

SRI LANKA

**Civil Society Report on the Implementation of the ICCPR
Replies to the List of Issues CCPR/C/LKA/Q/5**

**112th Session of the UN Human Rights Committee
Geneva – October 2014**

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Franciscans International
A voice at the United Nations

I. Introduction

1. This report is submitted by **Franciscans International** for the review of the state report of Sri Lanka which will be examined during the 112th Session of the Human Rights Committee in October 2014.
2. The report focuses on key concerns related to the civil and political rights in Sri Lanka as it is in the list of issues: accountability, liberty of person, judiciary, freedom of expression, freedom of assembly, freedom of association and minorities.

II. Accountability (arts. 2, 6, 7, 9, 10 and 14)

Issue 11: Please report on concrete measures taken to effectively address impunity for human rights violations committed by both State and non-State actors, in particular by ensuring independent and impartial investigations and applying the rule of law and due process in prosecuting perpetrators. What measures have been taken to ensure the right of victims of human rights violations to timely, prompt and effective remedies? Does the State party envisage accepting international assistance to resolve outstanding cases of serious human rights violations? How does the State party plan to strengthen the cooperation and coordination between different national and international authorities in investigating allegations of human rights violations during the conflict? Please provide an update on the progress made by the Sri Lankan Army's Court of Inquiry in investigating allegations of civilian casualties, including the allegations reported upon by a Channel 4 documentary.

3. The evolution of the domestic situation has shown that obstacles for a well and free functioning judiciary system remain important. There are still numerous and varied problems which have to be addressed; independence and impartiality are two of the most critical issues. An example amongst many others fostering this argument is the case of the kidnapped and killed school-boy Mr. Kapilnath in Chavakachcheri, Jaffna in March 2010. The alleged suspect is a member of the government aligned party, the Eelam People's Democratic Party (EPDP). When the case was in progress, armed men had been observed in the judge's residence surroundings trying to influence the case so that it would be dropped. Even though additional security had been granted by the police, the judge was eventually transferred with inconclusive results. Since then, the case has not been further examined and the alleged suspect has not been convicted.¹
4. The authorities' capabilities extend beyond their clandestine influence and they candidly wield influence over legal outcomes, demonstrating the legal system's lack of independency as well as impartiality. This is evident in such cases as when a Minister of Government allegedly intimidated a judge in Mannar. A group of Muslims who were dissatisfied with the verdict, protested in front of the court and caused significant damage. The Minister concerned with the matter, phoned the judge in order to ask him to change the verdict and release the arrested. Moreover, he set up a meeting with the Secretary of the Commission for Justice requesting him to transfer the judge in question. However, the Secretary refused since this was not within its remit.²
5. Not only has the Government repeatedly not shown any interest in the investigation of previous human rights violation, but in some cases it has also allegedly supported the perpetrators indirectly. In Colombo on August 10, 2014, a mob including Buddhist monks trespassed upon the Centre for Society & Religion's private property aiming at disrupting a meeting for families of disappeared persons from the north. The police refused to provide

¹ COMMISSION FOR JUSTICE AND PEACE OF THE DIOCESE OF JAFFNA, SRI LANKA. « *Eluded Peace, Denied Justice: Bare facts and naked truths* ». August 7, 2012

² Ibid.

the necessary protection for the meeting and the participants. Together with the Ministry of External Affairs, they blamed the participants for the tensions instead of condemning the mob of violating human rights, in particular the infringement of the property right. They trampled on the rule of law and missed to call on the investigation the incident. By that way, they protected the perpetrators which have not been punished.³

6. The role of the attorney is unambiguous; it is to ensure the prosecution of criminal offenses. It is crucial that the attorney is not biased so that those responsible for these offenses are held accountable. However, this is not always the case in Sri Lanka: the ability of the Department of the Attorney General to conduct prosecutions without prejudice is questionable. This became especially obvious during former Attorney General's term. His method of conducting the rigorous responsibilities was unprecedentedly and allegedly politicized since the department was not able to hold out against the pressure of political subversion.⁴
7. Many Sri Lankans lost faith in an independent and impartial judiciary because the system is strongly politicized. Hence, in some instances it has failed to hold the officials accountable for their misdemeanor. Consequently enough, this had led people to stop filing human rights cases because of the predetermined outcome; in all probability pro-government.⁵ Too often, the judiciary mechanisms do not function well as the complaints to the Sri Lanka's National Human Rights Commission (NHRC) exemplify. In April 2013, Mr. Ruki Fernando filed a complaint (No. 1548/13) due to a disruption of a peaceful vigil. Evidence was supplied and added to the complaint in form of video footage, photos and eyewitness testimonies. As of February 2014, this complaint has not been resolved. Furthermore, families of disappeared persons from the north wanted to head to Colombo to submit a petition to the UN, but were stopped before they were able to do so. Thus, in March 2013 they submitted a complaint to the head office of the NHRC which summoned all parties concerned twice that year. The police never turned up and no further information was provided to the complainants nor action undertaken (as of February 2014).⁶

