finding that “a purely domestic court procedure will have no chance of overcoming widespread and justifiable suspicions fueled by decades of violations, malpractice and broken promises.”<sup>20</sup>
42. Despite co-sponsoring A/HRC/RES/30/1 on reconciliation and accountability, Sri Lanka has not established—or even made meaningful progress towards establishing—any accountability mechanism that would meet international standards.<sup>21</sup> Indeed, President Sirisena and Prime Minister Wickremesinghe have publicly stated that international judges are not needed in any accountability mechanism and are therefore excluded.<sup>22</sup>
43. Sri Lanka continues to violate many of its commitments under A/HRC/RES/30/1. There is broad consensus that reconciliation both within the Tamil community and between Tamils and Sinhalese will be impossible without a credible accountability mechanism involving international participation.

#### **Sri Lanka Has Failed to Hold Inclusive Consultations on Constitutional Reform**

44. Sri Lanka supported relevant second-cycle UPR recommendations (A/HRC/22/16) 127.9 (by Bangladesh), 127.35 (by Myanmar), and 127.56 (by the Holy See). The government should live up to its commitments and demonstrate its desire to include all affected persons in consultations related to constitutional and institutional reform.
45. In March 2016, Sri Lanka initiated a constitutional reform process aimed at devolving power from the federal government and providing increased autonomy to the provinces. However, one year later, the Constitutional Steering Committee has yet to publicize what Sri Lanka’s political framework would look like under a revised constitution, especially with respect to devolution and the relationship between the central government and provinces.<sup>23</sup> The lack of transparency undermines the legitimacy of the constitutional reform process.
46. Civil society groups have critiqued the Public Representations Committee’s consultation process as being too limited in scope and not far-reaching enough. There was very little to no education of communities prior to the consultations, leading to low participation and a lack of public engagement with the constitutional reform process across the country. Civil society groups continue to express concerns that the constitutional reform will not address the demands of the Tamil people and will consequently exacerbate tensions caused by central government hegemony.<sup>24</sup>

**Security Forces Continue to Torture and Sexually Violate Tamils, Particularly in Detention**

47. In A/HRC/RES/30/1, ¶ 17, Sri Lanka agreed “that violations of international human rights law and international humanitarian law, including those involving torture, rape and sexual violence, are prohibited and that those responsible will be investigated and punished.”
48. The Sirisena government also committed to undertake security sector reform in A/HRC/RES/30/1, ¶ 8.
49. However, in recent times, international and local civil society groups, the OHCHR Investigation on Sri Lanka (OISL) report, the UN Committee Against Torture,<sup>25</sup> and the UN Special Rapporteur on torture have expressed alarm at the high rates of ongoing torture, including sexual violence, against Tamils, particularly those in detention. “White van” abductions have also continued to occur.
50. The UN Special Representative of the Secretary-General on Sexual Violence in Conflict, Zainab Hawa Bangura, has been very vocal about the prevalence of sexual violence post-2009 in the North-East, which remains ongoing.
51. Sri Lanka is one of four post-conflict states included in the most recent Report of the Secretary-General on Conflict-related Sexual Violence (S/2016/361 (2016)), ¶ 82. This report describes a policy of sexual violence used by Sri Lanka’s security forces against detainees. Notably, security forces have perpetrated sexual violence against both women and men on an equal basis.
52. Statements of torture victims taken by civil society suggest that the use of torture and sexual violence is highly organized and systemic against Tamils suspected of even low-level association with the LTTE or involvement in legitimate democratic political activity. Of the 2015 cases, all but 5 now have medicolegal reports corroborating torture.<sup>26</sup>
53. In 2015, for the fourth successive year, Sri Lanka was a top country of origin of individuals needing rehabilitation or forensic documentation of their torture injuries.<sup>27</sup>

