

Submission to the Committee on the Elimination of Racial Discrimination

Geneva, 15, 16 August 2016

INTRODUCTION

1. The United States Tamil Political Action Council (USTPAC) respectfully makes this submission to the Committee on the Elimination of Racial Discrimination (CERD or the Committee).
2. USTPAC is a diaspora group of Tamils seeking accountability from both sides for war crimes committed during the ethnic conflict in Sri Lanka, and reform of the political and constitutional structures in Sri Lanka, which have historically discriminated against Tamils and minority communities on the basis of race and ethnicity. This discrimination is embedded in Sri Lanka's constitution, in legislation, selective non-implementation of constitutional safe guards in the Tamil dominated provinces, and practices of government departments, including the police and security services in contravention of Article 2 of the International Convention on the Elimination of All Forms of Racial Discrimination (the Convention). Furthermore, as a direct result of the most recent ethnic conflict which ended in 2009, the discrimination faced by Tamil women, particularly the 90,000 war widows¹ in the former war zones, and the 73,700 internally displaced persons (IDPs)² who are mostly Tamil, is also drawn to the Committee's attention. We will address the need for the transitional justice mechanisms currently being developed in Sri Lanka (including those that address the war crimes committed by both sides in the conflict) to be designed so as to address the embedded racial and ethnic divide in Sri Lanka. Finally, we draw the Committee's attention to the failure of the current leadership on Sri Lanka to lead a national reckoning of the discriminatory practices of the past and to adopt "immediate and effective measures" as required by Article 7 of the Convention.
3. USTPAC is the primary organization of Tamil Americans originally from Sri Lanka addressing issues of concern to Tamils in the United States. USTPAC has a close relationship with sister diaspora organizations around the world. Overall the Sri Lankan Tamil diaspora numbers approximately one million, most of whose members fled or left Sri Lanka since the 1970s as a direct response to racial discrimination, in many cases life threatening racial discrimination against Tamils and other communities in Sri Lanka, historically encouraged or sponsored by the Sri Lankan state. USTPAC also works with a broad band of civil society organizations and international human rights organizations on human rights issues, including the elimination of racial discrimination against Tamils and other communities in Sri

¹ "At the Commonwealth heads of government meeting in Colombo, British Foreign Secretary William Hague raised the "continued concerns over the vulnerability of women and girls to sexual harassment and abuse, particularly the 90,000 Sri Lankan war widows living in areas with a large military presence".

<http://www.channel4.com/news/sri-lanka-tamil-north-vanni-human-rights-chogm-rajapaksa> There are 50,000 war widows who are heads of household in the Northern Province, with over 23,000 in Jaffna Peninsula.

² <http://www.internal-displacement.org/south-and-south-east-asia/sri-lanka>

Lanka. USTPAC is active at the Human Rights Council (HRC), particularly recently during the passage of three successive resolutions, HRC 19/2, HRC 22/1, HRC 25/1 promoting reconciliation, accountability and human rights in Sri Lanka, which were opposed by the government of Sri Lanka, and on consensus HRC resolution 30/1 of September 2015.

4. The legitimacy of the diaspora as stakeholders for accountability, reconciliation, and human rights in Sri Lanka is now well recognized, most recently by the UN High Commissioner for Human Rights (the High Commissioner) in his oral report to the Human Rights Council in June 2016.³ The ongoing engagement of the Office of the High Commissioner for Human Rights (OHCHR) and this Committee's process now underway pursuant to the Convention is crucially important to support the reform process now in its infancy, and to start to remove the base causes of racial discrimination against Tamils, Muslims and other communities in Sri Lanka.

5. We refer to the list of themes issued by the Committee on 10 June 2016, which have been very helpful in framing USTPAC's submission. USTPAC's submission on the existence of, the effects of, and the failure to address the root causes of, racial discrimination in Sri Lanka are organized around the headings below. Each will be dealt with in turn and is preceded by a short background piece on the overall effects of the history of racial discrimination on the Tamil population in Sri Lanka.

