



SUBMISSION BY

SOCIETY FOR THREATENED PEOPLES INTERNATIONAL

A Non-Governmental Organization (NGO) in Special Consultative Status

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The Society for Threatened Peoples (STP) is an independent international human rights organization, representing a strong voice for minorities and indigenous peoples worldwide. Our most important activities concern the protection of minorities and threatened peoples, the promotion of human rights and the fight against human rights violations by creating public awareness and informing national and international key stakeholders about the situation of threatened peoples which hardly appear in the daily press or on the political agenda, and carry out campaigns and projects for their protection and well being. We provide an extensive documentation on various issues regarding our field of work for any people interested in minorities and human rights in general.

Introduction

1. Since the first cycle of the Universal Periodic Review on Sri Lanka in 2008, the situation in the country has changed dramatically: In late 2008, the Government of Sri Lanka (GoSL) started a military offensive against the Liberation Tigers of Tamil Eelam (LTTE) and declared victory in May 2009. From January to May 2009 – the civilian population remaining in the conflict area suffered “*unacceptably high*” casualties, according to the United Nations Secretary-General, Ban Ki-Moon.¹
2. STP believes that the clarification about the incidents that occurred in the final phase of the conflict, the investigation of alleged war crimes and the prosecution of those responsible to fight impunity, are crucial for lasting peace in Sri Lanka. STP therefore welcomes the UN Resolution on Reconciliation and Accountability in Sri Lanka passed at the 19th Session of the UN Human Rights Council (HRC).
3. Although accountability is a very important issue, this submission will not deal with it directly, because there has been said a lot about this topic already.² Instead, STP will focus on the post-war situation. According to the analysis of the post-war situation by STP, the war in Sri Lanka is over, but a very important underlying cause of the conflict has not yet been solved. The concerns of minorities – Tamils, Muslims and Christians – are not addressed and their rights not guaranteed. STP believes that unless all citizens are treated equally without any discrimination, Sri Lanka will face the same troubles it has been facing for the last decades. It is commonly known that the ignorance and oppression of smouldering conflicts can lead to violent outbreaks of those who feel they are not recognized. The division of the population – into a victorious majority and dominated minorities – is no ground for lasting peace.
4. For the above mentioned reasons and the fact, that STPs focus lies on minorities and indigenous peoples, this present submission will give special attention to minority issues. As most of the minorities live in the north of Sri Lanka, parts of the submission will concentrate on the situation there.

Involvement of Civil Society in Development Processes and Use of Land

5. According to the document A/HRC/8/46, Sri Lanka accepted the recommendation by the United Kingdom of Great Britain and Northern Ireland, “*that civil society organizations, including those from multi-ethnic communities and conflict affected areas in Sri Lanka’s north and east, be involved in the follow-up to the UPR process.*”
6. Unfortunately, GoSL does not seem to take the above recommendation very seriously: In the past three years, the occupation of land by state actors for development purposes without any consideration, information or involvement of affected communities – mostly Tamils who for having lived in the north of Sri Lanka for centuries can be considered as indigenous peoples – resulted in the violation of fundamental human rights and several international conventions such as the UN Declaration on the Rights of Indigenous Peoples and the ILO-Convention 169.

¹ UN News Centre, 1 June 2009: Civilian casualties in Sri Lanka conflict ‘unacceptably high’ – Ban: www.un.org/apps/news/printnewsAr.asp?nid=30984 (accessed: 20.04.2012).

² See: UN Panel of Experts on Accountability in Sri Lanka 2011: http://www.un.org/News/dh/infocus/Sri_Lanka/POE_Report_Full.pdf; Sri Lankan Lessons Learnt and Reconciliation Commission 2011: http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf; International Crisis Group (ICG) 2010: War Crimes in Sri Lanka: <http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/191%20War%20Crimes%20in%20Sri%20Lanka.pdf>; Human Rights Watch (HRW) 2009: War on the Displaced: http://www.hrw.org/sites/default/files/reports/srilanka0209web_0.pdf.

7. Since the end of the war, the north of Sri Lanka has seen a wide range of large-scale development initiatives, including infrastructure and tourist projects. Almost all of these projects are part of the GoSLs 'Northern Spring Programme' led by Basil Rajapaska. As this development programme for the north focuses on large-scale projects, most of these projects require a good deal of land. The acquisition of this land is often mentioned as problematic, land grabbing is an often repeated allegation.
8. One example of such an allegation was the leasing and touristic conversion of two islands near Kalpitiya – Inpativu and Vellai. The leasing contracts with two foreign companies were signed by the GoSL in August 2010 without knowledge and permission of the Sri Lankan parliament, and are therefore severely violating the rule of law. Further, the Sri Lanka Tourism Development Authority officially called the island uninhabited –which is not the reality. There are residents on the islands, using it to make their living by traditional fishery. These people were neither informed nor consulted about the projects. Therefore the leasing of the islands violates the Free Prior Informed Consent (FPIC), internationally recognized by the UN-Declaration on the Rights of Indigenous Peoples and the ILO-Convention 169 and to some extent.³
9. The threatened communities on the island pronounced their wish to live where their ancestors have lived for centuries and fish in the traditional way. So even though the work on the islands has not yet started, the affected communities still fear for their land and existence. Some of them are ready to go to court, if they are evicted from their homeland, but many of them fear the oppression and threats by the Navy, the Tourist Officials, Police and others, who at a meeting told them, not to do any interventions against tourism.
10. The leasing of the two mentioned islands is not an isolated case. There is a lack in participation and control of the vast majority of the population in planning and implementing development and there is a clear need to adopt a more inclusive development policy, ensuring the right of local communities to be involved according to the principles of the FPIC and the right to self determination.