Recommendations

8. The State party should take measures to:
 - 8.1 Adopt policies and amend the Constitution in order to ensure the independence of the judiciary from the Government;
 - 8.2 Ensure that all offenses including kidnapping and killing are investigated and prosecuted credibly through Sri Lankan public justice system;
 - 8.3 Address the problems of the Department of the Attorney General politicization by inter alia reducing the political control of the institution by the Executive;
 - 8.4 Implement comprehensively the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC) in order to address the crisis of the national legal system;
 - 8.5 Adapt and strengthen the NHRC so it becomes a commission inquiry which examines independently and impartially the received complaints and which finds out the causes of the alleged human rights violations in accordance with Paris Principles.

³ THE CONFERENCE OF MAJOR RELIGIOUS SUPERIORS OF SRI LANKA (CMRS). *The Conference of major Religious Superiors of Sri Lanka Condemns Illegal Intrusion of Centre for Society & Religion*. August 10, 2014

⁴ Established investigative and prosecutorial mechanisms are deeply flawed. In: *Sri Lanka Briefing Notes*. No. 04, August 2012, p. 10

⁵ Key Findings on Accountability in Sri Lanka. In: *Sri Lanka Briefing Notes*. No. 02, March 2012, p. 9

⁶ Attacks on minority religious rights. In: *Sri Lanka Briefing Notes*. No. 08, February 2014, p. 21

III. Prohibition of torture and cruel, inhuman or degrading treatment, liberty and security of person, fair trial and independence of judiciary (arts. 7, 9, 10 and 14)

Issue 14: Please describe the measures taken to address arbitrary and unlawful detention by public officials, and to ensure that those responsible for such cases are duly sanctioned and victims are adequately remedied. What steps have been taken (a) to guarantee, in practice, the rights of persons deprived of their liberty to notify their families about their detention, and to have access to a lawyer and a doctor starting from the moment of their arrest; and (b) to establish a central register of all persons in official custody and publish a list of all detainees and places of detention?

9. In our observations, the investigations in Sri Lanka are frequently superficial; they lack transparency which can lead the cases to go on for years. In accordance to our sources, there are still hundreds of prisoners who do not have any charges filed against them.⁷ Mrs. Tirumakal's case illustrates this problem as she spent the last 18 years (as of 2012) in prison without a proper case filed against her. During the same period she had had to appear 429 times in front of the judge. Moreover, four other men suffered the same fate with the same period in prison and amount of times in court. Facing the problem of "Justice delayed is justice denied", it is unacceptable to prolong cases in order to get rid of people, especially political prisoners.⁸ In addition to prisoners who have not been charged of any crime, a great number of detainees are convicted for minor charges such as providing food to the Liberation Tigers of Tamil Eelam (LTTE).⁹
10. The procedural guarantee, an important aspect of the rule of law, ensures that the detainees have access to a lawyer. Nevertheless, the Sri Lankan authorities have repeatedly violated this important principle. The human rights defenders Fr. Praveen Mahesan and Mr. Ruki Fernando had to experience it at first hand in March 2014 when during their three days detention (March 16 to 18, 2014), access to legal counselling was refused. Meanwhile, Mrs. Jeyakumari was arrested under the Prevention of Terrorism Act (PTA) which disregards human rights in itself. While arrested, the army / Criminal Investigation Department (CID) questioned her and refused her the right to speak to anyone including a lawyer.¹⁰
11. The right to life is the first aspect of the personal freedom and imprisonment is not a valid argument for a restriction. Sri Lanka has not taken the necessary steps to guarantee the rights of persons to have access to a doctor when under arrest. One instance is the case of a Tamil detainee Mr. Banesan Nimalaruban who died on July 4, 2012. He was not only allegedly brutally assaulted by prison officials, but he was also denied the necessary medical assistance. He was kept in the prison hospital even though a prison doctor had ordered to transfer him to a hospital outside the prison.¹¹
12. After several hunger strikes and protest by political prisoners in Welikada and Vavuniya, the concerned authorities promised to establish a "speed court" procedure in order to be able to accelerate the hearing of such cases.¹²