Background

- I. Constitution of Sri Lanka
- II. Prevention of Terrorism Act, 1979
- III. Security and Police Practices that Target Tamil and Minority Communities
- IV. Women in the former war zones
- V. Transitional Justice
- VI. IDPs
- VII. Failure of current leadership to lead a national reckoning of the past

Background: Effects of Racial Discrimination on the Tamil Population

6. Sri Lanka is a diverse country with numerous ethnic and religious groups within its boundaries. Unfortunately, the government of Sri Lanka has not taken advantage of that diversity for the benefit of all of its citizens, but has historically, since independence, attempted to homogenize its population through assimilation, demographic engineering, elimination, and forcing populations to leave and flee the island. In addition, in the 1990s, the Muslim community in the North was forced from their homes and livelihoods by the Liberation Tigers of Tamil Eelam (LTTE). Non-Sinhalese constituted 30% of the

³ Paragraph 25, "The High Commissioner emphasizes the need to include the voices of victims abroad and encourages further outreach in the diaspora."

population at independence in 1946, yet now make up 25%.⁴ Tamils constituted 23% of the population in 1946 and today constitute 15%.⁵

7. Of those Tamils brought by the British in the 19th century, often called Indian Tamils or Hill Country Tamils, the first act of Parliament after independence was to deprive them of their citizenship. By the late 1980s, 500,000 had been returned to India⁶ against their will from whence their forebears had migrated. The remainder who were left stateless eventually regained citizenships in the 1980s and 1990s after prolonged struggle. These actions had a huge impact on the Tamil population; for example, it reduced the Tamil presence in Parliament from 33% to 20%⁷ and facilitated the discriminatory actions that were to follow. Today Tamils hold 15% of the seats in Parliament.

8. One million Tamils, one third of those on the island in 1983, have fled overseas since that time due to the horrors of war and ongoing ethnic discrimination and violence.

9. Approximately 200,000 Tamils were killed directly during the war from 1983 to 2009, most by state forces,⁸ while innumerable others died from decades-long embargoes of essential goods, including food and medicine⁹ Infant mortality, for instance, had quadrupled in the Jaffna Peninsula by 1993 since before the war and was twice as high as in the South.¹⁰

10. Regular and increasingly deadly pogroms targeted Tamils and their property following independence, culminating in the 1983 pogrom that claimed 3,000 lives and displaced 250,000 Tamils. During the late civil war, almost the entire Tamil population in the North East was displaced at one time or another, many multiple times, usually by the shelling and military action by government forces.

11. During the 20th century and increasingly since independence, state irrigation schemes have moved large numbers of Sinhalese into the traditionally Tamil areas, with 'nearly a quarter of the island's population [] moved from the Wet Zone to the Dry Zone between 1946 and 1971.'¹¹ Sinhalese constitute 23% (and nearly one third of the voting population) of the Eastern Province, where in 1946 they comprised 8%. In the 1980s efforts were begun to move more Sinhalese into border areas of the

⁴ http://nationalpubliclibrary.info/articles/Ethnic_groups_in_Sri_Lanka

⁵ The native Tamil population has remained relatively stable as a percentage of the population, even with strong emigration, due to a young population.

⁶ <http://www.refworld.org/docid/469f3ad4c.html>

⁷ Virginia Leary: *Ethnic Conflict and Violence in Sri Lanka - Report of a Mission to Sri Lanka on behalf of the International Commission of Jurists*, July/August 1981

⁸ Catholic Bishop of Mannar submission to the LLRC saying 146,679 people need to be accounted for from the end of the war https://www.jrs.net/assets/Regions/IOR/media/files/LLRCsubmission_by_MannaarDiocese.pdf & documentation by Tamil Centre for Human Rights http://sangam.org/2007/11/Killed_1956_2007.php?uid=2619

⁹ Dr. Jordan J. Paust,, 'The Human Rights to Food, Medicine and Medical Supplies, and Freedom from Arbitrary and Inhuman Detention and Controls in Sri Lanka,' *Vanderbilt Journal of Transnational Law*, May 1998 <http://www.sangam.org/BOOKS/Vanderbilt.htm>

¹⁰ Jaffna infant mortality survey by N. Sivarajah, MD, *Proceedings of the International Conference on Health*, London, Sept, 1994

¹¹ Chelvadurai Manogaran, 'Colonization as Politics: Political Use of Space in Sri Lanka's Ethnic Conflict,' p.85 in Chelvadurai Manogaran & Bryan Pfaffenberger, *The Sri Lankan Tamils: Ethnicity & Identity*, Westview Press, Boulder, CO, 1994

Northern Province, especially those areas intersecting the Eastern Province to drive a wedge between the two. Gerrymandering of districts has been used in both the North and East to weaken Tamil political representation. Grievances over colonization of the Northern and Eastern Provinces, political marginalization, widespread and systematic racial and ethnic discrimination and anti-Tamil violence were sparks for the ethnic civil war.