Militarisation of Every Day Life in the North

11. According to the document A/HRC/8/46, Sri Lanka accepted the recommendation by Belgium "*to take the measures necessary to ensure the return and restitution of housing and lands in conformity with international standards for internally displaced persons*" and by Finland to "*take measures to protect the rights of IDPs, including long-term housing and property restitution policies that meet international standards, and protecting the rights to a voluntary, safe return and adequate restitution.*"
12. Over the past two years, the GoSL has made huge efforts to resettle a large number of Internally Displaced Persons (IDPs), which has resulted in 250'000 people – 95% of all 'official IDPs' – being allowed to return to their homes and communities. However the occupation of land by state actors – mainly the

³ As the Swiss company 'Lets travel Switzerland' is involved in one of the foreign companies that signed the leasing contract with the GoSL – STP has been following the case and trying to convince Lets Travel Switzerland to pressure its partners in order to withdraw from the contract with the GoSL.

military – often denies real access to their land to some of the officially resettled – so de facto they are still displaced.⁴

13. A villager told a person travelling through the Vanni: “We were told by the Divisional Secretary that we can go back to our lands. So we came from the camps. But when we came and started to clean up the land, the land we have been living for more than 25 years, the Army came and told us to go away. When we asked why, they told us that they are going to take our land for an Army Camp”.⁵
14. Militarisation is an omnipresent phenomenon in the north of Sri Lanka. The main types of military restrictions include High Security Zones (HSZ), Military Camps and Posts in almost every Village and Access Restrictions such as the need for fishermen to get permission by the military to fish in some areas.
15. Beside the occupation of land by the military, there is a tendency of the military being present in the everyday life of civilians and assuming the control in place of civil administration. Frequently one is stopped by the armed forces and asked about the destination and purpose of the journey and the military decides on the beneficiaries of NGO-programmes.
16. The vast military presence combined with the high number of female headed households, causes deep rooted fears among the civilians in the area. Sexual abuse by armed forces and the unwillingness of the authorities to investigate the cases are common allegations.
17. In order to move towards a normalization of life and realise the transition from war to peace, GoSL must take steps to demilitarise the north and ensure, all citizens of Sri Lanka enjoy the full range of human rights.

Economic, Cultural and Social Rights: ‘Sinhalisation’ of the North

18. According to the document A/HRC/8/46, Sri Lanka accepted the recommendation by Mexico to “*continue strengthen its activities to ensure there is no discrimination against ethnic minorities in the enjoyment of the full range of human rights, in line with the comments of the Committee on Economic, Social and Cultural Rights, the committee on the Elimination of Racial Discrimination, the Committee on the Rights of the Child, and the Committee on the Elimination of Discrimination Against Women.*”
19. Unfortunately, the GoSL doesn’t seem to be serious about the protection of minorities and their rights: In the past three years, there have been reports about a so called ‘Sinhalisation’ of the north. First, there are allegations by local communities of the GoSL treating Sinhala families in preferential way – e.g. giving Sinhalese fishermen permission whilst forcing Tamil fishermen to leave – and giving them economic incentives – such as land – in order to motivate them to settle in the north.
20. Furthermore, many Tamil villages and streets within these villages have been given Sinhalese names and sanctuaries and symbols of Hindus, Christians and Muslims have been replaced by Buddhist temples and symbols. Additionally, beside the official initiatives to re-demarcate boundaries, there are fears that existing boundaries are altered clandestinely in order to weaken Tamil dominated areas.

⁴ In a recent news article about heavy winds in the north of Sri Lanka, it was revealed, that in Menik Farm – an IDPs camp – there are still thousands of temporary shelters. See: News First, 1 April 2012: http://www.newsfirst.lk/english-news/index.php?view=news_more&id=10919

⁵ Groundviews 2010: The End of War in Sri Lanka. A Year Hence: S.123: <http://groundviews.org/category/issues/end-of-war-special-edition/>.