⁷ Continuing disappearances killings, torture, arrests and detention. In: *Sri Lanka Briefing Notes*. No. 05, February 2013, p. 12

⁸ COMMISSION FOR JUSTICE AND PEACE OF THE DIOCESE OF JAFFNA, SRI LANKA. « *Eluded Peace, Denied Justice: Bare facts and naked truths* ». August 7, 2012

⁹ Continuing disappearances killings, torture, arrests and detention. In: *Sri Lanka Briefing Notes*. No. 05, February 2013, p. 12

¹⁰ VIVAT. *Represion of Human Rights Defenders and Civil Society Representatives in Sri Lanka*

¹¹ Tamil detainee beaten to death: No proper inquiry held – July 2012. In: *Sri Lanka Briefing Notes*. No. 04, August 2012, p. 23

¹² Continuing disappearances killings, torture, arrests and detention. In: *Sri Lanka Briefing Notes*. No. 05, February 2013, p. 11

13. Families still lack knowledge and information regarding their missing relatives since the war or post-war period. Several families had last seen their relatives in military custody, but the Government denies any knowledge. Therefore an extensive list of all detainees is crucial. By not providing an updated and complete list of information, the likelihood of disappearances increases along with extreme delays, illustrating the Government's lack of will to cooperate.¹³

Recommendations

14. The State party should take measures to:
- 14.1 Ensure that all detainees have access to necessary adequate health services;
 - 14.2 Guarantee that any injury or death in prison or detention center is investigated and the responsible prosecuted;
 - 14.3 Recognize the right of all detainees to go to court for challenging the legality of their detention and provide access to legal counseling to all detainees;
 - 14.4 Examine its judicial system to avoid long-lasting process of litigation;
 - 14.5 Engage in the investigation of disappearances and cooperate thus with the UN as well as support the effort undertaken by family members towards truth, justice and accountability.

IV. Freedom of expression, freedom of assembly and freedom of association (arts. 19, 21 and 22)

Issue 23: Please respond to reports of (a) intimidation and harassment, including physical attacks, death threats, and politically motivated charges, against journalists and human rights defenders, by State officials; and (b) the State party's failure to bring perpetrators to justice. Please provide an update on the outcome of the investigation into the outstanding cases of attacks against human rights defenders and media personnel. Please describe the measures taken to protect individuals in the exercise of their freedom of expression and to prosecute the perpetrators of such attacks.

15. Intimidation, harassment and threats against human rights defenders are violations of the human rights regardless if it is state or non-state actor that is guilty. Having ratified the International Covenant on Civil and Political Rights (ICCPR), Sri Lanka has the obligation to protect the human rights defenders.¹⁴
16. The year 2012 has marked a new climax of the ongoing smear campaign against human rights defenders with a focus on any engagement with the UN processes, in particular, the Sri Lankan Universal Periodic Review (UPR) by the UN Human Rights Council. Human rights defenders along with other groups such as Tamil politicians and Christian clergy were the first suffering. They were accused of contributing to the revival of the LTTE. There are numerous examples of high politicians and officials threatening and discrediting human rights defenders. In January 2012 during a ceremony of the Organization of Professional Associations, the Defense Secretary (and brother of the president) Mr. Gotabaya Rajapakse deliberately accused human rights activists of being affiliated with the LTTE and of discrediting Sri Lanka's progress.¹⁵
17. Human rights defenders and other individuals from Sri Lanka engaging with the United Nations human rights system are especially targeted by the Government. The Government Spokesman and Media Minister Rambukwella repeatedly threatened those collaborating with and providing information to the UN. This reflects the intensification of reprisals and

¹³ Key Findings on Accountability in Sri Lanka. In: *Sri Lanka Briefing Notes*. No. 02, March 2012, p. 9

¹⁴ *International NGO letter on reprisals against Sri Lankan Human Rights Defenders cooperating with the UN*.