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- <sup>1</sup> PEOPLE FOR EQUALITY AND RELIEF IN LANKA (PEARL), *WITHERING HOPES* 12 (2016), <http://pearlaction.org/articles/press-release-withering-hopes-pearl-report-on-the-current-situation-in-the-north-east-of-sri-lanka/> [hereinafter *WITHERING HOPES*]. *Sri Lanka's Democratic Transition: A New Era for the U.S.-Sri Lanka Relationship: Hearing Before the Subcomm. on Asia and the Pacific of the H. Comm. on Foreign Affairs*, 114th Cong. 26 (2016) (statement of Nimmi Gowrinathan, Ph.D., Visiting Prof., Colin Powell Ctr. for Civic and Glob. Leadership, City Coll. of N.Y., City Univ. of N.Y.) [hereinafter *Gowrinathan Statement*].
- <sup>2</sup> SOCIETY FOR THREATENED PEOPLES, *UNDER THE MILITARY'S SHADOW: LOCAL COMMUNITIES AND MILITARIZATION ON THE JAFFNA PENINSULA* 20 (2016), [http://oceangrabbing.ch/wp-content/uploads/sites/3/2016/10/Bericht\\_JaffnaFINAL\\_low.pdf](http://oceangrabbing.ch/wp-content/uploads/sites/3/2016/10/Bericht_JaffnaFINAL_low.pdf) [hereinafter *Under the Military's Shadow*].
- <sup>3</sup> *Id.*
- <sup>4</sup> *New Sri Lanka President Renews Troop Deployment Orders*, *DAILY MAIL* (Feb. 5, 2015), <http://www.dailymail.co.uk/wires/afp/article-2940733/New-Sri-Lanka-president-renews-troop-deployment-orders.html>. See also *Gowrinathan Statement*, *supra* note 1, at 25 (“And then militarization—obviously, this demilitarization is one of the biggest issues for all communities in the north and east. To show demilitarization, yes, the government has made the governor of the northeast a civilian and not a military commander. So this is—you know, it is showing something. But if you talk to the civilians there, there was a civilian I spoke to recently who said you don't need checkpoints anymore—you don't need soldiers.”).
- <sup>5</sup> THE OAKLAND INSTITUTE, *WAITING TO RETURN HOME: CONTINUED PLIGHT OF IDPS IN POST-WAR SRI LANKA* 6 (2016), [https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/SriLanka\\_Return\\_Home\\_final\\_web.pdf](https://www.oaklandinstitute.org/sites/oaklandinstitute.org/files/SriLanka_Return_Home_final_web.pdf) (“it is difficult to ascertain how many of the promised lands have actually been released for full resettlement, and how many households have successfully been resettled. What is clear is that the promises made by the government to date are far below the total necessary lands required to adequately resettle all the current IDPs.”) [hereinafter *WAITING TO RETURN HOME*].
- <sup>6</sup> CENTRE FOR POLICY ALTERNATIVES, *LAND OCCUPATION IN THE NORTHERN PROVINCE: A COMMENTARY ON GROUND REALITIES AND RECOMMENDATIONS FOR REFORM* 8 (2016), <http://www.cpalanka.org/wp-content/uploads/2016/03/Land-Occupation-in-the-Northern-Province.pdf>.
- <sup>7</sup> *WAITING TO RETURN HOME*, *supra* note 5, at 4.
- <sup>8</sup> *Id.* at 6.
- <sup>9</sup> *Id.* at 8.
- <sup>10</sup> *Sri Lanka: Office of Mission Persons seeks 'disappeared,'* *BBC NEWS* (May 25, 2016), <http://www.bbc.com/news/world-asia-36378789>.
- <sup>11</sup> *Sri Lanka: Consultations Lacking on Missing Persons' Office*, *HUMAN RIGHTS WATCH* (May 27, 2016), <https://www.hrw.org/news/2016/05/27/sri-lanka-consultations-lacking-missing-persons-office>.
- <sup>12</sup> Taylor Dibbert, *Tamil Political Prisoners in Sri Lanka: A Road to Nowhere?*, *LAWFARE* (Sept. 11, 2016), <https://www.lawfareblog.com/tamil-political-prisoners-sri-lanka-road-nowhere>. Shiran Illanperuma, *How Sri Lanka Commissions Away The Disappeared*, *ROAR* (Mar. 17, 2017), <https://roar.lk/reports/how-sri-lanka-commissions-away-the-disappeared/>.
- <sup>13</sup> P.K. Balachandran, *North Sri Lankan CM Wigneswaran boycotts Independence Day function*, *NEW INDIAN EXPRESS* (Feb. 4, 2017), <http://www.newindianexpress.com/world/2017/feb/04/north-sri-lankan-cm-wigneswaran-boycotts-independence-day-function-1566954.html>.
- <sup>14</sup> *Sri Lankan PM say missing persons may have left the country illegally*, *NEW INDIAN EXPRESS* (Jan. 26, 2017), <http://www.newindianexpress.com/world/2017/jan/26/sri-lankan-pm-says-missing-persons-may-have-left-the-country-illegally-1563758--1.html>.
- <sup>15</sup> *WITHERING HOPES*, *supra* note 1, at 22.
- <sup>16</sup> *Id.* at 7.
- <sup>17</sup> *PTA Prisoners on Hunger Strike*, *DAILY MIRROR* (Aug. 8, 2016), <http://www.dailymirror.lk/113769/PTA-prisoners-on-hunger-strike>.
- <sup>18</sup> Dibbert, *supra* note 12.
- <sup>19</sup> Taylor Dibbert, *Clarifying Sri Lanka's Transitional Justice Commitments*, *HUFFINGTON POST* (Nov. 14, 2015), [http://www.huffingtonpost.com/taylor-dibbert/clarifying-sri-lankas-tra\\_b\\_8564430.html](http://www.huffingtonpost.com/taylor-dibbert/clarifying-sri-lankas-tra_b_8564430.html).
- <sup>20</sup> Press Release, OHCHR, *Zeid Urges Creation of Hybrid Special Court in Sri Lanka as UN Confirms Patterns of Grave Violations* (2015), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16432>.