12. An example of the demographic engineering referred to above, is that the formerly Tamil-speaking district of Puttalam on the North Central coast became Sinhalese-speaking in just one generation after schools were switched from Tamil medium to Sinhalese medium. Language rights were one of the first triggers for ethnic conflict when Mr. Bandaranaike ran for prime minister on the platform of 'Sinhala Only in 24 hours' during the election of 1956, which he won. Establishing the language of government as Sinhalese was a deliberate and consequential act of racial discrimination, particularly when such a high proportion of employment, particularly educated employment, was in public service.

I. CONSTITUTION OF SRI LANKA

13. The Constitution of the Democratic Socialist Republic of Sri Lanka ("Sri Lanka's Constitution"), grants the majority community of Sinhalese Buddhists overriding rights in two areas: religion and language.

(i) Religion

Article 9 of Sri Lanka's Constitution states:

"The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana [clerical hierarchy], while assuring to all religions the rights granted by Articles 10 and 14(1)(e)."¹²

Chapter II of Sri Lanka's Constitution is devoted to this Article alone, giving it unusual prominence. Articles 10 and 14(1)(e) provide for freedom of religion and its practice for every person and every citizen.

(ii) Official Language

Article 18 of Sri Lanka's Constitution states:

"(1) The Official Language of Sri Lanka shall be Sinhala.

(2) Tamil shall also be an official language.

(3) English shall be the link language.

(4) Parliament shall by law provide for the implementation of the provisions of this Chapter. "

Article 19 provides:

"The National Languages of Sri Lanka shall be Sinhala and Tamil."¹³

Provision is then made for the use of both languages in schools and administration in the various provinces and the central government.¹⁴ The failure of the government of Sri Lanka in its report to this

¹² <https://www.parliament.lk/files/pdf/constitution.pdf>

¹³ *ibid.*

Committee to mention this provision of its Constitution (paras 15-28 of the government of Sri Lanka's report) which is clearly antithetical to the language and spirit of Article 2 of the Convention is telling indicator over the government of Sri Lanka's commitment to addressing the root causes of the racial and ethnic discrimination in Sri Lanka.

14. By singling out Buddhism, which is the religious practice of the vast majority of the Sinhala population, and granting it this prominence over the other distinct communities, Sri Lanka's Constitution predisposes the state and the state's institutions and practices to discrimination in favour of the Sinhala population and undermines the state's obligation to protect all of its citizens equally.

15. In practice, Buddhism is supported by the government through official symbolism, funds¹⁵, and the Ministry of Buddhist Sasana and Religious Affairs, which also has departments for Hinduism, Islam and Christianity.¹⁶ The current government recently set up a Buddhist Revival Fund for providing further resources to the Sasana. Sinhalese is for all intents and purposes the language of government and society, with Tamils who do not speak Sinhalese having trouble finding employment in or interacting with the government, particularly the central government and in areas outside their traditional areas of habitation in the North and East. Equally serious has been government laxness in looking after the interests of non-Sinhalese Buddhists in fundamental rights, education, law and order, infrastructure, and the economy, where discrimination is pervasive.

16. Currently there is significant momentum for constitutional reform in Sri Lanka. The historic election of 2015, where, with the essential support of the Tamil and Muslim political parties, a new reform government was elected, offers an opportunity to establish a new constitution, which puts all racial and religious groups on an equal footing. On March 2016 the Sri Lankan parliament established itself as a constitutional assembly to draft and approve a new constitution or amendments to the old, by the end of 2016 to be followed by a referendum in 2017. Wide-ranging consultations within Sri Lanka have commenced during the first half of 2016, overseen by a Public Representations Committee.

