



Universal Periodic Review – Sri Lanka March 2017

Sri Lanka's last hearing before the Working Group on the Universal Periodic Review (UPR) was in November 2012, during which the government largely focused on its plan to implement the recommendations of its Lessons Learnt and Reconciliation Commission (LLRC) to provide redress for wartime abuses. Since then, Sri Lanka has had a change of government that has made pledges at the Human Rights Council through resolution 30/1 of October 2015, which, if implemented, promise greater rights protections and accountability than those recommended by the LLRC.

However, implementation of the present government's pledges has been slow and halting, leading to frustration for victims and families affected by the 27-year-long war between the separatist Liberation Tigers of Tamil Eelam (LTTE) and the government. A promised office on enforced disappearances has yet to be established, although enabling legislation was passed in June 2016. Legislation to establish another three transitional justice mechanisms remain in draft form. Senior government officials, including the President Maithripala Sirisena, frequently make public statements opposing holding members of the security services accountable for wartime abuses.

Security sector reform mentioned in the 2012 UPR and the 2015 Human Rights Council resolution has made little progress. Barring prosecutions in a few high-profile cases and the creation of a separate Ministry of Law and Order, impunity for abuse and torture by the police and other members of the security services remains a pervasive problem.

Sri Lanka has engaged extensively with the international community over the last two years as recommended in the 2012 review. Many special mandate holders and the High Commissioner for Human Rights have visited Sri Lanka, and reported free and unfettered access and movement.

Accountability and Transitional Justice

Under the consensus 2015 resolution of the Human Rights Council, Sri Lanka undertook to deliver justice and accountability that went above and beyond its 2012 UPR pledge. Despite government claims of progress before the March 2017 council session, almost none of the pledges, including those pertaining to accountability, had been fulfilled.

A key element of the government's promise on transitional justice is establishing four mechanisms: a special court with international judges and prosecutors to try allegations of war crimes; an office on missing and disappeared persons; truth-seeking and reconciliation; and reparations. The government has made slow progress on fulfilling this mandate. Work still has not begun after the government hastily enacted a law to create an Office of Missing Persons. Other than draft legislation, there has been no movement on the other three mechanisms.

Importantly, the government has yet to announce steps to act on the recommendations of its Consultation Task Force (CTF), which conducted extensive nationwide consultations on the transitional justice mechanisms. Instead, senior political leaders have dismissed the report as an "NGO report." The CTF report provides an important blueprint for the way forward, drawn from all affected communities including the security services. The government's dismissal of this report sends a disturbing message that it has little regard for the views of the victims of abuses and little desire to press ahead with action.

An additional note of concern on Sri Lanka's progress on accountability is its resistance to any foreign involvement in the four mechanisms. Although the involvement of "Commonwealth and other foreign judges ... and authorized prosecutors and investigators," is a core component of Sri Lanka's undertakings

to the council, and is critical to help ensure the independence of the mechanisms, the president and cabinet members have been outspoken in rejecting international involvement. The robust participation of international actors also emerged as a central demand from victims' groups in the CTF report, citing it as central to their faith in the legitimacy of the processes.

Although there has been some movement on a few emblematic cases, progress has been slow and courts have had difficulty compelling security services to cooperate with directives to provide evidence and documentation. Most conflict-era cases, documented by various commissions of inquiry over the years, remain uninvestigated.

Recommendations:

- Establish the Office of Missing Persons.
- Establish remaining transitional justice mechanisms.
- Ensure appointment of commissioners in a transparent manner and includes representatives across all affected communities.
- Ensure women are represented at all decision-making levels in transitional justice mechanisms.
- Abide by undertakings to the Human Rights Council on meaningful participation of international judges, prosecutors and investigators in the mechanisms.
- Issue instructions to the security forces to comply with court directives during trials investigating potential culpability of members of the security forces.
- Amend the Victim and Witness Protection Act to bring it in line with international standards; ensure that the authority set up under the act is independent and adequately resourced, with particular attention to supporting women victims and victims of sexual violence.
- Ratify the Rome Statute of the International Criminal Court.