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- <sup>21</sup> *Sri Lanka: Adopt Task Force's Justice Proposals*, HUMAN RIGHTS WATCH (Jan. 12, 2017), <https://www.hrw.org/news/2017/01/12/sri-lanka-adopt-task-forces-justice-proposals>.
- <sup>22</sup> *President promises urgent action to reduce CoL, vows to strengthen economy*, SUNDAY TIMES (June 12, 2016), <http://www.sundaytimes.lk/160612/columns/president-promises-urgent-action-to-reduce-col-vows-to-strengthen-economy-197072.html>. See also *Sri Lanka divided as panel backs foreign judges to probe war crimes*, REUTERS (Jan. 6, 2017), <http://in.reuters.com/article/sri-lanka-rights-un-idINKBN14Q09D>.
- <sup>23</sup> ADAYAALAM CENTRE FOR POLICY RESEARCH, ISSUE BRIEF NO. 1: THE SUB-COMMITTEE ON CENTRE-PERIPHERY RELATIONS AND THE UNITARY STATE 3 (2016), <https://drive.google.com/file/d/0By31TvxfMQOSmN4S3hWYW4ydFE/view>.
- <sup>24</sup> *Id.*
- <sup>25</sup> *Torture is 'Common Practice' in Sri Lanka, U.N. Panel Finds*, N.Y. TIMES (Dec. 17, 2016), <https://www.nytimes.com/2016/12/07/world/asia/sri-lanka-torture.html>.
- <sup>26</sup> ITJP SUBMISSION TO THE COMMITTEE AGAINST TORTURE (Oct. 17, 2016), [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT\\_CAT\\_CSS\\_LKA\\_25771\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT_CAT_CSS_LKA_25771_E.pdf).
- <sup>27</sup> In fact, Sri Lanka was the top country of origin of individuals referred to Freedom from Torture for rehabilitation or forensic documentation of their torture injuries. Of the 22 referrals, they have completed medico legal reports for 8 people tortured in this period, 8 others are receiving clinical treatment. Amongst these 16 cases, 1 was a minor. UN COMMITTEE AGAINST TORTURE, 59TH SESS., FREEDOM FROM TORTURE SUBMISSION ON SRI LANKA, [http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT\\_CAT\\_CSS\\_LKA\\_25498\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/INT_CAT_CSS_LKA_25498_E.pdf).