21. One example of such a shift of boundary is an incident reported to the Center for Policy Alternatives (CPA): “The Kanakarayankulam Medium Irrigation Tank was listed in the 2010 Irrigation Department’s Statistical Handbook as located in Northern Vavuniya, but it is not listed in the corresponding handbook for 2011. A new tank is listed in the 2011 handbook in Southern Vavuniya, Kalebogasweva, but was not included in the 2010 handbook. The Tamil residents around Kanarayankulam Tank have not been able to resettle in their original properties or visit. The ‘disappearance’ of a tank from a Tamil majority area and the appearance of a ‘new’ tank in the adjoining Sinhala area has obviously created significant fears that surreptitious steps are being taken by government officials to alter existing boundaries.”⁶
22. The above mentioned issues point to a denial of economic, cultural and social rights of minorities in favor of the majority population. If the GoSL is serious about its commitment to lasting peace, it must investigate the alleged preferential treatment and guarantee equal access to land as well as economic, cultural and social rights irrespective of the ethnic background.

Freedom of Opinion and Expression: Human Rights Defenders in Danger

23. According to the document A/HRC/8/46, Sri Lanka accepted the recommendation by Canada and Ireland to “take measures to ensure access to humanitarian assistance for vulnerable populations and take further measures to protect civilians, including human rights defenders and humanitarian workers.”
24. Unfortunately, there have not been many visible efforts concerning the second part of the recommendation. The violation of the fundamental right to Freedom of Opinion and Expression is a problem that is neither limited to minorities nor to the north. Regrettably, there are many different cases of attempts to silence critical voices by intimidation, defamation and abduction. The following are two recent examples:
25. First example: Mrs. Sandya Eknaligoda – the wife of a disappeared journalist – was one of the speakers during a side-event held on 19th March 2012 during the session of the UN HRC. Already at the side-event she was intimidated and called a liar by a supporter of the GoSL Delegation in Geneva.⁷ After having returned to Sri Lanka, Mrs. Eknaligoda attended a hearing at the Homagama Magistrate’s Court in connection with her plea to the High Court to summon Mr. Mohan Peiris, Advisor to the Cabinet of Ministers, to court to give evidence in relation to a statement he had made officially about the whereabouts of Mrs. Eknaligoda’s husband. At the hearing, Mrs. Eknaligoda was interrogated about her participation at the side-event and given the feeling she was a traitor for participating there.
26. Second example: In February 2012 – during the protests of fishermen in the West of Sri Lanka - a young man was killed by unknowns. In the aftermath, the leader of the National Fisheries Solidarity Movement (NAFSO) – Herman Kumara – was (indirectly) accused by the Minister of Fisheries in the Media of being responsible for this death. Some days later, when Kumara came back to Sri Lanka from a meeting in Rom, he was followed by a vehicle – the same one that had come to Kumaras home town before, investigating his whereabouts and asking questions about him. According to Kumara, this was an attempt

⁶ Center for Policy Alternatives (CPA) 2011: Land in the Northern Province: Post-War Politics, Policy and Practices. S. 138: <https://cpalanka.org/land-issues-in-the-Northern-Province-Post-War-Politics-Policy-and-Practices.pdf>.

⁷ STP organized and moderated the mentioned side-event and is in possession of video documentation of the incidents.

to abduct him when coming from overseas. Abduction in this moment would allow the perpetrators to say that he didn't disappear but never came back and lives abroad.

27. These are no isolated cases. There is reason to believe that the GoSL, instead of protecting its citizens, systematically pressures people, who dare to express a critical and dissent opinion publicly. The GoSL must guarantee the right to Freedom of Opinion and Expression to all of its citizens and assure the social and physical security of human rights defenders and other exposed persons.

Recommendations

28. STP believes that accountability is a key issue for lasting peace in Sri Lanka. Therefore, STP urges the GoSL to allow an international investigation about the incidents during the final phase of the war in order to ensure justice, equity, accountability and reconciliation for all Sri Lankans.
29. STP urges the GoSL to recognize all minorities as equal citizens of the Sri Lankan society and ensure there is no discrimination against minorities in the enjoyment of the full range of human rights.
30. STP recommends the GoSL to take measures to overcome the division of the population and fight racism and discrimination, in order to take steps towards reconciliation and lasting peace in Sri Lanka.
31. STP recommends the GoSL to take efforts towards a political solution of the underlying causes of the conflict. That means finding political mechanisms to actively involve minority representatives and assure their political participation.
32. STP insists that there should be more transparency and public information about the use of land for development and any other purposes and recommends elaborating and following mechanisms that actively involve the civil society in decision making. This involvement should follow the principles of the Free Prior Informed Consent (FPIC).
33. STP recommends elaborating an action plan on the demilitarisation of Sri Lankas north in order to allow the population to move towards a normal every-day life. This plan should include successive steps to withdraw the military and substitute it with civil authorities.
34. STP urges the GoSL to promptly, completely and impartially investigate allegations of preferential treatment of Sinhalese families and assure that everybody – irrespective of ethnic or religious background – enjoys the same rights and possibilities at the political, economic and cultural level.
35. STP insists that GoSL has the responsibility to protect civilians and especially vulnerable and exposed groups such as human rights defenders and recommends elaborating an action plan on how to fulfil this obligation.