17. The Tamil National Alliance (TNA), which is an alliance of the majority of Tamil political parties and which is the official opposition in Sri Lanka is directly involved in drafting the new constitution. On behalf of the Tamil population, the TNA is seeking a change in the nature of the state from strongly unitary to a federal system, which would mean control of law and order, protection of language and land and taxing authority to be established at the provincial level. The TNA is also requesting that the Northern and Eastern Provinces be re-merged as required in the current constitution as a result of section 1.4 of the 1987 Indo-Lanka Accord, which reads:
"Also recognizing that the Northern and the Eastern Provinces have ben areas of historical habitation of the Sri Lankan Tamil speaking peoples, who have at all times hitherto lived together in this territory with

¹⁴ *ibid.*

¹⁵ The Ministry of Buddhist Sasana spent at least US\$2 million in 2015, not including salaries.

<http://www.mbra.gov.lk/images/pdfs/Progress%20Report%20Book%20%202015.pdf>

¹⁶ Simply looking at the websites of the departments indicates the difference - <http://www.mbra.gov.lk/en/> & <http://www.hindudept.gov.lk/>. Organizational structure of Dept. of Buddhist Sasana http://www.buddhistdept.gov.lk/web/images/contents/large_en.png

21. Also to be noted is that following the 1988-1991 JVP uprising of Sinhalese leftists, the government at the time granted amnesty to all the 9,000 prisoners held under the PTA²⁴ and released them to integrate back into society and join the democratic process as a political party.

22. Special Rapporteur Juan Mendez observed in May this year that the PTA is “still very much in place” and provides an open door for “police investigators to use torture and ill-treatment as a routine method of work.”²⁵ The Attorney General’s Office has played a central role in cruelly prolonging arbitrary detentions and stunting judicial proceedings under the current government by use of this Act. The High Commissioner noted in his June 2016 report that, “On 17 June, the President issued similar directions to the Commanders of the Armed Forces and the Police to enable the Human Rights Commission to exercise and perform its powers, functions and duties and for the purpose of ensuring that fundamental rights of persons arrested or detained are respected and such persons are treated humanely,” although similar directives have been issued on several occasions in the past to little effect.

23. Tamil detainees under the PTA have conducted a series of hunger strikes this past year out of dire circumstances and frustration at promises not kept. Another hunger strike started on August 8²⁶, accompanied by demonstrations by families. Indefinite and arbitrary detention has become a very emotive issue for Tamils in Sri Lanka, weakening their confidence in the reconciliation process. Reform of the PTA and release of prisoners were immediately identified as issues that President Sirisena’s new government could implement rapidly to show their reconciliation bona fides. Promises have been made to prisoners for resolutions of their cases in a special court set up for this purpose, but this has not happened.²⁷

24. It is regrettable, and somewhat surprising, therefore, that the Government of Sri Lanka has chosen to cite this Act in support of its report to the Committee on compliance with Article 4 of the Convention.

III. SECURITY AND POLICE PRACTICES THAT TARGET TAMIL AND MINORITY COMMUNITIES

25. Security and Police practices that target Tamil and minority communities have been identified as needing remedial action but little or no action has been taken. The government of Sri Lanka has been encouraged by the High Commissioner of Human Rights to be “more forthright in combating []

during their visit in November 2015.

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16771&LangID=E%20%20%20%20%20#sthash.8bTglg5D.dpuf>

²³ Personal communication with TNA MP A. Sumanthiran, Esq.

²⁴ <https://www.amnesty.org/download/Documents/196000/asa370021991en.pdf>

²⁵ Preliminary observations and recommendations of the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Juan E. Mendez on the Official joint visit to Sri Lanka

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19943&LangID=E>

²⁶ “Tamil political prisoners begin fast demanding release” <http://colombogazette.com/2016/08/08/tamil-political-prisoners-begin-fast-demanding-release/>

²⁷ High Commissioner Oral Report on Sri Lanka to the HRC, June 28, 2016, A/HRC/32/CRP.4, p.5, and TNA MP Anathan slams Sirisena in Parliament for failing to honour promise on Tamil Prisoners, June 24, 2016