¹⁵ 2012: Attacks on dissent in Sri Lanka. In: *Sri Lanka Briefing Notes*. No. 02, March 2012, p. 13

threats against victims who raise their voice before human rights mechanisms including the UN Human Rights Council.¹⁶

18. On the night of March 16, 2014, two human rights defenders, Mr. Ruki Fernando and Fr. Praveen Mahesan were arrested in Killinochi by the Terrorist Investigation Department (TID) because of their goal to go north in order to investigate the arrest of several persons (including Ms. Jeyakumari). However, the aforesaid department thwarted their plans by accusing the human rights defenders to cause discomfort to the Government and disharmony amongst people. In addition, after talking to local and international media, they had being denied the right to speak to anyone about the case, the investigation and on the top of it, a third court order was issued allowing the seizure of their iPads and a hard disk. According to our sources, the authorities, especially the Terrorist Investigation Department (TIP), threaten human rights defenders and in some cases even arrest them in order to prevent them from discovering the truth about potential human rights violations.¹⁷
19. Not only human rights defenders are targeted, but journalists are also included. Mr. S.V. Sivakaran, the editor of the “Puthiyavan” (Tamil newspaper in the northern district of Mannar) received a death threat on April 10, 2014. It was issued by the United People's Freedom Alliance (UPFA) coalition provincial councilor led group. They threatened him to block the distribution of the newspaper and to burn down the office.¹⁸
20. It becomes significantly more problematic when the intimidation is specifically related to the reporting of lead politicians and their relatives since this further suppresses the freedom of the press and information. On April 9, 2014, the Criminal Investigation Department summoned the Lakbima newspaper’s chief editor Mr. Saman Wagaarchchi for lengthy questioning about the caption of a photo related to Mrs. Anoma Rajapaksa, wife of the Defense Secretary and brother of the President.¹⁹ On May 27, 2014, journalists were warned by high ranking police officers not to film the Defense Secretary Gotobhaya Rajapaksa’s arriving at the Mount Lavinia District Court in the context of a defamation case related to the “Sunday Leader” newspaper. One officer threatened the journalists to be imprisoned for months if they dare to film the Defense Secretary. Afterwards, the police obstructed access and the media personal were not able to cover the cross examination. This is dangerous in two regards: first, the freedom of the press and information is restricted. Thus secondly, related to the judicial proceedings, media is incapable of verifying the jurisdiction and the procedures.²⁰

Recommendations

21. The State party should take measures to:
 - 21.1 Review its national law in order to conform with the provisions of the UN Declaration on Human Rights Defenders;
 - 21.2 Ensure that all human rights defenders in Sri Lanka can pursue peaceful human rights activities without being harassed, intimidated or prosecuted;
 - 21.3 Inquire credibly reprisals against human rights defenders so that all perpetrators, state or non-state actors, who harass, intimidate or commit acts of violence against human rights defenders are hold accountable;
 - 21.4 Ensure that family members of disappeared persons as well as human rights defenders supporting them, face no intimidations, no harassment nor prosecution.

¹⁶ *International NGO letter on reprisals against Sri Lankan Human Rights Defenders cooperating with the UN.*

¹⁷ Arrest of three human rights defenders (HRDs). In: *Repression of Dissent in Sri Lanka. January – March 2014.* p. 5

¹⁸ Mr. S.V. Sivakaran and “Puthiyavan” newspaper: threats including death. In: *Repression of Dissent in Sri Lanka.* April 2014, p. 6

¹⁹ Mr. Saman Wagaarchchi: editor questioned by the police. In: *Repression of Dissent in Sri Lanka.* April 2014, p. 7

²⁰ FREE MEDIA MOUVEMENT. *Sri Lanka: Security forces should respect media freedom and should not obstruct journalists.*

V. Rights of persons belonging to minorities (arts. 18, 26 and 27)

Issue 26: Please indicate the measures taken to eliminate discrimination against ethnic, linguistic and religious minorities, including Muslim and Tamil communities. Please provide information on (a) cases of schools refusing admission to Protestant children on the grounds of religion; and (b) efforts made to prevent and to punish offences against the free exercise of religion in line with the provisions of the Covenant. In particular, please indicate the outcome of the State party's action regarding allegations of increasing pressure and harassment by the authorities against certain religious groups, including attacks on the places of worship of Hindu, Muslim, Evangelical Christian and Jehovah's Witness communities.

