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UNHRC UNIVERSAL PERIODIC REVIEW - 2012

-stakeholders Information on Sri Lanka submitted by

Northeast Secretariat on Human Rights

1. INTRODUCTION

Over the course of the past three decades, war has devastated the NorthEast of Sri Lanka. Tamils in this area have faced extreme violence and been the victims of appalling human rights abuses. When the Prevention of Terrorism Act (PTA) was put in place, standard law enforcement mechanisms broke down and victims were left without recourse in the face of abuse. In response, community leaders in the NorthEast established citizens' committees to hear complaints and took whatever limited actions they found possible.

As a part of the 2002 peace process brokered by the Royal Norwegian Government between the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam(LTTE), the international community recommended the strengthening of the human rights protection mechanisms in the NorthEast of Sri Lanka. In response, the very community leaders who had been involved in the citizens' committees launched the NorthEast Secretariat On Human Rights (NESOHR) on July 9, 2004, in Kilinochchi, Sri Lanka.

NESOHR continued to be the only local, independent human rights monitoring body in the North-East of Sri Lanka up to end of 2008 after which due to the intensity of the war it became impossible for our operatives to function on the ground. Between 2005 and 2008, three of its founder members namely, Rev.Fr.Xavier Karunaratnam, Chairman(20.04.2008), Chandra Nehru(08.02.2005) and Joseph Pararajasingham (members) were killed by the Sri Lanka Armed Forces and or the Para military working with them. Rev.Fr. was killed by the deep penetration force of the Sri Lankan Army),Nehru was killed on the road to Batticaloa from Polannaruwa and Pararajasingham shot inside the Batticaloa Church on the Christmas eve(25.12.2005).-(Massacres of Tamils -1956 to 2008).



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2. FORCED DISAPPEARANCES, TORTURE AND EXTRA JUDICIAL KILLINGS:

Forced disappearances, torture, and extra-judicial killings are the norms in Sri Lanka and goes on unabated. It started to take place in large numbers in the 70s with the youth insurrection by JVP in the South., in the wake of which J.R.Jayawardene, the then President introduced the Prevention of Terrorism (Temporary Provisions) Act , which remains a permanent feature of Sri Lankan Laws with an amendment. Out of the three above offences, Forced disappearances and Involuntary Removals is the worst.

PTA and the Emergency Regulations (EMR) although extended every 30 days was used by successive governments for almost 30 years to rule the country, contributed in no small measure to the impunity of the Armed forces and aided and abetted and encouraged torture. Whilst confession was not admissible in evidence in normal criminal law of the country it was, under PTA and EMR. In 90 percent of the cases under these two Laws, confession was the only evidence against the accused and to obtain it Police tortured them. There are 31 methods of torture practiced by the Armed Forces in Sri Lanka well illustrated in a monograph by Prof. Fernando of the Colombo University and published by FRC, Sri Lanka. Although the EMR is now not being extended, some of its Provisions have been incorporated into the PTA.

3. DISAPPEARANCES

Although the State of Sri Lanka has signed and ratified the Optional Protocols to the ICCPR,they are still not implementing the views of the Human Rights Committee. In fact they have gone to the ridiculous extent of stating that they did not realize the implications when they signed it. Further having compromised their sovereignty they are putting up sovereignty of the country as a defence for not implementing the views of the HRC.

Two of the examples are :

1. *Communiation No: 1033/2001in the matter of Nallaratnam Singarasa-vs-Sri Lanka*

Views adopted on 21 July,2004 by HRC – ‘Unfair trial’ and the State was also directed to repeal and or amend many provisions of PTA.



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2. *Thevaraja Sharma*

<http://www.tamilnet.com/art.html?catid=13&artid=34240>

The petitioner Shanmugaratna Sarma Jegatheeswara Sarma filed the application that the court should order the government to pay the compensation as recommended by the UNHRC. The petition came up for hearing before two member bench of the Court of Appeal comprising Justice S.Sriskandarajah (President) and Justice Nalin Perera on Wednesday. The petitioner cited Mr.D.B. Jayasundera, Treasury Secretary and Secretary, Foreign Affairs Ministry and the Attorney General as respondents. The petitioner said in his application that his son Thevaraja Sarma was arrested in 1990 and was reported missing after the arrest. The father made representations to the Sri Lanka President, Human Rights Commission of Sri Lanka and several human rights organizations in Sri Lanka. But no action was on his representation. Finally he made complaint to the UN Human Rights Commission on 25th October 1999.

After inquiry the UNHRC held that the Government of Sri Lanka had violated the section 7 and 9 of Convention of Human Rights and instructed the Government of Sri Lanka to pay compensation to the bereaved family. Subsequently, Sri Lanka's Attorney General requested the Human Rights Commission of Sri Lanka (HRCSL) to determine the amount of compensation to be paid. Thereafter the HRCSL recommended to the GOSL to pay a sum of three million rupees as compensation. No action has been taken by the GOSL to pay the compensation to the petitioner. The petitioner begged court to order the GOSL to pay the compensation without delay. Thereafter the HRCSL recommended to the GOSL to pay a sum of three million rupees as compensation. No action has been taken by the GOSL to pay the compensation to the petitioner. Two decades later this matter is still pending.

3. **Current disappearances**

The latest Report of the Centre for Policy Alternative (CPA) in Colombo, entitled 'The disturbing rise in abductions in Sri Lanka, Paramilitary murders and the plight of Menik Farm IDPs (Groundviews updates@groundviews.org dated 08.04.2012) reveals that in the months of February/March itself 29 forced disappearances have taken place, of these 19 took place during the period when the 19th Sessions of UNHRC was in progress in Geneva. During the last six months the total number of disappearances reported was 56. A few examples follow.