Security Sector Reform

Sri Lanka has a long history of torture and custodial abuse by the police and armed forces that is facilitated by draconian wartime legislation. The government has yet to initiate security sector reform, including repealing and replacing the Prevention of Terrorism Act (PTA), which remains in place eight years after the end of the war. Any new law replacing the PTA needs to respect international criminal justice standards.

Although the government has released many of the long-term PTA detainees either on bail or unconditionally, nearly 120 detainees remain in jail either awaiting charges or trial. Some of the PTA detainees have been held without charge for over 10 years. The government should give priority to resolving the outstanding cases and providing redress for those detainees who were released unconditionally after years in detention without charge.

There are reports that President Sirisena issued directives to the security forces to abide by the law in its treatment of persons in custody. However, a January 2017 report by the United Nations Special Rapporteur on torture, corroborates Human Rights Watch's findings that a culture of torture is endemic to the security forces, and that impunity is entrenched.

Recommendations:

- Credibly investigate and appropriately prosecute all cases of torture implicating members of the security forces.
- Repeal the PTA immediately, and resolve all outstanding cases under the PTA as matter of priority.
- Ensure that any new counterterrorism law is drafted in consultation with key stakeholders and meets international due process standards.
- Seek the advice of the Special Rapporteur on counter-terrorism on a new anti-counterterrorism bill and invite him for an in-country visit.

Constitutional Reforms

A government-appointed independent task force on constitutional reform, set up in December 2015, conducted nationwide public consultations. The task force heard from over 2500 individuals, and received several hundred other submissions. Although the task force reportedly felt hampered by government-imposed time limits, it published a comprehensive public report of its findings on May 31, 2016. The task force's recommendations on fundamental rights provide the government with a window to enshrine strong protections in the new constitution.

The task force recommended that the constitution be regarded as the supreme law of the land and that the judiciary ensure all legislation is in compliance with the constitution.

Recommendations:

- Amend the constitution to strengthen protection of fundamental rights of all persons, including for the LGBTI community.
- Explicitly include gender identity and sexual orientation alongside race, religion, language, caste, sex, political opinion, place of birth, and other such grounds as protected characteristics in the non-discrimination provisions of the new constitution.

Sexual Orientation and Gender Identity

State and non-state discrimination against the lesbian, gay, bisexual, transgender and intersex population persisted. Sections 365 and 365A of the Sri Lankan Penal Code prohibit "carnal knowledge against the order of nature" and "gross indecency," commonly understood in Sri Lanka to criminalize same-sex relations between consenting adults, including in private spaces.

These laws enable a range of abuses against LGBTI people by state officials and the general public. No laws specifically criminalize transgender or intersex people in Sri Lanka. but police have used several criminal offenses and regulations to target LGBTI people, particularly transgender women and men involved in sex work. These include a law against "cheat[ing] by personation," and the vaguely worded Vagrants' Ordinance that prohibits soliciting or committing acts of "gross indecency," or being "incorrigible rogues" procuring "illicit or unnatural intercourse."

Some trans women and gay men said that repeated harassment by police, including instances of arbitrary detention and mistreatment, had eroded their trust in Sri Lankan authorities, and made it unlikely that they would report a crime. Some transgender people reported abuse and harassment at the hands of medical professionals, leading many to self-medicate rather than seek professional assistance.

Recommendations:

- Pass comprehensive anti-discrimination legislation that prohibits discrimination, including on grounds of gender identity and sexual orientation, and includes effective measures to identify, prevent, and respond to such discrimination.
- Repeal sections 365 and 365A of the Sri Lankan Penal Code, which criminalize same-sex relations between consenting adults, and the Vagrants' Ordinance, which has been used to criminalize transgender people and sex workers.
- Stop arbitrarily detaining people based on their gender expression, gender identity, sexual orientation, or sex worker status, including by prohibiting police officers from arresting transgender people for "cheating by personation" under section 399 of the Penal Code.