<http://www.ceylonews.com/2016/06/sirisena-slammed-for-failing-to-honour-promise-on-tamil-prisoners-video/>

discriminatory violence” and has been criticized for not moving fast enough with measures that would assist in building confidence among victim and minority communities in the post ethnic conflict situation that exists in Sri Lanka.²⁸

26. Since the end of the civil war there have been increasing calls for the government of Sri Lanka to address the racial divide in Sri Lanka both from institutions and processes set up by the government, such as the Lessons Learned and Reconciliation Commission, and those outside the government, such as the current ongoing Human rights Council process that commenced in 2012. All have accepted that as well as the necessity of accountability from both sides for the war crimes committed at the end of the ethnic war, there is a compelling and urgent need for the government to address the embedded racial divide in Sri Lanka. The successive HRC resolutions, the detailed reports of the High Commissioner, as well as the OHCHR investigation on Sri Lanka, all detail the urgent need for a comprehensive plan to address the past and the racial discrimination that has so undermined Sri Lanka with tragic consequences.

27. A critical example of the urgent need to address racial inequality and discrimination is in the composition and deployment of Sri Lanka’s armed forces. Currently 95-98 %²⁹ of the armed forces are comprised of Sinhalese. These armed forces are accused of serious war crimes that resulted in the deaths of 70,000 to 100,000 in 2008-9. These forces remain unreformed since the end of the war. What is more, they continue to be stationed in the North and East, the former war zones. 17 of 21 divisions of the army, the overwhelming majority of who are Sinhalese continue to be stationed in the North and East where the overwhelming majority of the populace are Tamil, as the government itself acknowledges in its report to this Committee.³⁰

28. There is an urgent need for comprehensive reform of the army and other branches of the security sector to root out the racial discrimination that has led to a nearly Sinhala only security sector. One straightforward action that the government of Sri Lanka could have taken in the last 18 months, and one urged upon it from many quarters, was to issue instructions to all branches of the security forces that harassment, surveillance, torture, sexual violence, including on racial grounds is prohibited and that those responsible will be investigated and punished.³¹ These would have been “immediate and effective measures” to combat prejudice and racial discrimination as required by Article 7 of the Convention. It is an illustrative example of the inability and or unwillingness of the government of Sri Lanka to take one of the most obvious and basic of steps towards addressing the deadly violence and dehumanization of the Tamil population that exists statewide in Sri Lanka that as of July 2016 no such instructions had been issued.

²⁸ High Commissioner Oral Report on Sri Lanka to the HRC, June 28, 2016, A/HRC/32/CRP.4, paragraphs 12c and 13

²⁹ K.M. de Silva, ‘Sri Lanka’s Political-Military Relations,’ Netherlands Institute of International Relations, November 2001, p. 18. See also <http://www.country-data.com/cgi-bin/query/r-13282.html>

³⁰ See, for example, paragraph 19 of the government’s report

³¹ See undertakings given by Foreign Minister Samaraweera General Debate 14 September 2015 to the Human Rights Council. See also OISL recommendation 9 and HRC resolution 30/1 OP 17.

29. Chief Whip Dinesh Gunawardene informed the Sri Lankan parliament in 2011 that, “Out of those in [the police] service, 81,328 are Sinhala police officers, 1,093 Tamil police officers, 952 Muslim officers, nine Dutch officers and 25 Malay officers.”³² During the war, the police served under the Ministry of Defence and their paramilitary force, the Special Task Force was heavily involved in the war, particularly in the East. In 2013 President Rajapakse moved the police to the new Ministry of Law and Order, headed by a former general. The Ministry is now known as the Ministry of Law and Order and Southern Development. Independent control of the police was weakened by the elimination of Constitutional Commission under President Rajapakse’s 18th Amendment to the constitution, but somewhat restored under the 2015 19th Amendment. The Asian Human Rights Commission has noted the increasing politicization of the police for years.³³

30. Control over law and order in the North East has been a primary demand of the Tamils since independence, since racial discrimination and ethnic-based violence have been such a problem exacerbated by centralized control of the police and other security forces.