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1. Prageeth Ekneligoda, journalist and cartoonist disappeared on 24th January, 2010 after he went to report on Sri Lankan Presidential Elections and is still missing. (www.transcurrents.com-15.04.2012-from an interview with his wife, Mrs. Sandya Priyangini Ehnaligoda)
2. 10th December, 2011- On the day of the Universal Declaration of Human Rights-UDHR- one Lalith Kumara Weeraraj and Kugan Muruganandan, both of 'Movement for Peoples Struggle' disappeared in Jaffna whilst they were preparing for a protest next day against missing persons. Government continued to maintain that they knew nothing about their disappearance (www.dailymirror.lk-12.04.2012), but recently it is reported in the media that they were held in the 6th Floor of the Police welfare building opposite Manning Market in Pettah, Colombo-1 and interrogated. (www.transcurrents.com.18.04.2012,1.07 a.m.)
3. 10th March, 2012
Ravindra Uthayashantha, a government politician and Chairman of Kolannava Pradeshiya Sabha was saved from being abducted by his supporters. The abductors were apprehended by the supporters, positively identified as from the Army and handed over to Police. However they were released a few hours later by the Police. (Daily Mirror.12.04.12)
4. 06th April, 2012
Premkumar Gunaratnam and Dimuthu Attygale both of the recently launched 'Frontline Socialist Party' were abducted by an armed group working under/with the blessings of the government, according to the abductees who were later released due to the protest by various International Human Rights Organisations, public outcry and the intervention of the Australian High Commissioner in Colombo since Gunaratnam happens to be an Australian Citizen. ([www.transcurrents.com,18.04.2012,1.07a.m.](http://www.transcurrents.com,18.04.2012,1.07a.m))

4. RAPE AND EXTRA-JUDICIAL KILLING:

March 3, 2012, Rape and murder of a 13 year old girl, Jesudasan Lakshini in the islet of Delft off Jaffna by one Kanthasamy Jegatheswaran alias Karuna, alleged to be the former right hand man of the EPDP Commander of Nepelean. He was also a suspect in the murder of Jaffna based journalist Mylvaganam Nimalarajan. EPDP (Eelam peoples Democratic party) is a coalition partner of the government and its leader, Douglas Devananda is a Minister. The suspect was apprehended by the people and handed over to Navy who in turn handed him over to police. This Islet is under the full control of the S.L. Navy, Police and EPDP for many years. The recent LLRC report has been very critical of EPDP armed cadres and its leader Devananda, the Minister. (Local media reports)



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5. LAST UNIVERSAL PERIODIC REVIEW- 13 MAY,2008

At the last UPR the government of Sri Lanka was represented by a delegation consisting of 17 members of which, the only person belonging to the minority community was Ajmeerajward, Counselor, permanent mission of Sri Lanka to U.N. in Geneva. The Hon Minister for Human Rights and Disaster Management, Mahinda Samarasinghe, the leader of the delegation, promised many things. He assured that it is his government's primary duty to safeguard the Human Rights of all its citizens. He also stated that his government believes firmly in the building of strong and independent National Institutions which can sustain and deliver on their mandates to promote and protect Human Rights and that National Human Rights Commission (NHRC) is a vital cog in the H.R. promotion and protection machinery. It is a vibrant independent Institution of the state. Concerning media he said government in no way condones or endorses any attack on media workers.

He undertook to effect development and a uniform compensation policy for the displaced and dispossessed. He said the high voter turnout in the Eastern Provincial Council elections demonstrated confidence in the commitment of the government to devolve far reaching powers to the provinces and promised S.L. will take measures for the effective implementation of the 13th A Amendment to the Constitution and adopt best practices good governance and political pluralism. Elections to the Northern P.C. was promised by Dr.Dayan Jayatileke,Sri Lankan Ambassador to Switzerland and Head of the Permanent Mission of S.L. to U.N. in Geneva.

6. RECOMMENDATIONS BY OTHER COUNTRIES

Brazil wanted S.L. to ratify the Optional Protocol to the Convention against torture

Canada recommended that SL takes steps to safeguard the independence of the key protection Institutions including through implementation of 17A to the constitution

Japan wanted witness protection system implemented



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IN THE ABOVE BACKDROP

Immediately after the civil war in 2009, and the advanced Presidential Election (two years earlier) the President passed the 18th Amendment repealing the 17th Amendment to the country's constitution. The 17th Amendment permitted an independent Constitutional Council (CC) with eminent members the power to appoint the National Human Rights Commission (NHRC), Judicial Service Commission, Police Commission, and Public Service commission. The reason given for not appointing the CC according to the 17th Amendment was that the minority parties were not agreeing to their nominee. But in fact an agreement was reached and the name of former Auditor General Mr.Epa was given. But this nominee was rejected by the President with the excuse that he was holding another important post. This despite the fact that Mr Epa was prepared to resign from this post in order to take up the post with CC. The 18th Amendment gave the rights to the President to appoint his men to all the above Commissions. Thus the present NHRC was not appointed in accordance with the Paris Principles. Political interference increased leading to breakdown of law and order.

The 17th Amendment was never implemented and the 13th Amendment was never fully implemented 25 years after it was enacted.

Elections to the Northern Provincial Council were never held and it is being ruled by a former Military General as the Provincial Governor.

In the past 17 journalists and other media workers had been killed and 50 journalists have fled the country in fear of their lives (World Socialist Website).

UNSG's Expert Committee's Report and Dublin Peoples Tribunal speaks of the other credible allegations of War crimes, crimes against humanity etc. in Vanni pre, during and post Mullivaikkal.