Migrant Workers

More than one million Sri Lankans are employed overseas, mostly in the Middle East, and many remained at risk of abuse at every stage of the migration cycle, from recruitment and transit, to employment, repatriation, and reintegration. More than a third of Sri Lanka's migrants are domestic workers, almost exclusively female. The government took some steps to protect their rights abroad, but many continued to face long working hours with little rest, delayed or unpaid wages, confinement in the workplace, and verbal, physical, and sexual abuse. The *kafala* (sponsorship) systems in the Middle East ties workers visas to their employers, where in several countries they cannot transfer jobs without employer consent, and

can be punished with imprisonment and deportation if they leave their employers. In June 2016, the government announced that it appointed a committee to study strategies to reduce the number of domestic workers abroad to end this form of migration.

In 2014, Sri Lanka began to implement the Family Background Report (FBR) circular, which effectively bans women with children under the age of 5 from migrating overseas for domestic work. It also requires all women with children over age 5 to nominate a substitute caregiver who consents to filling in for her, as well as written permission of a “guardian” (the husband, or father if unmarried), and attestation of several government officers before she is allowed to migrate. In August 2015, the government extended this to all women migrating overseas for employment, requiring them to complete a family background report. The 2014 circular also sets a higher minimum age requirement than 18 for women hoping to migrate overseas for domestic work. Such requirements on women are discriminatory and prevent them from seeking employment opportunities without providing support for them in Sri Lanka. In 2016, the UN Committee on Migrant Workers called on Sri Lanka to withdraw the circular.

Recommendations:

- Repeal circulars that restrict women’s migration for work overseas, and increase educational and employment opportunities for such women in Sri Lanka.
- Ensure that women migrant domestic workers who face abuse in countries of destination are provided with shelter, legal assistance, as well as psychosocial assistance at Sri Lankan missions abroad.
- Cooperate and share information with other country-of-origin embassies on abusive employers and agencies, and harmonize standards and protection mechanisms for all workers.
- Implement reintegration policies for returning migrant workers, particularly female migrant workers.

Women’s Rights

Sri Lanka had its review before the Committee on the Elimination of Discrimination against Women (CEDAW Committee) in March 2017. The government panel was unprepared for many of the questions although most topics raised had been flagged ahead of time. This raises concerns about the government’s commitment to fulfill its many pledges on women’s rights issues.

In its concluding observations, the CEDAW Committee noted that the Sri Lankan government had yet to implement the Convention on the Elimination of All Forms of Discrimination against Women in full, although it did note some progress on policies and plans designed to protect women against sexual and other violence, and against trafficking. Both the CEDAW Committee and women’s rights groups in Sri Lanka noted a disturbing absence of women’s voices in the constitutional amendment process as well as in the transitional justice process, despite the responsibility of all countries, articulated in Security Council Resolution 1325, to ensure “increased representation of women at all decision-making levels” in institutions and mechanisms for the prevention, management, and resolution of armed conflict. The government’s proposed National Human Rights Action Plan states that all discriminatory laws will be amended in line with Sri Lanka’s international and national obligations. Sri Lanka must ensure in particular that the Muslim, Kandyan and Tesawalamai personal laws are amended to remove provisions that lead to discrimination on the basis of gender in relation to inheritance, ownership and transfer of land and property, marriage, divorce and child custody. Sri Lanka should also undertake reforms to end child marriage across all communities; at present 12 percent of girls marry before the age of 18.

Recommendations:

- Revise or revoke all laws that discriminate on the basis of gender.
- Set the minimum age of marriage at 18 for people of all religions, with exceptions permitted only for 16 and 17 year olds with a judicial order, as set out in international treaties.

International Justice

Sri Lanka should ratify and implement the Rome Statute of the International Criminal Court.