IV. WOMEN IN THE FORMER WAR ZONES

31. In September 2010 Sri Lanka’s Deputy Minister for Women’s Affairs and Child Development Mr. Hizbullah identified a list of 89,000, nearly all Tamil, war widows in the former conflict zone—49,000 in the Eastern Province and 40,000 in the Northern Province.³⁴ Over 26,000 live in Jaffna Peninsula,³⁵ out of a Tamil population of 1 million Tamils, while more than 25,000 live in Batticaloa district out of a population of 614,500 Tamils. There are 50,000 female-headed households in the Northern Province.³⁶ One in five families in the North is headed by a female, most of who are widows coping on their own in areas with the highest female unemployment in the country. No government programmes have been aimed at this very vulnerable population or their dependents, partly because the issue is so linked to the issue of those missing or unaccounted for after the war. The current government has, however, recently set up a small loans programme.³⁷ Many continue to live in shacks thrown up at the end of the war, since little housing has been provided for those displaced by war.³⁸

³² *Daily Mirror*, Colombo, November 28, 2011 <http://www.dailymirror.lk/15074/police-service-short-of-around-10000-cadres>

³³ For instance, “The National Police Commission is politicized and defunct, and the office of the Attorney General has simply become the spokesperson for the government, with many actors having made critical comments concerning its independence and integrity in recent times.” http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/ALRC_LKA_UPR_S2_AsianLegalResourceCentre_uprsubmission.pdf. 2008. p.2

³⁴ *Daily Mirror*, Sept. 29, 2010 <http://www.dailymirror.lk/6838/89000-war-widows>

³⁵ <https://www.wsws.org/en/articles/2010/10/sriw-o27.html>

³⁶ IRIN, May 5, 2015 <http://www.irinnews.org/feature/2015/05/13/help-last-sri-lanka-war-widows>

³⁷ “Help at last for Sri Lanka war widows” <http://www.irinnews.org/feature/2015/05/13/help-last-sri-lanka-war-widows>

³⁸ At the end of the war, the ICRC estimated that 260,000 houses needed to be reconstructed in the North East. The World Bank has provided loans for 58,000 to be built, with another 50,000 to be built at some time by India, although it is unclear how many have been. <http://www.thehindu.com/news/international/imf-team-visits->

32. As 17 of the 20 divisions of the mostly Sinhalese army are stationed in the North and East, in many former conflict areas there is one soldier for every 5 civilians --one of the highest levels of militarization in the world. The female-headed Tamil households with poor housing with little income continue to be at extreme risk of sexual predation and violence, with little recourse, since the military are the ultimate authorities in the North and East. During the current HRC process, this discrimination against Tamil women in the North and East has been extensively discussed with repeated calls for action by the government to address the situation. Former LTTE cadres are especially at risk, since army personnel including soldiers believe they have a legal basis /excuse to enter homes at will. They are also required to report to military bases regularly.³⁹ Four soldiers were convicted in 2015 of raping a Tamil woman in the Northern Province in 2010.⁴⁰ The International Truth and Justice Project on Sri Lanka led by Yasmin Sooka noted that the woman had been 'repeatedly harassed and threatened by military and police.'⁴¹ This is the only case of soldiers being convicted for sexual violence against Tamil women since 1998.⁴²

V. TRANSITIONAL JUSTICE

33. Reconciliation and the assurance of justice cannot flourish without government and wider recognition in all communities of the realities of the history and current situation in Sri Lanka. Without this, Tamils live in a plight of insecurity and contempt, while still being the minority, and legally secondary in Sri Lanka. The OHCHR called for a comprehensive strategy reinforced by a concerted public information campaign to implement reconciliation processes and encourage a shift in the majoritarian political culture. We call upon the CERD to not only reinforce this message, but also to emphasize its vital and crucial significance. Moreover, such a message from this Committee may help create an environment of solidarity with the Human Rights Council, the High Commissioner and the Special Procedure holders, which would serve as a necessary catalyst to the implementation and success of Transitional Justice mechanisms currently being developed in Sri Lanka. It is essential that all of the mechanisms do not import the racial and ethnic biases, which underlie the majority of governmental structures and institutions in Sri Lanka. It is the Tamil and other communities in Sri Lanka's long experience of this discrimination and its consequences that has lead the High Commissioner, the Human Rights Council, the Tamil community and civil society organizations to identify the need, for example, for foreign judges and legal personnel in the criminal accountability mechanism currently under discussion.