22. Minorities in Sri Lanka are still treated unfairly, often with tacit or explicit backing from the Government, despite the state's obligation deriving from the present Covenant. Since 2012 an increase in violence against Muslims has been observed. For instance in June 2014, over 80 Sri Lankan Muslims were injured and 3 killed in two coastal towns of the Sinhalese-dominated south during clashes with hardline Buddhists.²¹ The Defense Secretary, instead of calling for justice, allegedly protected the Buddhist extremists by indicating the danger of the spreading Muslim fundamentalism over the world. According to him, such a reaction is justified in order to rein it in.²²
23. The Muslims and the Christians who live in Sri Lanka suffer from discrimination with limited intervention on the part of the authorities. For instance on September 8, 2013, Buddhist monks leading a mob disturbed a prayer by forcibly entering the Jeevana Diya Church premises in Meegoda, destroying all the musical instruments and causing damage to furniture and windows. Additionally, the pastor and his mother were physically assaulted and were then in need of medical assistance. The praying people were verbally abused because, according to the attackers, they live in a Buddhist village and this is the reason the prayer meetings must stop immediately. The police arrived only after the mob had left and since then, as of February 2014, no one responsible for the attack has been arrested.²³
24. The issue of minorities is especially important in the postwar era when dealing with war experiences. May 18, 2014 was the fifth anniversary of the Government of Sri Lanka war victory. They celebrated the day as the annual "War Victory Day" in order to remember the soldiers died at war, whereas various Tamil groups and media named the same day "Remembrance Day". On May 5, 2014, the registrar of the Jaffna University announced the closure of the university from May 12 to 16, 2014. Later on, the Major General Udaya Perera also notified that no person would be permitted onto campus grounds on May 18, 2014. It was understood that these measures aimed to block activities related to Remembrance Day. Additionally, the military banned temple events as well as public gatherings, and military spokesman Mr. Ruwan Wanigasuriya announced that public remembrance events were not allowed that day (even though private events at home were possible). All of these measures are discriminatory and violate further both, the freedom of assembly and expression.²⁴
25. This year the police officials trampled on floral tributes which had been placed in front of the Northern Provincial Council Secretariat in Kaithadi. They continued by smashing the camphor lamp lit by Tamil political leaders.²⁵ The police force represents the government and must act neutrally. By no means, such discriminatory actions against a minority should be tolerated.

²¹ Sri Lanka Brief: Update/17 June 2014

²² Attacks on minority religious rights. In: *Sri Lanka Briefing Notes*. No. 08, February 2014, p. 25

²³ *Ibid.*, p. 24

²⁴ Celebration of the War Victory Day and Suppression of the Remembrance Day. In: *Sri Lanka Briefing note*.

May 2015

²⁵ *Ibid.*

26. Sri Lanka can still be considered unsafe for the Tamil minority. The state sponsored “Sinhala Colonization” project in the north raises fear for the ethnic group. Together with the Government, the Sri Lankan Army engages in aiming at minimizing the Tamil majority areas that reside in the north.²⁶ For instance, in the village of Manal Aaru (now Weli Oya), Sinhala villagers illegally settled and Tamil villagers were chased out.²⁷ Fear shared by many that discrimination will rise and the request for self-determination will be suppressed.

Recommendations

27. The State party should take measures to:

- 27.1 End harassment, intimidation and discrimination of religious and ethnic minority either by religious extremists groups or security forces;
- 27.2 Guarantee protection of religious and ethnic minority groups so that they can safely engage in peaceful activities;
- 27.3 Ensure every citizen’s right to play an active role in public affairs and that they are not discriminated due to their beliefs, religion or ethnicity;
- 27.4 Fully implement the sixteenth amendment of the Constitution to make provision of Sinhala and Tamil to be the languages of administration and legislation.

²⁶ Land Grabbing and Colonization. In: *Sri Lanka Briefing Notes*. No. 05, February 2013, p. 19

²⁷ UNIVERSITY TEACHERS FOR HUMAN RIGHTS JAFFNA (UTHRJ). *Special Report 5, From Manal Aaru to Weli Oya and the Spirit of July 1983*.