34. A first step in the transitional justice process of national consultations, particularly with victims, was the formation of a task force in January 2016. These consultations have had a slow start and only began in June 2016, with some publicity for written submissions and efforts at meetings outside Colombo. One transitional justice mechanism has been formed, the Office of Missing Persons that was

[wartorn-northern-province-of-sri-lanka/article433562.ece](http://www.wartorn-northern-province-of-sri-lanka/article433562.ece) Distribution of houses to those most in need has been an important point of dispute.

³⁹ International Crisis Group, 'Sri Lanka: Women's Insecurity in the North and East,' Report No: 217, December 20, 2011

⁴⁰ <http://www.msn.com/en-us/news/other/sri-lankan-soldiers-convicted-of-rape/ar-AAfcU9j>

⁴¹ *ibid.*

⁴² http://news.bbc.co.uk/2/hi/south_asia/125691.stm

authorized by the cabinet in May, unfortunately, without waiting for this consultation process to be complete. Two consultations with NGOs were held in Colombo, the TNA were consulted and their recommendations incorporated, but bypassing the necessary procedures was not confidence inspiring. On the other hand, there is some concern that the consultation process is not proceeding rapidly enough and is slowing the entire transitional justice process.

35. Consulting victims is a difficult process after an ethnic war, since Tamils constitute the overwhelming majority of those victims. Before the last year of the war, a rough estimate of casualties in the war mirrored that of Guatemala, in which 90% of victims were Mayan. In Sri Lanka military casualties were approximately evenly divided between ethnicities until the end of the war, while 90% of civilian casualties were Tamils.⁴³

The Government and the Sinhala community has yet to accept its role in being the agent of racial discrimination and violence against the Tamil community- the reason for such a large Tamil diaspora. More significantly the government has failed to educate the Sinhala population of the crimes committed by its armed forces and the entrenched structures of government that result in racism and the need for those to be reformed to eliminate all forms of racism in the country.

VI. INTERNALLY DISPLACED PERSONS

36. The Internal Displacement Monitoring Centre (IDMC) notes the current situation of internally displaced persons (IDPs) in Sri Lanka as follows:

They originate from the Northern and Eastern Provinces and live in the districts of Jaffna, Kilinochchi, Mullaitivu, Vavuniya, Mannar (Northern Province), Trincomalee, Batticaloa (Eastern Province), and Puttalam (North Western Province). Their protracted displacement is a result of the 26-year civil war between government forces and armed insurgent groups, most prominently the Liberation Tigers of Tamil Eelam (LTTE), which ended in 2009 (IDMC, 1 July 2015, pp.3-4, 8).

Among them, 89 per cent, or up to 65,500 IDPs were living in host communities, the remainder in camps and about 550 in a relocation site (IDMC, 1 July 2015, pp.3-4, 8). The overwhelming majority belong to the Tamil and Muslim minorities. In addition, it is estimated that several tens of thousands among the more than 794,000 who are registered as having returned to their homes (Ministry of Resettlement, Reconstruction and Hindu Religious Affairs, 31 March 2015) have still not achieved a durable solution to their displacement.

Those still displaced in Jaffna, Puttalam and Mannar, who together make up two thirds of all current IDPs, have been displaced for 25 years or more. Most remained displaced for the whole period. Some in Puttalam and Mannar were able to return after the 2002 ceasefire, only to be

⁴³ Briefing by Association of Sri Lankan Tamils in the USA to US House Committee on International Relations, April 29, 2001, available at http://tamilnation.co/intframe/us/010429congressionalbriefing_files/frame.htm

displaced again in 2006 (Puttalam) or 2007 (Mannar). In Kilinochchi and Mullaitivu districts, the whole population was displaced during the last phase of the war (2008-2009). A large majority, 270,230 people ([Ministry of Resettlement, Reconstruction and Hindu Religious Affairs](#), 31 March 2015), have since returned. Many had already experienced displacement during earlier phases of the conflict, as had IDPs and returnees in other areas of the north and east ([IDMC](#), 1 July 2015, p.4).⁴⁴

37. A good portion of those who remain displaced are unable to return because of the large tracts of land and other property that continue to be held by the military in the North East in an area whose economy rests on agriculture and fishing. Approximately 3,200 acres of land have been returned under the new government according to the Ministry of Resettlement, with 8,000 still to be released.⁴⁵ The British Tamil Forum, however, estimates that 67,000 acres of private and state land held on long-term lease are still inaccessible by owners as of January 2016.⁴⁶

38. At a Christmas celebration in Jaffna in 2015, President Sirisena promised to solve the issues of long-term IDPs in 6 months.⁴⁷ The High Commissioner was assured that the process of releasing land and relocating structures built by the military would be completed by June 2016.⁴⁸ Recently news reports have said that the government is working to close all 31 IDP camps in Jaffna by August 15 by building homes elsewhere. Local critique of the plan notes that without the military releasing the economic resources the families depend on for livelihood, the resettlement will not be much improvement.⁴⁹ Other resettled IDPs in the North East have complained of a lack of infrastructure on recently released land.⁵⁰ The World Bank noted in its February 2016 report said that a land dispute mechanism was necessary and as yet had not been established.⁵¹

39. The presence of the nearly all-Sinhalese military on such wide swathes of the land is a problem economically, demographically and socially. The military continues to seize land and works to make its camps permanent, while bringing families and cultural and religious activities along with them. The military flies Buddhist flags over their camps and is building many Buddhist monuments in areas that have been hitherto Hindu, Muslim and Christian. Supposedly demobilized soldiers from the civil security force are involved in tourism, agriculture, garment factories and pre-schools.⁵²

⁴⁴ <http://www.internal-displacement.org/south-and-south-east-asia/sri-lanka/figures-analysis>

⁴⁵ http://resettlementmin.gov.lk/site/index.php?option=com_content&view=article&id=19&Itemid=29&lang=en

⁴⁶ <http://tamilsforum.co.uk/2016/04/tamils-land-occupied-by-sri-lankan-security-forces-2/#more-3469>

⁴⁷ http://www.colombopage.com/archive_15B/Dec21_1450640457CH.php

⁴⁸ High Commissioner Oral Report on Sri Lanka to the HRC, June 28, 2016, A/HRC/32/CRP.4, p.4.

⁴⁹ <http://www.thehindu.com/todays-paper/tp-international/sri-lanka-may-shut-31-idp-camps-in-jaffna/article8883514.ece>

⁵⁰ www.tamilguardian.com/article.asp?articleid=16923

⁵¹ <http://documents.worldbank.org/curated/en/363391467995349383/pdf/103246-SCD-P152526-PUBLIC-NON-BOARD-VERSION-SriLankaCompleteFinal-122515lr-2.pdf>

⁵² http://www.csd.lk/index.php?option=com_content&view=article&id=20&Itemid=134&lang=en#present-future-role

40. During the war, almost the entire Tamil population and a good portion of the Muslim population were displaced at one time or another, many multiple times, which impoverished those displaced and pulled apart the social order. The displacement was viewed in many cases as intentional and seen in the context of an ethnic war.

VII. FAILURE OF CURRENT LEADERSHIP TO LEAD A NATIONAL RECKONING OF THE PAST

41. Despite the welcome electoral changes in Sri Lanka in 2015 the current leadership appears reluctant to undertake the, admittedly, challenging task of confronting the Sinhalese majority mindset of racial superiority that evidences the deep racial and ethnic divide in Sri Lanka. Tamils welcome the important symbolic steps taken by the government “towards promoting reconciliation and changing the majoritarian political culture”⁵³ such as the singing of the national anthem in both Sinhala and Tamil on independence day in February 2016 for the first time since 1946, and the less triumphal militaristic, more subdued respectful Remembrance Day commemorations in May 2016. However, as the High Commissioner has noted these gestures need to be accompanied by institutional change and much more vigorous steps to combat “discriminatory violence, including through appropriate legislation to regulate hate speech and incitement to violence.” We add further that the government of Sri Lanka has not yet conceded to its history and the Tamils’ past. It speaks of reconciliation, but not between whom; of assisting victims, but not why they became so in the first place.

We respectfully make this submission to the Committee with hopes that it will assist in its considerations.

USTPAC, August 2016

⁵³ High Commissioner Oral Report on Sri Lanka to the HRC, June 28, 2016, A/HRC/32/CRP.4, paragraph 10.